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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 00–046F]

RIN 0583–AD07

Nutrition Labeling: Nutrient Content Claims on Multi-Serve, Meal-Type Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its nutrition labeling regulations to change the definition of ''meal-type'' products to allow for nutrient content claims on multiple-serve food containers, to adopt the definition of ''main dish'' used by the Food and Drug Administration (FDA), and to define how meal-type products and main dishes should be nutrition labeled. The change in the definition of meal-type products will allow nutrient content claims on qualifying products to be based on 100 grams of product rather than on the serving size, which is based on the Reference Amounts Customarily Consumed (RACCs) for the food components. These actions are in response to a petition filed by ConAgra, Inc. (the petitioner). The changes will help to ensure that FSIS' nutrition labeling regulations are parallel, to the maximum extent possible, to the nutrition labeling regulations of FDA, which were promulgated under the Nutrition Labeling and Education Act (NLEA) of 1990.

EFFECTIVE DATE: Effective on November 30, 2004.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program and Employee Development, FSIS, at (202) 205–0279 or by fax at (202) 205–3625.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) authorize the Secretary of Agriculture to establish and maintain inspection programs designed to assure consumers that meat and poultry products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. FSIS regulates the labeling of meat and poultry products, and FDA has responsibility for all other food labeling.

In January of 1993, FSIS and FDA published their final rules on nutrition labeling. Both agencies amended their respective regulations to (1) Require either mandatory or voluntary nutrition labeling on most of the food products they regulate; (2) revise the list of required nutrients and food components; (3) specify a new format for declaring the nutrients and food components in nutrition labeling; (4) permit specific products to be exempt from nutrition labeling; (5) establish RACCs specific for food categories; and (6) prescribe a simplified form of nutrition labeling and the conditions under which such labeling may be used.

In order for persons to use the nutrition information to construct healthy diets that include products from across the food supply, the two agencies recognized that the regulations need to be as consistent as possible. There was overwhelming support for FSIS to proceed with the adoption of FDA-defined nutrient content claims, including adopting a constant value of 100 grams for comparison of nutrient content claims on meal-type products. As a result, both agencies issued regulations establishing, as nearly uniform as possible, definitions for nutrient content claims to allow consumers to make valid comparisons among food product categories.

In addition, the agencies participated in the Interagency Committee on Serving Sizes to jointly establish the RACCs for foods and the criteria for converting RACCs to serving sizes in common household measures. The final FSIS rule, among other things, established RACCs for 23 meat (9 CFR 317.312(b)) and 22 poultry product categories (9 CFR 381.412(b)). These RACCs were calculated to reflect the amount of food, including snacks, dinners, and condiments, that persons four years of age and older customarily consume. These calculations were based on consumption survey data and on data used by food manufacturers and grocers. RACCs are designed to be used by food companies as the basis for determining the serving sizes for nutrition labeling of their products.

Nutrient content claims for both FDA and FSIS are composed of two defined parts: The amount (weight) of the nutrient and the amount (generally a serving) of food in which the nutrient is found. If the food is considered to be an individual food, the amount of food (a serving) is represented as the RACC for the food category. If the food is a meal-type product, the amount of food is measured by weight, *i.e.*, 100 grams. If a ''low-fat'' or ''healthy'' claim is used, the amount of fat is limited to a maximum of 3 grams per RACC for individual foods and 3 grams per 100 grams of product for meal-type products.

However, FSIS and FDA have established different criteria for what constitutes a meal. FSIS defined a ''meal-type'' product (9 CFR 317.313(l) and 381.413(l)) as a product for consumption by one person on one eating occasion that constitutes the major portion of a meal. For purposes of making a nutrition claim, a meal-type product must (1) make a significant contribution to the diet by weighing at least 6 ounces, but no more than 12 ounces per serving (container); (2) contain ingredients from two or more food groups, depending on the weight of the product; and (3) represent, or be in a form commonly understood to be, a meal (breakfast, dinner, etc). In addition, the serving size for meal-type products is defined as the entire content (edible portion only) of the package, *i.e.*, single-serve container.

FDA defined a ''meal-type'' product (21 CFR 101.13(l)) for the purpose of making a claim as a product that makes a major contribution to the total diet by (1) weighing at least 10 ounces per labeled serving; (2) containing not less than three 40-gram portions of food or combinations of foods from two or more of the four food groups; and (3) representing, or being in a form commonly understood to be, a meal

(breakfast, dinner, etc). FDA's regulations do not restrict the use of the meal-type product claims to single-serve containers.

FDA also defined a ''main-dish'' product (21 CFR 101.13(m)) for the purpose of making a claim as a food that makes a major contribution to the meal by (1) weighing at least 6 ounces per labeled serving; (2) containing not less than 40 grams of food, or combinations of foods from at least two of four food groups; and (3) representing, or being in the form commonly understood to be, a main dish (*i.e.*, not a beverage or dessert). FSIS regulations do not define a ''main-dish'' product.

FSIS' and FDA's rationale for allowing different criteria to serve as the basis for evaluating nutrient content claims on meal-type products versus other types of foods is that meal-type products have potentially large variations in amounts customarily consumed, and the average serving size would not be an appropriate basis for comparison of nutrients. Rather, a constant value of 100 grams was determined to be an appropriate basis. FSIS further reasoned that restricting this category to a single-serving criterion and requiring that products within the category be represented as a meal would adequately distinguish these products from other similarly formulated products.

ConAgra's Petition

In September 1998, ConAgra petitioned FSIS to amend the definition of ''meal-type'' products in its regulations to allow nutrient content claims on multi-serve food containers based on the same criteria as for meals that are sold in single-serving containers. Specifically, the petitioner sought an amendment of the definition of ''meal'' (9 CFR 317.313(l)) to include product in multiple-serving containers in the general principles (9 CFR 317.313) and the ''healthy'' regulations (9 CFR 317.363). FSIS' initial response was that the few changes requested by the petitioner would not be sufficient to address all of the issues and amend the regulations so that manufacturers can make consistent nutrition content claims on multi-serve containers. FSIS requested that the petitioner provide additional data to justify the changes it was seeking and clearly state the need for consistent definitions for main-dish and meal-type products that do not compromise the established RACCs for food products and that are consistent with the intent of the NLEA.

In 2001, FSIS concluded that more conclusive data submitted by the petitioner indicated that there was a market for multi-serve meals that did not exist in 1993 when the nutrition labeling regulations were issued. Because of the increasing popularity of multi-serve meals and evidence that a significant number of consumers were purchasing such meals, FSIS said it was prepared to consider changing the regulatory definition of ''meal-type'' products and allowing nutrient content claims based on a 100 gram criterion as long as there are no established RACCs for the food product category in question. It also said that consistency in nutrient content claims and criteria for RACCs for all meat and poultry products must be maintained in accordance with the regulations. The Agency noted that if Federal regulations regarding the basis on which nutrient content claims are made are modified for consistency, FSIS and FDA need identical definitions for what constitutes a meal and a main-dish product. FSIS granted the petition in September 2001. The petition and supporting documentation are available in the FSIS Docket Room (*see* **ADDRESSES**) and on the FSIS Web site at *http://www.fsis.usda.gov.*

Response to Comments

The proposed rule was published in the **Federal Register** on April 16, 2003 (68 FR 18560–65). The public comment period of the proposed rule closed on June 16, 2003. Four comments were received. All of the respondents supported the proposal because it increased the regulatory consistency between FSIS and FDA on nutrient content claims, and it would benefit consumers by permitting them to choose from more healthy food options.

Several respondents commented that, with this change, FSIS has positioned meat and poultry meals as being as nutritious as similar products regulated by FDA. The commenters further stated that the FSIS regulations will no longer promote the idea of good versus bad foods, and that the change will eliminate nutrient content claims based on the packaging format instead of the product formulation.

While it is true that some consumers tend to infer that multi-serve and other products are nutritionally inferior if they lack the claims that other products have, FSIS has never promoted a good food/bad food policy.

The commenters asserted that the change will be an incentive for manufacturers to provide more low-fat or healthy meal options. FSIS agrees. In addition, the consistency in the nutrient claim criteria will benefit consumers by providing them with additional tools and guidance for adhering to a low-fat diet at a more favorable cost.

We are adopting the proposed rule as final but are making some minor editorial changes to conform the existing regulations with this final rule. In addition, although discussed in the preamble of the proposed rule, the definition of ''main-dish'' was inadvertently omitted in the regulatory changes of the proposed rule to Part 317 of the meat regulations (but was included in Part 381 of the proposed rule's regulatory changes to the poultry regulations). In the final rule, paragraph (m) of section 317.383 of the meat regulations contains the definition of main-dish.

Costs and Benefits Associated With the Rule

No significant cost impact is seen as a result of this final rule. All costs would be borne by industry, which petitioned for the change. The only labels that would be affected would be those of multi-serve, meal-type products above 6 ounces that would be able to bear nutrient content claims. The Agency believes that no more than 300 products currently on the market will be affected by the change. Therefore, the expected additional labeling costs would be nominal for the industry.

A more consistent format across similar food products will be of benefit to consumers, who will be able to make more informed choices in their food purchases. Consumers report that they are experiencing some confusion about how some food products are labeled, and why some packages bear claims specifying the nutrient content of the product and others do not.

The Final Rule

The final rule will provide consumers of meat and poultry products with consistency in nutrition labeling with FDA's requirements by amending § 317.309 and the parallel poultry regulations at § 381.409 to provide for the nutrition labeling of multi-serve meal-type products and of main-dish products. The final rule also will amend § 317.313(l) and § 317.313(m) and the parallel poultry regulations at § 381.413(l) and § 381.413(m) by revising the definitions of a ''meal-type'' product and adding a ''main-dish'' product for the purpose of making a claim on the packaging of the food products. In addition, this rule will amend the individual nutrient content claim regulations for both meat and poultry products at 9 CFR 317.313(l) and (m) and 9 CFR §§ 381.413 (l) and (m).

FSIS' paramount objectives in considering this modification of its nutrition labeling regulations were that the changes not undermine the basic principles or intent of the misbranding provisions of the Federal Meat Inspection Act and the Poultry Products Inspection Act, and that such modifications would result in labels that would not mislead consumers or create unfair marketing advantages for any segment of the food industry. The Agency also was concerned about extending the use of the 100-gram criterion for nutrient content claims to include products not in single-serve containers. Although useful, the 100-gram criterion does not provide nutrient information to consumers that is as definitive as the amount of nutrient per RACC.

However, in the interests of maintaining consistency between FSIS and FDA and of providing incentives to industry to develop more less-caloric yet economical meals and main dish products in multi-serve containers that would qualify for nutrient content claims, FSIS is making changes in its nutrition labeling regulations. The Agency believes that consumers will benefit from the information on the containers of products that were formulated to qualify to bear such claims.

Executive Order 12866 and the Regulatory Flexibility Act

This final rule has been determined to be not economically significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. FSIS is responding to an industry petition for a labeling change affecting approximately 300 food products.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. When this rule becomes final: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Effect on Small Entities

The Administrator, FSIS, has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities. This rule will change the definition of ''meal-type'' products to allow for nutrient content claims based on 100 grams of product on multi-serve food containers and adopt FDA's definition of ''main-dish'' products; however, it will not require anyone to change their labeling.

Paperwork Requirements

This rule has been reviewed under the Paperwork Reduction Act and imposes no new paperwork or recordkeeping requirements.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this final rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov.*

The Regulations.gov website is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection, Nutrition.

9 CFR Part 381

Food labeling, Food packaging, Nutrition, Poultry and poultry products

The Final Rule

■ For the reasons discussed in the preamble, FSIS is amending 9 CFR, Parts 317 and 381, as follows:

PART 317—LABELING, MARKING DEVICES AND CONTAINERS

■ 1. The authority citation for 9 CFR part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. Section 317.309 is amended as follows:

■ a. By removing the phrase ''and meal type products'' in paragraph (b)(7)(iv).

■ b. By revising paragraph (b)(12) to read as follows:

§ 317.309 Nutrition label content.

* * * * *

(b) * * *

(12) The serving size for meal-type products and main-dish products as defined in § 317.313(l) and § 317.313(m) in single-serving containers will be the entire edible content of the package. Serving size for meal-type products and main-dish products in multi-serve containers will be based on the reference amount applicable to the product in § 317.312(b) if the product is listed in § 317.312(b). Serving size for meal-type products and main-dish products in multi-serve containers that are not listed in § 317.312(b) will be based on the reference amount according to § 317.312(c), (d), and (e).

* * * * *

■ 3. Section 317.313 is amended by revising paragraph (l) and by adding paragraph (m) to read as follows:

§ 317.313 Nutrient content claims; general principles.

* * * * *

(l) For purposes of making a claim, a ''meal-type'' product will be defined as a product that:

(1) Makes a major contribution to the diet by:

(i) Weighing at least 10 ounces per labeled serving; and

(ii) Containing not less than three 40 gram portions of food, or combinations of foods, from two or more of the following four food groups, except as noted in paragraph (l)(1)(ii)(E) of this section:

(A) Bread, cereal, rice, and pasta;

(B) Fruits and vegetables;

(C) Milk, yogurt, and cheese;

(D) Meat, poultry, fish, dry beans, eggs, and nuts; except that:

(E) These foods will not be sauces (except for foods in the four food groups in paragraph (l)(1)(ii)(A) through (D) of this section, that are in the sauces),

gravies, condiments, relishes, pickles, olives, jams, jellies, syrups, breadings, or garnishes; and

(2) Is represented as, or is in the form commonly understood to be, a breakfast, lunch, dinner, meal, or entre. Such representations may be made by statements, photographs, or vignettes.

(m) For purposes of making a claim, a main-dish product will be defined as a food that:

(1) Makes a major contribution to the meal by:

(i) Weighing at least 6 ounces per labeled serving; and

(ii) Containing not less than 40 grams of food, or combinations of foods, from two or more of the following four food groups, except as noted in paragraph (m)(1)(ii)(E) of this section.

(A) Bread, cereal, rice, and pasta;

(B) Fruits and vegetables;

(C) Milk, yogurt, and cheese;

(D) Meat, poultry, fish, dry beans, eggs, and nuts; except that:

(E) These foods will not be sauces (except for foods in the four food groups in paragraph (m)(l)(ii)(A) through (D) of this section, that are in the sauces), gravies, condiments, relishes, pickles, olives, jams, jellies, syrups, breadings, or garnishes; and

(3) Is represented as, or is in a form commonly understood to be, a main dish (*e.g.,* not a beverage or dessert). Such representations may be made by statements, photographs, or vignettes.

* * * * *

§ 317.354 [Amended]

■ 4. Section 317.354 is amended as follows:

■ a. By adding the phrase ''and main-dish products as defined in § 317.313(m)'' after the phrase ''meal-type products as defined in § 317.313(l)'', whenever it occurs in the introductory text of paragraphs (b)(1), (e)(1) and (e)(2).

■ b. By adding the phrase ''and main-dish products as defined in § 317.313(m)'' after the phrase ''meal-type products as described in § 317.313(l)'' in the introductory text of paragraph (c)(1).

■ c. By adding the phrase ''and main-dish product as defined in § 317.313(m)'' after the phrase ''meal-type product as defined in § 317.313(l)'', whenever it occurs in the introductory text of paragraphs (b)(2) and (c)(2).

■ (d) By adding the phrase ''or a main-dish product'' after the phrase ''meal-type product'' in paragraphs (d)(1) and (e)(2)(ii)(B).

§ 317.356 [Amended]

■ 5. Section 317.356 is amended as follows:

■ a. By adding the phrase ''and main-dish products as defined in § 317.313(m)'' after the phrase ''meal-type products as defined in § 317.313(l)'', whenever it occurs in paragraph (b) introductory text and paragraph (c)(3).

■ b. By adding the phrase ''and main-dish product as defined in § 317.313(m)'' after the phrase ''meal-type product as defined in § 317.313(l)'', whenever it occurs in paragraph (d)(1) introductory text and paragraph (d)(2)(i).

§ 317.360 [Amended]

■ 6. Section 317.360 is amended as follows:

■ a. By adding the phrase ''and main-dish products as defined in § 317.313(m)'' after the phrase ''meal-type products as defined in § 317.313(l)'', whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), and (c)(4).

■ b. By adding the phrase ''and main-dish product as defined in § 317.313(m)'' after the phrase ''meal-type product as defined in § 317.313(l)'', whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), and (c)(5).

■ c. By adding the phrase ''or a main-dish product'' after the phrase ''a meal-type product'' in paragraph (c)(1)(i).

§ 317.361 [Amended]

■ 7. Section 317.361 is amended as follows:

■ a. By adding the phrase ''and main-dish products as defined in § 317.313(m),'' after the phrase ''meal-type products as defined in § 317.313(l)'', whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), and (b)(6).

■ b. By adding the phrase ''and main-dish product as defined in § 317.313(m)'' after the phrase ''meal-type product as defined in § 317.313(l)'', whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), and (b)(7).

■ c. By adding the phrase ''or a main-dish product'' after the phrase ''a meal-type product'' in paragraph (b)(1)(i).

§ 317.362 [Amended]

■ 8. Section 317.362 is amended as follows:

■ a. By adding the phrase ''and main-dish products as defined in § 317.313(m)'' after the phrase ''meal-type products as defined in § 317.313(l)'', whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), (c)(2), (c)(4), (d)(2), (d)(4), (e)(1), and (e)(2).

■ b. By adding the phrase ''and main-dish product as defined in § 317.313(m)'' after the phrase ''meal-type product as defined in § 317.313(l)'', whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), (c)(3), (c)(5), (d)(1)(i), (d)(1)(iii), (d)(3), and (d)(5).

■ c. By adding the phrase ''or a main-dish product'' after the phrase ''a meal-type product'', in paragraphs (b)(1)(i) and (c)(1)(i).

§ 317.363 [Amended]

■ 9. Section 317.363 is amended as follows:

■ a. By adding the phrase ''main-dish product, as defined in § 317.313(m), and before the phrase ''a meal-type product, as defined in § 317.313(l)'' in the introductory text of paragraph (b)(2)(i) and (b)(3)(i).

■ b. By removing the phrase ''meal-type product, as defined in § 317.313(l),'' and adding the phrase ''main-dish product, as defined in § 317.313(m),'' in its place in paragraph (b)(4)(i) and by removing the phrase ''meal-type products that weigh at least 6 oz. but'' and adding the phrase ''main-dish products that weigh'' in its place in paragraph (b)(4)(i).

■ c. By removing the phrase ''and including meal-type products that weigh 10 oz. or more per serving (container),'' in paragraph (b)(4)(ii).

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 10. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

■ 11. Section 381.409 is amended as follows:

■ a. By removing the phrase ''and meal-type products'' in paragraph (b)(7)(iv).

■ b. By revising paragraph (b)(12) to read as follows:

§ 381.409 Nutrition label content.

* * * * *

(b) * * *

(12) The serving size for meal-type products and main-dish products as defined in § 381.413(l) and § 381.413 (m) in single-serve containers will be the entire edible content of the package. Serving size for meal-type products and main-dish products in multi-serve containers will be based on the reference amount applicable to the product in § 381.412(b) if the product is listed in § 381.412(b). Serving size for meal-type products and main-dish products in multi-serve containers that are not listed in § 381.412(b) will be based on the reference amount according to § 381.412(c), (d), and (e).

* * * * *

■ 12. Section 381.413 is amended by revising paragraph (1) and by adding paragraph (m) to read as follows:

§ 381.413 Nutrient content claims; general principles.

* * * * *

(1) For purposes of making a claim, a ''meal-type'' product will be defined as a product that:

(1) Makes a major contribution to the diet by:

(i) Weighing at least 10 ounces per labeled serving; and

(ii) Containing not less than three 40 gram portions of food, or combinations of foods, from two or more of the following four food groups, except as noted in paragraph (l)(1)(ii)(E) of this section:

(A) Bread, cereal, rice, and pasta;

(B) Fruits and vegetables;

(C) Milk, yogurt, and cheese;

(D) Meat, poultry, fish, dry beans, eggs, and nuts; except that:

(E) These foods will not be sauces (except for foods in the four food groups in paragraph (l)(1)(ii)(A) through (D) of this section, that are in the sauces), gravies, condiments, relishes, pickles, olives, jams, jellies, syrups, breadings, or garnishes; and

(2) Is represented as, or is in the form commonly understood to be, a breakfast, lunch, dinner, meal, or entrèe. Such representations may be made by statements, photographs, or vignettes.

(m) For purposes of making a claim, a ''main-dish'' product will be defined as a food that:

(1) Makes a major contribution to the meal by:

(i) Weighing at least 6 ounces per labeled serving; and

(ii) Containing not less than 40 grams of food, or combinations of foods, from two or more of the following four food groups, except as noted in paragraph (m)(1)Iii)(E) of this section.

(A) Bread, cereal, rice, and pasta;

(B) Fruits and vegetables;

(C) Milk, yogurt, and cheese;

(D) Meat, poultry, fish, dry beans, eggs, and nuts; except that:

(E) These foods will not be sauces (except for foods in the four food groups in paragraph (m)(1)(ii)(A) through (D) of this section, that are in the sauces), gravies, condiments, relishes, pickles, olives, jams, jellies, syrups, breadings, or garnishes; and

(2) Is represented as, or is in a form commonly understood to be, a main dish (*e.g.*, not a beverage or a dessert). Such representations may be made by statements, photographs, or vignettes.

* * * * *

§ 381.454 [Amended]

■ 13. Section 381.454 is amended as follows:

■ a. By adding the phrase ''and main-dish products as defined in § 381.413(m)'' after the phrase ''meal-type products as defined in § 381.413(l)'', wherever it occurs in the introductory text of paragraphs (b)(1), (e)(1), and (e)(2).

■ b. By adding the phrase ''and main-dish products as defined in § 317.313(m)'' after the phrase ''meal-type products as described in § 317.413(l)'', of paragraph (c)(1).

■ c. By adding the phrase ''and main-dish product as defined in § 381.413(m)'' after the phrase ''meal-type product as defined in § 381.413(l)'', whenever it occurs in the introductory text of paragraphs (b)(2) and (c)(2).

■ d. By adding the phrase ''or in a main-dish product'' after the phrase ''meal-type product'' in paragraphs (d)(1) and (e)(2)(ii)(B).

§ 381.456 [Amended]

■ 14. Section 381.456 is amended as follows:

■ a. By adding the phrase ''and main-dish products as defined in § 381.413(m)'' after the phrase ''meal-type products as defined in § 318.413(l)'', whenever it occurs in paragraph (b) introductory text and paragraph (c)(3).

■ b. By adding the phrase ''and main-dish product as defined in § 381.413(m)'' after the phrase ''meal-type product as defined in § 381.413(l)'', whenever it occurs in paragraph (d)(1) introductory text and paragraph (d)(2)(i).

§ 381.460 [Amended]

■ 15. Section 381.460 is amended as follows:

■ a. By adding the phrase ''and main-dish products as defined in § 318.413(m)'' after the phrase ''meal-type products as defined in § 381.413(l)'', whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), and (c)(4).

■ b. By adding the phrase ''and main-dish product as defined in § 381.413(m)'' after the phrase ''meal-type product as defined in § 381.413(l)'', whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), and (c)(5).

■ c. By adding the phrase ''or a main-dish product'' after the phrase ''a meal-type product'' in paragraph (c)(1)(i).

§ 381.461 [Amended]

■ 16. Section 381.461 is amended as follows:

■ a. By adding the phrase ''and main-dish products as defined in § 381.413(m),'' after the phrase ''meal-type products as defined in § 381.413(l)'', whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), and (b)(6).

■ b. By adding the phrase ''and main-dish product as defined in § 381.413(m)'' after the phrase ''meal-type product as defined in § 381.413(l)'', whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), and (b)(7).

■ c. By adding the phrase ''or a main-dish product'' after the phrase ''a meal-type product'' in paragraph (b)(1)(i).

§ 381.462 [Amended]

■ 17. Section 381.462 is amended as follows:

■ a. By adding the phrase ''and main-dish products as defined in § 381.413(m)'' after the phrase ''meal-type products as defined in § 381.413(l)'', whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), (c)(2), (c)(4), (d)(2), (d)(4), (e)(1) and (e)(2).

■ b. By adding the phrase ''and main-dish product as defined in § 381.413(m)'' after the phrase ''meal-type product as defined in § 381.413(l)'', whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), (c)(3), (c)(5), (d)(1)(i), (d)(1)(iii), (d)(3), and (d)(5).

■ c. By adding the phrase ''or a main-dish product'' after the phrase ''a meal-type product'', in paragraphs (b)(1)(i) and (c)(1)(i).

§ 381.463 [Amended]

■ 18. Section 381.463 is amended as follows:

■ a. By adding the phrase ''main-dish product, as defined in § 381.413(m), and'' before the phrase ''meal-type product, as defined in § 381.413(l)'' in the introductory text of paragraph (b)(2)(i) and (b)(3)(i).

■ b. By removing the phrase ''meal-type product, as defined in § 381.413(l),'' and adding the phrase ''main-dish product, as defined in § 381.413(m),'' in its place in paragraph (b)(4)(i) and by removing the phrase ''meal-type products that weigh at least 6 oz. but'' and adding the phrase ''meal-type products that weigh'' in its place in paragraph (b)(4)(i).

■ c. By removing the phrase ''and including meal-type products that weigh 10 oz. or more per serving container.'' in paragraph (b)(4)(ii).

Done at Washington, DC, on: September 27, 2004.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 04–22028 Filed 9–30–04; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AH24

Industry Codes and Standards; Amended Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference the 2001 Edition and the 2002 and 2003 Addenda of Division 1 of Section III of the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (BPV Code); the 2001 Edition and the 2002 and 2003 Addenda of Division 1 rules of Section XI of the ASME BPV Code; and the 2001 Edition and the 2002 and 2003 Addenda of the ASME *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code) to provide updated rules for constructing and inspecting components and testing pumps and valves in light-water cooled nuclear power plants. This final rule incorporates by reference the latest edition and addenda of the ASME BPV and OM Codes that have been approved for use by the NRC subject to certain limitations and modifications. The NRC is also withdrawing its approval of Subsection NH of the 1995 through 2000 Addenda of Section III of the ASME BPV Code.

DATES: Effective November 1, 2004. The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of November 1, 2004.

ADDRESSES: The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* The availability of the Regulatory Analysis and the Environmental Assessment is further discussed in Section 5 of this rule.

FOR FURTHER INFORMATION CONTACT: Stephen Tingen, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Alternatively, you may contact Mr. Tingen at (301) 415–1280, or via e-mail at: *sgt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

1. Background
2. Public Comments Received on Proposed Rule; and Final Rule
   2.1 Section III
   2.2 Section XI
   2.3 ASME OM Code
3. Section-by-Section Analysis
4. Generic Aging Lessons Learned Report
5. Availability of Documents
6. Voluntary Consensus Standards
7. Finding of No Significant Environmental Impact: Availability
8. Paperwork Reduction Act Statement
9. Regulatory Analysis
10. Regulatory Flexibility Certification
11. Backfit Analysis
12. Small Business Regulatory Enforcement Fairness Act
13. Miscellaneous Public Comments on Proposed Rule

1. Background

On January 7, 2004 (69 FR 879), the NRC published a proposed rule to amend 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities.'' The proposed rule presented revised requirements for construction, inservice inspection (ISI), and inservice testing (IST) of nuclear power plant components for public comment. For construction, the proposed rule would have permitted the use of Section III, Division 1, of the ASME BPV Code, 2001 Edition and the 2002 and 2003 Addenda for Class 1, Class 2, and Class 3 components with one new modification.

For ISI, the proposed rule would have permitted the use of Section XI, Division 1, of the ASME BPV Code, 2001 Edition and the 2002 and 2003 Addenda for Class 1, Class 2, Class 3, Class MC, and Class CC components with new modifications and limitations.

For IST, the proposed rule would have permitted the use of the ASME OM Code, 2001 Edition and the 2002 and 2003 Addenda for Class 1, Class 2, and Class 3 pumps and valves with no new modifications or limitations.

2.0 Public Comments Received on Proposed Rule; and Final Rule

Fifty-five comments on the proposed rule were received from utilities, service organizations, and individuals. In response to the public comments, the NRC has either removed or revised some modifications and limitations that were proposed. A summary of the public comments applicable to the proposed rule and their resolution are provided in the following sections.

The NRC has considered and resolved the public comments and incorporated changes into the final rule. The NRC is publishing the final rule in § 50.55a to incorporate by reference the 2001 Edition and the 2002 and 2003 Addenda of Division 1 rules of Section III of the ASME BPV Code; the 2001 Edition and the 2002 and 2003 Addenda of Division 1 rules of Section XI of the ASME BPV Code; and the 2001 Edition and the 2002 and 2003 Addenda of the ASME OM Code for construction, ISI, and IST of components in nuclear power plants. The 2001 Edition and the 2002 and 2003 Addenda of Sections III and XI of the ASME BPV Code are acceptable for use subject to limitations and modifications. The 2001 Edition and the 2002 and 2003 Addenda of the ASME OM Code is acceptable for use with no new limitations or modifications.

2.1 Section III

The proposed rule would have revised § 50.55a(b)(1) to incorporate by reference the 2001 Edition and the 2002 and 2003 Addenda of Division 1 of Section III of the ASME BPV Code subject to modifications and limitations. Accordingly, the existing modification and limitation for weld leg dimensions and independence of inspection in §§ 50.55a(b)(1)(ii) and 50.55a(b)(1)(v), respectively, would continue to apply when using the 2001 Edition through 2003 Addenda of Section III, Division 1, of the ASME BPV Code. The existing modification and limitation in §§ 50.55a(b)(1)(ii) and 50.55a(b)(1)(v) would continue to apply to the 2001 Edition through 2003 Addenda of Section III because the earlier Code provisions on which these regulations are based were not revised in the 2001 Edition through 2003 Addenda of Section III to address the underlying issues which led to the NRC to impose the modification and limitation. There were no public comments received on §§ 50.55a(b)(1) and 50.55a(b)(1)(v). Therefore, §§ 50.55a(b)(1) and 50.55a(b)(1)(v) are adopted without change in this final rule.

10 CFR 50.55a(b)(1)(ii)—Weld Leg Dimensions

One commenter stated that the footnote to circumferential fillet welded and socket welded joints in Figures NC–3673.2(b)–1 and ND–3673.2(b)–1 of Section III was renumbered in the Code. The NRC agrees. Footnote 11 to Figures NC–3673.2(b)–1 and ND–3673.2(b)–1 is referenced in the existing regulation in § 50.55a(b)(1)(ii). Footnote 11 to Figures NC–3673.2(b)–1 and ND–3673.2(b)–1 was renumbered as Footnote 7 in the 1997 Addenda. Footnote 7 was renumbered as Footnote 11 in the 2000 Addenda. Footnote 11 was renumbered as Footnote 13 in the 2002 Addenda. Although the footnote was renumbered

in the Code, the contents of the footnote have not been revised. In consideration of this public comment, the existing regulation in § 50.55a(b)(1)(ii) is revised in this final rule to reference the contents of the footnote instead of referencing the footnote number. The revised § 50.55a(b)(1)(ii) states that the footnote to circumferential fillet welded and socket welded joints in Figures NC–3673.2(b)–1 and ND–3673.2(b)–1 that permits a socket weld leg dimension to be less than 1.09 of the nominal wall thickness of the pipe is not approved for use when using the 1989 Addenda through 2003 Addenda of Section III. This revision does not change the requirements in a substantive manner.

10 CFR 50.55a(b)(1)(iii) and 10 CFR 50.55a(b)(1)(vi)—Seismic Design

The proposed rule would have revised the existing limitation for seismic design in § 50.55a(b)(1)(iii) to prohibit the use of Articles NB–3200, NB–3600, NC–3600, and ND–3600 when using the 1994 Addenda through 2000 Addenda of Section III. The proposed rule stated that the limitation in § 50.55a(b)(1)(iii) does not apply to the 2001 Edition through 2003 Addenda of Section III because the earlier Code provisions on which this regulation was based were revised in the 2001 Edition through 2003 Addenda of Section III to address a number of the underlying issues which led the NRC to impose the limitation on the ASME Code provisions. Section 50.55a(b)(1)(vi) in the proposed rule would have allowed use of these articles when using the 2001 Edition and 2002 and 2003 Addenda of Section III with certain limitations and modifications. However, in consideration of public comment, the revisions to § 50.55a(b)(1)(iii) and § 50.55a(b)(1)(vi) in the proposed rule are not adopted in this final rule.

Section 50.55a(b)(1)(vi) of the proposed rule would have permitted the use of the alternative method for evaluating reversing dynamic building filtered loads and seismic loads in the 2001 Edition and the 2002 and 2003 Addenda of Section III Division 1 of the ASME BPV Code subject to modifications and limitations. However, § 50.55a(b)(1)(vi)(A) of the proposed rule would have prohibited the use of the alternative method for evaluating reversing dynamic loads for piping subject to loads generated by reflected waves caused by flow transients in NB–3200, NB–3600, NC–3600, and ND–3600. In addition, § 50.55a(b)(1)(vi)(B) of the proposed rule would have prohibited the use of inelastic analyses for evaluating reversing dynamic loads in NB–3228.6. Also, § 50.55a(b)(1)(vi)(C) of the proposed rule would have provided an alternate Level B stress limit for reversing dynamic loads. Section 50.55a(b)(1)(vi)(D) of the proposed rule would have supplemented the requirements for the calculation of inertial moment. Section 50.55a(b)(1)(vi)(E) of the proposed rule would have prohibited the use of the B_2 'stress indices specified in ND–3655(b)(3) and would have required that the allowable B_2 'stress indices specified in NB–3656(b)(3) and NC–3655(b)(3) be used instead of the allowable B_2 'stress indices specified in ND–3655(b)(3). Section 50.55a(b)(1)(vi)(F) of the proposed rule would have allowed the use of an allowable stress limit of $6S_M$ in the evaluation of the range of resultant moment only when it could be demonstrated that the global piping system response to the anchor movement does not create significant inelastic strain concentrations when using the provisions in NB–3656(b)(4), NC–3655(b)(4), and ND–3655(b)(4). S_M is the design stress intensity limit for a material and is tabulated in Section II of the ASME Code. A demonstration that the anchor movement does not create significant inelastic strain concentrations would not have been required if an allowable stress limit of $3S_M$ were used instead of $6S_M$ in the evaluation of the range of resultant moment.

The NRC received a large number of public comments on the modifications and limitations in § 50.55a(b)(1)(vi). The public comments provided technical reasoning why the modifications and limitations in § 50.55a(b)(1)(vi) were unnecessary and recommended their deletion. For example, ASME submitted an 83 page position paper in response to the modifications and limitations in (b)(1)(vi) of the proposed rule. It should be noted that the NRC's concerns regarding the alternative method for evaluating reversing dynamic building filtered loads and seismic loads began with changes in the 1994 Addenda through 1996 Addenda and were discussed in an amendment to § 50.55a issued in September 1999 (64 FR 51370). The ASME formed a special working group to evaluate the NRC's concerns. Although the special working group resolved some the NRC's concerns, a few significant issues remain.

The ASME submittal also recommended that the NRC prohibit the use of the revised seismic design provisions in the 2001 Edition and the 2002 and 2003 Addenda of Section III at this time. The ASME stated that the NRC and ASME should resolve their technical differences over the modifications and limitations in § 50.55a(b)(1)(vi) before permitting the use of revised seismic design provisions in the 2001 Edition and 2002 and 2003 Addenda of Section III. The NRC agrees. This would allow the NRC to discuss the technical details including recent piping dynamic testing in a more comprehensive manner. In consideration of public comments, the revision to § 50.55a(b)(1)(iii) in the proposed rule and the modifications and limitations in § 50.55a(b)(1)(vi) in the proposed rule are not adopted in this final rule. The existing limitation for seismic design in § 50.55a(b)(1)(iii) is revised in this final rule to prohibit the use of Articles NB–3200, NB–3600, NC–3600, and ND–3600 when using the 1994 Addenda through 2003 Addenda of Section III.

10 CFR 50.55a(b)(1)(vii)—Subsection NH

Section 50.55a(b)(1)(vii) in the proposed rule would have prohibited the use of Subsection NH of the 2001 Edition through 2003 Addenda of Section III of the ASME BPV Code and would have withdrawn current approval of Subsection NH of the 1995 Addenda through 2000 Addenda of Section III of the ASME BPV Code. The scope of Subsection NH includes Class 1 components that function in water, steam, sodium, helium, or any other process fluid. The special design provisions in Subsection NH apply to Class 1 components that are required to function at elevated metal temperatures where creep and relaxation effects may be significant and for which the stress limits and design provisions in Subsection NB of Section III are not applicable. These stress limits and design provisions of Subsection NB are applicable only to service conditions where creep and relaxation effects do not exist. The proposed rule stated that the elevated temperature provisions in Subsection NH, applicable to certain Class 1 components in future advanced reactor designs such as liquid metal and high-temperature gas-cooled reactor designs, have not been reviewed by the NRC for technical adequacy because the design provisions in Subsection NH were thought not to be applicable to any currently operating nuclear power plant nor to any currently approved standard advanced light-water reactor plant design.

A commenter stated that prohibiting the use of Subsection NH because the NRC has not performed a technical review is not adequate justification. The commenter stated that the NRC should provide technical reasons why Subsection NH is not approved for use.

The NRC disagrees and, with the exception of the application of Subsection NH to pressurizer heater sleeves constructed from Type 316 stainless steel, is unable to provide technical comments on Subsection NH at this time because it has not performed a comprehensive review of Subsection NH. A public comment on the proposed rule indicated that Subsection NH is used for the design and construction of pressurizer heater sleeves (a pressure boundary component). Accordingly, the NRC is approving the use of Subsection NH for this application. The maximum service condition for Type 316 stainless steel components that are designed and constructed in accordance with the currently approved provisions in Subsection NB is 800 °F because the reduction in material strength due to creep and relaxation effects are negligible at temperatures below 800 °F. Subsection NH provides specialized design and construction provisions when temperatures exceed 800 °F. The temperature of Type 316 stainless steel pressurizer heater sleeves reaches approximately 900 °F; therefore, Subsection NH is applicable. At 900 °F, creep and relaxation effects reduce the allowable stress at 800 °F by approximately 10 percent for Type 316 stainless steel. Therefore, a 100 °F increase in temperature above 800 °F does not significantly reduce the material strength of Type 316 stainless steel. The use of pressurizer heater sleeves constructed of Type 316 stainless steel is limited to only one type of reactor plant design in the United States. Pressurizer heater sleeves in other reactor plant designs are constructed of different materials and the temperature of the pressurizer heater sleeves in the other designs does not exceed 800 °F. Furthermore, many years operating experience indicate that pressurizer heater sleeves have not experienced creep and relaxation effects. Accordingly, the NRC concludes that the use of Subsection NH for Type 316 stainless steel pressurizer heater sleeves is technically acceptable and will provide reasonable assurance of adequate protection to public health and safety.

The NRC has not performed a full technical review of Subsection NH for other Class 1 components in future advanced reactor designs such as liquid metal and high-temperature gas-cooled reactor designs where service conditions could reach 1500 °F. At these service conditions, creep and relaxation are more pronounced. Therefore, the NRC is unable to approve the use of Subsection NH for components other than Type 316 stainless steel pressurizer heater sleeves. In consideration of public comment, § 50.55a(b)(1)(vii) is revised to allow the application of Subsection NH to Type 316 stainless steel pressurizer heater sleeves only where service conditions do not cause the component to reach temperatures exceeding 900 °F. Section 50.55a(b)(1)(vii) in the proposed rule is renumbered as § 50.55a(b)(1)(vi) in this final rule. Section 11, ''Backfit Analysis,'' below, has been revised to address this last comment.

2.2 Section XI

The proposed rule would have revised § 50.55a(b)(2) to incorporate by reference the 2001 Edition and the 2002 and 2003 Addenda of Division 1 of Section XI of the ASME BPV Code subject to proposed modifications and limitations. Accordingly, the existing modifications and limitations for quality assurance, Class 1 piping, underwater welding, reconciliation of quality requirements, certification of nondestructive examination personnel, substitution of alternative method, and Table IWB–2500–1 examination requirements in § 50.55a(b)(2)(x), § 50.55a(b)(2)(xi), § 50.55a(b)(2)(xii), § 50.55a(b)(2)(xvii), § 50.55a(b)(2)(xviii), § 50.55a(b)(2)(xix), and § 50.55a(b)(2)(xxi), respectively, would continue to apply when using the 2001 Edition through 2003 Addenda of Section XI, Division 1, of the ASME BPV Code. The existing modifications and limitations in § 50.55a(b)(2)(x), § 50.55a(b)(2)(xi), § 50.55a(b)(2)(xii), § 50.55a(b)(2)(xvii), § 50.55a(b)(2)(xviii), § 50.55a(b)(2)(xix), and § 50.55a(b)(2)(xxi) would continue to apply to the 2001 Edition through 2003 Addenda of Section XI because the earlier Code provisions on which these regulations are based were not revised in the 2001 through 2003 Addenda of Section XI to address the underlying issues which led the NRC to impose the modifications and limitations. There were no public comments on § 50.55a(b)(2), § 50.55a(b)(2)(x), § 50.55a(b)(2)(xi), § 50.55a(b)(2)(xii), § 50.55a(b)(2)(xviii), § 50.55a(b)(2)(xix), and § 50.55a(b)(2)(xxi). Therefore, § 50.55a(b)(2), § 50.55a(b)(2)(x), § 50.55a(b)(2)(xi), § 50.55a(b)(2)(xii), § 50.55a(b)(2)(xviii), § 50.55a(b)(2)(xix), and § 50.55a(b)(2)(xxi) are adopted without change in this final rule.

10 CFR 50.55a(b)(2)(xvii)—Reconciliation of Quality Requirements

One commenter stated that the existing modification in § 50.55a(b)(2)(xvii) for the reconciliation of quality requirements is no longer applicable because a footnote was added to IWA–4222 that resolves the issue. The footnote was added in the 1999 Addenda to Section XI and clarifies that the provision in IWA–4222(a)(2) does not negate the requirement to implement the Owner's quality assurance program nor does it affect Owner commitments to regulatory and enforcement authorities. The NRC agrees that § 50.55a(b)(2)(xvii) is no longer applicable because the footnote addresses NRC reasons for initially implementing § 50.55a(b)(2)(xvii) in final rule dated September 22, 1999 (64 FR 51374). In consideration of this public comment, § 50.55a(b)(2)(xvii) is revised in this final rule to be applicable only when using the 1995 Addenda through 1998 Edition of Section XI.

10 CFR 50.55a(b)(2)—Footnote 10

The proposed rule would have added Footnote 10 to § 50.55a(b)(2) to indicate that the NRC has issued Order EA–03–009 which imposed enhanced reactor pressure vessel (RPV) head inspections at pressurized water reactors (PWRs). In February 2003, the NRC issued the Order to licensees of PWRs to establish interim inspection requirements that would ensure adequate protection of public health and safety. The Order was revised on February 20, 2004. The Order imposes enhanced requirements for PWR licensees that supplement areas of Section XI of the ASME BPV Code to ensure the structural and leakage integrity of the reactor coolant pressure boundary. The requirements imposed by the Order do not conflict with the requirements in Section XI of the ASME BPV Code but are needed to enhance Code requirements. Licensees are required to meet the requirements in the Order as a supplement to the requirements in the 2001 Edition with the 2002 and 2003 Addenda of Section XI of the ASME BPV Code. Licensees of PWRs using editions and addenda of Section XI of the ASME Code earlier than the 2001 Edition are currently required to apply the requirements in the Order to supplement the use of their applicable Code of record.

One commenter incorrectly interpreted Footnote 10 in the proposed rule. The commenter stated that Footnote 10 would incorporate the requirements of the Order into 10 CFR 50.55a. The NRC notes that it never intended to incorporate the requirements of the Order into 10 CFR 50.55a in this rulemaking. This final rule does not incorporate the requirements of the Order into 10 CFR 50.55a; it simply alerts the reader to the Order. Footnote 10 is adopted without change in this final rule.

10 CFR 50.55a(b)(2)(viii)—Examination of Concrete Containments

This proposed rule would have revised the existing modification for examination of concrete containments in § 50.55a(b)(2)(viii) to apply to the 2001 Edition through 2003 Addenda of Section XI, Division 1, of the ASME BPV Code. The modification in § 50.55a(b)(2)(viii) continues to apply to the 2001 Edition through 2003 Addenda of Section XI because the earlier ASME BPV Code provisions on which this regulation was based were not revised in the 2001 Edition through 2003 Addenda of Section XI to address the underlying issues which led the NRC to impose the modification of the ASME Code provisions. The proposed rule would have also revised the existing modification for examination of concrete containments in § 50.55a(b)(2)(viii) to require a new modification, which is discussed below, when using the 2001 Edition through 2003 Addenda of Section XI, Division 1, of the ASME BPV Code. There were no public comments received on § 50.55a(b)(2)(viii) in the proposed rule. Therefore, § 50.55a(b)(2)(viii) is adopted without change in this final rule.

10 CFR 50.55a(b)(2)(viii)(G)—Corrosion Protection Medium (CPM)

Section 50.55a(b)(2)(viii)(G) of the proposed rule would have required that CPM be restored in accordance with the quality assurance program requirements specified in IWA–1400 when using the 2001 Edition through 2003 Addenda of Section XI. IWL–4110 of Section XI defines the scope of the repair and replacement activities associated with concrete containments. IWL–4110(b) specifies those items that are exempt from repair and replacement activity requirements. A new provision, IWL–4110(b)(3), was added in the 2002 Addenda exempting the removal, replacement, or addition of the concrete containment post-tensioning system CPM from repair and replacement requirements. Prior to the 2002 Addenda, IWL–4000 specifies that the CPM must be restored following a concrete containment post-tensioning system repair and replacement activity.

CPM is applied to containment post-tension system components to prevent corrosion. The function of the containment post-tension system is to ensure the structural integrity of the concrete containment structure under design basis loadings, and CPM is relied upon to maintain the integrity of the containment post-tension system. Therefore, the restoration of the concrete containment post-tensioning system CPM is important to ensure that the containment integrity and load capacity satisfy design basis requirements under accident conditions. For example, the acceptable concentration of water soluble chlorides, nitrates and sulfides of the replacement CPM must be verified. The amount of CPM to be installed and the method used to apply the CPM must be specified.

One commenter stated that the provisions in IWL–2500 must be applied to the restoration of CPM, and that these provisions were not revised in the 2002 Addenda. The commenter stated that quality assurance requirements must be applied when implementing IWL–2500. The NRC disagrees. The NRC believes that the provisions in IWL–2500 are not applicable to items that are exempt from Code repair and replacement activity requirements. Therefore, § 50.55a(b)(2)(viii)(G) is adopted without change in this final rule.

10 CFR 50.55a(b)(2)(ix)—Examination of Metal Containments and the Liners of Concrete Containments

The proposed rule would have revised the existing modification for examination of metal containments and the liners of concrete containments in § 50.55a(b)(2)(ix) to apply to the 2001 Edition through 2003 Addenda of Section XI, Division 1, of the ASME BPV Code. The proposed rule stated that with the exception of the visual examination requirements specified in § 50.55a(b)(2)(ix)(B), the modification in § 50.55a(b)(2)(ix) would continue to apply to the 2001 Edition through 2003 Addenda of Section XI because the earlier Code provisions on which this regulation was based were not revised in the 2001 Edition through 2003 Addenda of Section XI to address the underlying issues which led to the NRC to impose the modification on the ASME Code provisions. The minimum illumination and distance visual examination provisions in Table IWA–2210–1 in Section XI were revised in the 2003 Addenda and are equivalent to the minimum illumination and distance visual examination requirements in § 50.55a(b)(2)(ix)(B). Therefore, the proposed rule revised the existing modification for examination of metal containments and the liners of concrete containments in § 50.55a(b)(2)(ix) to specify that § 50.55a(b)(2)(ix)(B) does not apply when using the 2001 Edition with the 2002 and 2003 Addenda of Section XI, Division 1, of the ASME BPV Code.

Several commenters stated that the revision to Table IWA–2210–1 in the 2003 Addenda of Section XI was rescinded by a special Erratum in December 2003. Therefore, the existing modification in § 50.55a(b)(2)(ix)(B) should continue to apply when using the 2001 Edition with the 2002 and 2003 Addenda of Section XI, Division 1, of the ASME BPV Code. The NRC agrees. In consideration of the public comment, § 50.55a(b)(2)(ix) is revised in this final rule to require that § 50.55a(b)(2)(ix)(B) continue to apply when using the 2001 Edition and the 2002 and 2003 Addenda of Section XI.

10 CFR 50.55a(b)(2)(xiii)—Flaws in Class 3 Piping

The proposed rule would have revised § 50.55a(b)(2)(xiii) to eliminate the authorization to use Code Case N–513. The existing regulation in § 50.55a(b)(2)(xiii) authorizes the use of Code Cases N–513 and N–523–1. Code Case N–513 is now approved in Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1.'' Regulatory Guide 1.147 (Revision 13) was incorporated by reference into § 50.55a in a final rule dated July 8, 2003 (68 FR 40469). Thus, it is no longer necessary to authorize the use of Code Case N–513 in § 50.55a(b)(2)(xiii) because this code case is included in Regulatory Guide 1.147. Section 50.55a(b)(2)(xiii) would continue to approve the use of Code Case N–523–1 because Code Case N–523–1 is currently not included in Regulatory Guide 1.147. There were no public comments received on § 50.55a(b)(2)(xiii) and therefore is adopted without change in this final rule.

10 CFR 50.55a(b)(2)(xiv)—Appendix VIII Personnel Qualification

The proposed rule would have revised the existing modification for Appendix VIII personnel qualification in § 50.55a(b)(2)(xiv) to apply to the 2001 Edition through 2003 Addenda of Section XI, Division 1, of the ASME BPV Code. The modification in § 50.55a(b)(2)(xiv) continues to apply to the 2001 Edition through 2003 Addenda of Section XI because the earlier Code provisions on which this regulation was based were not revised in the 2001 Edition through 2003 Addenda of Section XI to address the underlying issues which led to the NRC to impose the modification. The proposed rule also revised § 50.55a(b)(2)(xiv) to correct an oversight. The existing regulation incorrectly states that the annual practice requirements in VII–4240 of Supplement VII of Section XI may be used. The reference to Supplement VII is incorrect; it should be Appendix VII.

Therefore, the proposed rule stated that § 50.55a(b)(2)(xiv) should be revised to state that the annual practice requirements in VII–4240 of Appendix VII of Section XI may be used.

One commenter requested that the existing annual training requirements in § 50.55a(b)(2)(xiv) be revised to change the required number of hours of training that must be completed before performing ultrasonic examinations. The NRC declines to make this change because the proposed rule did not suggest an amendment to the required number of hours of training that must be completed before performing ultrasonic examinations, and the NRC currently does not have a basis for supporting such a change. There were no other public comments received on § 50.55a(b)(2)(xiv). Therefore, § 50.55a(b)(2)(xiv) is adopted without change in this final rule.

10 CFR 50.55a(b)(2)(xv)—Appendix VIII Qualification and Coverage Requirements

The proposed rule would have revised the existing modification for Appendix VIII specimen set and qualification requirements in § 50.55a(b)(2)(xv) to apply to the 2001 Edition of Section XI, Division 1, of the ASME BPV Code. The modification in § 50.55a(b)(2)(xv) would continue to apply to the 2001 Edition of Section XI because the earlier Code provisions on which this regulation was based were not revised in the 2001 Edition of Section XI to address the underlying issues which led the NRC to impose the modification. There were no public comments received on § 50.55a(b)(2)(xv). Therefore, § 50.55a(b)(2)(xv) is adopted without change in this final rule.

The proposed rule would have revised the existing regulation in § 50.55a(b)(2)(xv)(C)(*1*) to specify that the flaw depth sizing provisions in Subparagraph 3.2(c) of Supplement 4 to Appendix VIII are not applicable when Appendix VIII is implemented in accordance with § 50.55a(b)(2)(xv). Section 50.55a(b)(2)(xv) currently provides an alternative method that licensees may use for implementing Appendix VIII and the supplements to Appendix VIII. The existing regulation specifies that the flaw depth sizing provisions in Subparagraph 3.2(a) of Supplement 4 to Appendix VIII are not applicable when using the flaw depth sizing provisions specified in § 50.55a(b)(2)(xv)(C)(*1*). This revision is needed to correct an oversight that the flaw depth sizing provisions in Subparagraph 3.2(c) of Supplement 4 to Appendix VIII also do not apply when using the flaw depth sizing provisions specified in § 50.55a(b)(2)(xv)(C)(*1*). Thus, the flaw depth sizing provisions in § 50.55a(b)(2)(xv)(C)(*1*) were revised in the proposed rule to also reference Subparagraph 3.2(c) of Supplement 4 to Appendix VIII. There were no public comments received on § 50.55a(b)(2)(xv)(C)(*1*). Therefore, § 50.55a(b)(2)(xv)(C)(*1*) is adopted without change in this final rule.

The proposed rule would have revised the existing regulation in § 50.55a(b)(2)(xv)(J) to eliminate the approval to use Code Case N–552. Code Case N–552 is now approved in Regulatory Guide 1.147, Revision 13, which was incorporated by reference into § 50.55a in a final rule dated July 8, 2003 (68 FR 40469). Thus, it is no longer necessary to approve the use of Code Case N–552 in § 50.55a(b)(2)(xv)(J) because this code case is included in Regulatory Guide 1.147. There were no public comments received on § 50.55a(b)(2)(xv)(J). Therefore, § 50.55a(b)(2)(xv)(J) is adopted without change in this final rule.

10 CFR 50.55a(b)(2)(xx)—System Leakage Test

The proposed rule would have revised the existing modification for system leakage tests in § 50.55a(b)(2)(xx) to continue prohibiting the use of certain system leakage test provisions in the 1997 Addenda through 2001 Edition of Section XI, Division 1 of the ASME BPV Code. The proposed rule stated that the modification in § 50.55a(b)(2)(xx) does not apply to the 2002 and 2003 Addenda of Section XI because the earlier Code provisions on which this regulation was based were revised in the 2002 Addenda of Section XI to address the underlying issues which led to the NRC to impose the modification of the ASME Code provisions. The revised system leakage test provisions in IWA–5213(a) are equivalent to the existing requirements in § 50.55a(b)(2)(xx).

One commenter stated that the system leakage test provisions in IWA–5213(a) were revised in the 2003 Addenda of Section XI not the 2002 Addenda as stated in the proposed rule. The NRC agrees. In consideration of the public comment, § 50.55a(b)(2)(xx) is revised in this final rule so that the modification applies when using IWA–5213(a), 1997 through 2002 Addenda.

10 CFR 50.55a(b)(2)(xxii)—Surface Examination

Section 50.55a(b)(2)(xxii) in the proposed rule would have prohibited the use of a new provision in IWA–2220 allowing ultrasonic (UT) examination. The provisions of Code Case N–615, ''Ultrasonic Examination as a Surface Examination Method for Category B–F and B–J Piping Welds,'' were incorporated into IWA–2220 in the 2001 Edition of Section XI of the ASME BPV Code. Code Case N–615 and IWA–2220 allow a surface examination to be conducted using a UT examination method. The UT examination is conducted from the inside surface of certain piping welds. Other allowable surface examination methods (magnetic particle or liquid penetrant) are conducted from the outside surface of certain piping welds. The purpose of the these surface examinations is to identify flaws in the outer surface of the weld. Revision 13 to Regulatory Guide 1.147 did not approve the use of Code Case N–615 and the proposed rule would have prohibited the use of the same UT examination specified in IWA–2220. There are no provisions in Section XI that address qualification requirements and performance demonstration criteria and requirements to ensure proper consideration of flaws in the outer surface of a piping weld when conducting a UT examination from the inside surface of the piping weld.

One commenter stated that the proposed § 50.55a(b)(2)(xxii) should be deleted because IWA–2220 provides an acceptable UT performance demonstration requirement. The NRC disagrees. For example, IWA–2220 does not provide test specimen requirements, piping weld material requirements, acceptable flaw types, performance demonstration detection acceptance criteria, nor acceptable pipe specimen thickness.

A number of commenters requested that § 50.55a(b)(2)(xxii) be revised to allow IWA–2220 surface examinations be conducted by UT examination provided that the UT examination method has been demonstrated by a successful performance demonstration. The commenters stated that their revision addresses the NRC concern that there are no qualification requirements or performance demonstration criteria in Section XI for conducting a UT examination from the inside surface of the piping weld. The NRC disagrees. The revision, as proposed by the commenters, does not address the concern in the proposed rule. Appendix I of Section XI requires that all piping examinations be performed in accordance with Appendix VIII qualified procedures and personnel. The final rule dated September 22, 1999 (64 FR 51370), requires that licensees implement Appendix VIII and the supplements to Appendix VIII on an expedited basis. The NRC imposed this requirement on an expedited basis

because there were shortcomings in the qualifications of personnel and procedures in ensuring the reliability of nondestructive examination of the reactor vessel and other components of the reactor coolant system pressure boundary. The NRC believes that the imposition of performance demonstration in Appendix VIII and its supplements has enhanced the overall level of assurance of the reliability of UT examination techniques in detecting and sizing flaws. The NRC is not approving the use of new UT provision in IWA–2220 because qualification requirements and performance demonstration criteria for the new UT provision are not addressed in Appendix VIII. Therefore, § 50.55a(b)(2)(xxii) is adopted without change in this final rule.

10 CFR 50.55a(b)(2)(xxiii)—IWA–4461.4.2 Evaluation of Thermally Cut Surfaces

Section 50.55a(b)(2)(xxiii) of the proposed rule would have required that all the adverse effects associated with the elimination of mechanical processing following a thermal removal process listed in IWA–4461.4.2(a)(1) through (5) be considered by tests, inspections and analyses. Tests, inspections and analyses are further discussed below. IWA–4461.4 requires that the surface left in service after the metal is removed by a thermal removal process be mechanically processed. A thermal removal process is used to remove metal from a weld or base metal. Thermal removal processes include oxyacetylene cutting, carbon arc gouging, plasma cutting, metal disintegration machining and electrodischarge machining. Thermal removal processes can leave cracks, stress risers, very rough surfaces or heavy oxidations on the surface of the metal. Mechanical processing involves the removal of any defects from a surface of the metal by grinding, machining or filing, for example. Subparagraph IWA–4461.4.2 was added in the 2001 Edition to allow the elimination of mechanical processing of a thermally cut surface when, due to field conditions, mechanical processing is deemed impractical. IWA–4461.4.2 allows the elimination of mechanical processing of thermally cut surfaces provided that the adverse effects associated with the elimination of mechanical processing listed in IWA–4461.4.2(a)(1) through (5) are considered by an evaluation. The adverse effects listed in IWA–4461.4.2(a)(1) through (5) include soundness of cut, material toughness, corrosion resistance, stresses, and oxidation or other contamination. The proposed rule stated that it is unclear if all the adverse effects listed in IWA–4461.4.2(a)(1) through (5) are required to be considered by evaluation or are licensees supposed to determine which of the adverse effects listed in IWA–4461.4.2(a)(1) through (5) would be applicable. The proposed rule stated that tests, inspections, and analyses would be required to evaluate the adverse effects listed in IWA–4461.4.2(a)(1) through (5). The proposed rule did not describe any specific test, inspection or analysis. Licensees would be responsible for determining the appropriate test, inspection, and analysis for each of the items listed in IWA–4461.4.2(a)(1) through (5).

Several commenters explained that the provision IWA–4461.4.2(a) requires that the evaluation shall include all those adverse effects listed in IWA–4461.4.2(a)(1) through (5) in the evaluation. Other commenters stated that not all of the adverse effects listed in IWA–4461.4.2(a)(1) through (5) are applicable to all thermal processes and that IWA–4461.4.2(c) requires that the evaluation document any adverse effects listed in IWA–4461.4.2(a)(1) through (a)(5) that are not applicable in the Repair/Replacement Plan. Commenters also stated that it is unreasonable for NRC to require tests, inspections, and analyses to address each of the adverse effects listed in IWA–4461.4.2(a)(1) through (5) to eliminate mechanical processing of a thermally cut surface. The tests, inspections, and analyses as proposed in § 50.55a(b)(2)(xxiii) would make it impracticable for a licensee to use the provisions in IWA–4461.4.2.

The NRC believes that it is impracticable to justify the elimination of mechanical processing of a thermally cut surface in an evaluation as specified in IWA–4461.4.2. It is not possible to evaluate the adverse effects that can occur as a result of thermal cutting without performing appropriate tests, inspections, and analyses. For example, the provisions in IWA–4461.4.2 could be used to eliminate mechanical processing for a carbon arc-gouging cut that removed a hanger in a high radiation area. If the cut is made too close to the load-bearing component, the metal on the load-bearing component could be affected by an errant arc touching the load-bearing surface or allowing some of the cutting spatter to become attached to the load-bearing surface leaving an arc strike, a heat-affected zone or a stress riser on the surface. The area around the cut must be inspected to make certain that the cutting has not damaged the surface of the component. Elimination of the inspection in a documented evaluation would not be adequate even for this simple thermal cutting example. Furthermore, the cut must be a safe distance from the surface of the component to eliminate any possibility of leaving a mechanical (a rough, oxidized or carburized surface) or metallurgical (a heat affected zone) stress riser near or in the surface of the component. If the cut is made too close to the final surface, a heat-affected zone from the cut could be left in the final load-bearing surface or a very rough, highly oxidized or carburized surface could be left very near the final load-bearing surface. The exact distance from the cut surface must be determined by an analysis or qualification testing of the configuration, not by a documented evaluation.

The NRC agrees with the comment that the test, inspection, and analysis provisions in § 50.55a(b)(2)(xxiii) of the proposed rule would make it impracticable for a licensee to use IWA–4461.4.2. Therefore, § 50.55a(b)(2)(xxiii) is revised in this final rule to prohibit the use of the new provisions in IWA–4461.4.2.

10 CFR 50.55a(b)(2)(xxiv)—UT Performance Demonstration and Coverage Requirements

Section 50.55a(b)(2)(xxiv) in the proposed rule would have prohibited the use of Appendix VIII and the supplements to Appendix VIII, and Article I–3000 in the 2002 and 2003 Addenda of Section XI of the ASME BPV Code. The elements of the Performance Demonstration Initiative (PDI) program were added to Appendix VIII and its supplements and Article I–3000 in the 2002 Addenda. PDI is an organization formed for the purpose of developing efficient, cost-effective, and technically sound UT performance demonstration methods to meet Appendix VIII requirements. The PDI program has evolved as programs were developed for each Appendix VIII supplement. Article I–3000, Examination Coverage, was also added in the 2002 Addenda to provide UT examination coverage criteria for certain welds.

The final rule dated September 22, 1999 (64 FR 51370), requires licensees to implement Appendix VIII and its supplements. The essential elements of the PDI program were added to the final rule as § 50.55a(b)(2)(xv). Section 50.55a(b)(2)(xv) also provides UT examination coverage criteria. Licensees are currently implementing Appendix VIII and its supplements in accordance with § 50.55a(b)(2)(xv). Although the NRC, ASME, and PDI have made considerable progress in the

development of UT qualification and inspection requirements, the addition of the PDI program into Section XI are not complete at this time. As a result, differences exist between the modifications in § 50.55a(b)(2)(xv), and the provisions in Appendix VIII and its supplements and Article I–3000 in the 2002 and 2003 Addenda of Section XI of the ASME BPV Code. Therefore, Appendix VIII and its supplements and the UT coverage criteria in Article I–3000 can not be implemented in accordance with § 50.55a(b)(2)(xv) when using the 2002 and 2003 Addenda. Consequently, the proposed rule would have prohibited the use of Appendix VIII and its supplements and Article I–3000 beyond the 2001 Edition.

The proposed rule stated that conflicts exist between the modifications in § 50.55a(b)(2)(xv), and the UT coverage provisions in Article I–3000 in the 2002 and 2003 Addenda. Several commenters stated that the use of the term ''conflicts'' in the proposed rule was inappropriate. The NRC agrees and should have used term ''differences'' instead of ''conflicts.'' Commenters acknowledged that there are differences between the UT coverage requirements in Article I–3000 and the UT coverage requirements in § 50.55a(b)(2)(xv).

A number of commenters requested that the proposed limitation in § 50.55a(b)(2)(xxiv) be revised to allow the use of the UT coverage requirements in Article I–3000. Commenters stated that the NRC should accept the UT coverage requirements in Article I–3000 as an alternative to the UT coverage requirements in § 50.55a(b)(2)(xv). The NRC disagrees. Article I–3000 requires that the UT coverage provisions be applied when using UT examination procedures, equipment, and personnel qualified by performance demonstration in accordance with Appendix VIII. The NRC believes that allowing the use of the UT coverage requirements in Article I–3000 would require revising the existing UT coverage requirements in § 50.55a(b)(2)(xv) to provide licensees the choice of continuing to use the existing UT coverage requirements in § 50.55a(b)(2)(xv) or using the UT coverage requirements in Article I–3000. It is not the NRC's intention to periodically revise § 50.55a(b)(2)(xv) to add new elements of the PDI program as the program evolves. The purpose of the modification in § 50.55a(b)(2)(xv) is to provide a short-term solution that allows licensees to implement an Appendix VIII program. The long-term solution is to add the elements of the PDI program to Section XI or develop a code case that can be used to implement Appendix VIII and remove § 50.55a(b)(2)(xv) from 10 CFR 50.55a. Therefore, § 50.55a(b)(2)(xxiv) is adopted without change in this final rule.

10 CFR 50.55a(b)(2)(xxv)—Mitigation of Defects by ''Modification''

Section 50.55a(b)(2)(xxv) in the proposed rule would have prohibited the use of the provisions in IWA–4340 when using the 2001 Edition and the 2002 and 2003 Addenda of Section XI of the ASME BPV Code. IWA–4340 was added in the 2000 Addenda and provides requirements for the mitigation of defects by ''modification.'' Paragraph IWA–4340 allows a defect to remain in a component provided that the defect can be eliminated from the pressure boundary by ''modification.''

Commenters stated that although additional provisions were added in the 2000 Addenda, Section XI has always allowed mitigation of defects by ''modification.'' Commenters objected to the NRC prohibiting the use of this longstanding Code requirement. Commenters also stated that prohibiting the use of IWA–4340 would significantly impact licensees in terms of cost, resources, and plant shutdowns. IWA–4340 ''modifications'' can be designed and installed by most plants within the 72-hour technical specification allowed outage time. These ''modifications'' are typically used when replacement or excavation and repair welding of the defect cannot be performed within the technical specification allowed outage time. Commenters stated that it is not unusual for a plant to install several ''modifications'' in an operating cycle. Commenters stated that licensees would have to request authorization of an alternative pursuant to § 50.55a(a)(3) to install modifications if use of IWA–4340 is prohibited. This would result in a significant increase in regulatory burden, costs, and plant outage time and would also adversely impact NRC resources. The NRC disagrees that the mitigation of a defect by ''modification'' in Section XI is a longstanding Code provision. Section XI does not specifically address mitigation of defects by ''modification'' in the editions and addenda prior to the 2000 Addenda. The NRC is also unaware of any ASME Section XI interpretation that specifically addresses mitigation of defects by ''modification.'' Furthermore, the NRC has authorized many alternatives pursuant to § 50.55a(a)(3) that are similar to those in IWA–4340. These alternatives were authorized on a case-by-case basis and addressed pressure testing, flaw growth evaluation, and reexamination requirements. Licensees believed these modifications were not permitted by the ASME Code, and therefore, concluded that authorizations of alternatives were necessary. Although some Section XI code cases address repair of defects on a limited basis, such as the use of weld overlays, new provisions for repairing defects were added in the 2000 Addenda.

One commenter stated that the NRC had previously approved the use of provisions that are similar to those in IWA–4340. The commenter stated that the NRC should approve the same provisions in IWA–4340. The NRC agrees that, in some instances, it had previously approved the use of mitigative methods or alternatives that could fall under the provisions of IWA–4340, but the methods approved by the NRC were significantly more comprehensive than those in IWA–4340. For example, the NRC approved the use of Code Case N–504–2, ''Alternative Rule for Repair of Class 1, 2, and 3 Austenitic Stainless Steel Piping,'' in Regulatory Guide 1.147. The NRC notes that the provisions in Code Case N–504–2 are significantly more comprehensive than the provisions required by IWA–4340. The NRC has also authorized use of weld overlays as corrective action for intergranular stress corrosion cracking in plant-specific submittals. Authorization was based on adequate flaw evaluation, examination frequency, and pressure testing provided by licensees in their proposed alternative. However, the NRC has also disapproved the use of mitigative methods that would be allowed under IWA–4340. For example, the NRC disapproved the use of Code Case N–562–1, ''Alternative Requirements for Wall Thickness Restoration of Class 3 Moderate Energy Carbon Steel Piping,'' in Regulatory Guide 1.193, ''ASME Code Cases Not Approved For Use.'' The NRC disapproved the use of Code Case N–562–1 because the ASME Code and the code case do not provide criteria for determining the rate of the extent of degradation of the repair or surrounding base metal and do not specify examination requirements.

The proposed rule stated that IWA–4520(b)(2) exempts piping, pump and valve welding or brazing that does not penetrate through the pressure boundary from any pressure test. Since the modification to mitigate the defect will become the new pressure boundary and the modification may be attached to the pressure boundary by welds that do not penetrate through the pressure boundary, pressure testing would not be required. The NRC proposed to not

accept the elimination of pressure testing requirements for a modification that will function as a pressure boundary.

Commenters stated that the reference to IWA–4520(b)(2) in the proposed rule is incorrect. The NRC agrees. The NRC intended to reference IWA–4540(b)(3) in the proposed rule. IWA–4540(b)(3) exempts piping, pump and valve welding or brazing that does not penetrate through the pressure boundary from pressure testing, not IWA–4520(b)(2).

Commenters did not discuss if the pressure test exemption in IWA–4540(b)(3) would be applicable to IWA–4340 ''modifications.'' They simply stated that Section XI requires a pressure test for new welds that are a part of the pressure boundary. The NRC agrees that pressure testing for new pressure boundary weld is a requirement. However, the NRC is concerned that licensees could interpret the provisions in IWA–4540(b)(3) that pressure tests are not required for certain IWA–4340 modifications such as an encapsulation of a defect that does not yet, but eventually could, breach the pressure boundary for example. The NRC believes that pressure testing the ''modification'' is necessary to validate the structural integrity of the ''modification.''

The proposed rule stated that IWA–4340(c) requires that each licensee define the successive examinations to be performed after the completion of the ''modification.'' The purpose of the successive examinations is to monitor the defect to detect propagation beyond the limits of the ''modification'' and, when practicable, to validate the projected growth of the defect. The Code is unclear as to whether it permits a defect to propagate outside the physical boundary of the ''modification'' or requires that a licensee's examination program predict propagation of the defect such that the licensee would be able to identify, in advance, a defect that is expected to propagate outside the area physically modified such that corrective action could be taken.

Commenters explained that a flaw outside of the modification might be acceptable until it reached the condition of a defect. The condition would be unacceptable if the flaw propagated into a defect. Commenters also indicated that because each ''modification'' is unique, it is not possible to specify examination frequency criteria that could be applied to all defects that are mitigated by ''modification.'' Commenters stated that IWA–4340(c) requires that, if practicable, the growth of the defect be predicted and licensees establish an examination method that would demonstrate that the defect has not propagated beyond the limits of the ''modification.'' The examinations would also validate the predicted growth assumptions. In other cases, it may not be practical to predict the growth of the defect. Commenters stated that the examination frequency would have to account for this condition. The NRC believes that IWA–4340(c) is unacceptable because it does not specify minimum periodic examinations that are capable of validating the predicted defect growth assumptions. The NRC believes that it is appropriate for the Code to establish minimum periodic examination requirements. Licensees may always do more than Code minimum requirements.

One commenter states that it is inappropriate for the NRC to modify the use of Code provisions that were previously accepted by the NRC. The NRC disagrees. The modification in § 50.55a(b)(2)(xxv) was not included in the final rule that incorporated by reference the 2000 Addenda of Section XI in § 50.55a (67 FR 60520: September 26, 2002) due to an oversight by the NRC. The NRC did not identify that these Code provisions were added when it reviewed the 2000 Addenda of Section XI. The NRC has determined that this modification should only apply to those licensees who implement the 2001 Edition and later editions and addenda of Section XI, and should not be backfit to those licensees who update their ISI programs to the 1998 Edition with the 1999 and 2000 Addenda in accordance with § 50.55a(g)(4)(ii). The NRC has determined it is acceptable not to backfit the licensees who update their ISI programs to the 1998 Edition with the 1999 and 2000 Addenda because those licensees will be required at the next 10-year interval to update their ISI programs to prohibit the relevant Code provisions. Thus, any problems would be caught during the next 10-year interval. The prohibition of the relevant Code provisions is not considered a backfit because they are imposed only as part of the routine updating required as part of the 120-month updating and do not constitute a significant change to, or fundamental modification of, the existing ISI program.

Although not discussed in the proposed rule, the NRC has additional concerns about the use of IWA–4340. For example, Section XI, Appendix I, Ultrasonic Examination, directs users to the specific examination methods to be followed, including the performance demonstration requirements of Appendix VIII for certain components. IWA–4340(a) states that defects shall be characterized using nondestructive examination but has no specific requirements regarding nondestructive examination methods to be used. The NRC believes that IWA–4340(a) should specify the qualification requirements and examination methods by reference to existing rules in the Code where applicable, or where not applicable, the process to be followed to demonstrate the capability of the techniques to be used.

IWA–4340 could be used to mitigate non-planar defects, such as caused by flow accelerated corrosion or microbiological induced corrosion. The ASME has issued certain code cases, such as Code Cases N–561–1, ''Alternative Requirements for Wall Thickness Restoration of Class 2 and High Energy Class 3 Carbon Steel Piping,'' and N–562–1, dealing with wall thickness restoration for non-planar defects. The NRC has found these code cases to be unacceptable because of the absence of criteria concerning the extent and rate of degradation of the repair and reinspection frequencies and because the root cause of the degradation may not be mitigated. For similar reasons, the NRC finds IWA–4340 unacceptable for use to mitigate non-planar defects.

Licensees have proposed to mitigate circumferential defects above the partial penetration weld in control rod drive nozzles by partially removing the defect and replacing the removed material with weldment, thereby ''embedding'' the defect. The NRC has found such proposals to be unacceptable because of the possibility of additional cracking in the embedding weld and because of safety concerns posed by severance of the nozzle. The NRC finds IWA–4340 unacceptable because it could be used to mitigate such defects.

Under IWA–4340, if a defect were to propagate beyond the limits of a modification, a licensee could perform repeated repairs to the same location. The NRC believes this is unacceptable because it would represent a failure of the original evaluation to correctly predict the projected growth of the defect.

For these reasons, § 50.55a(b)(2)(xxv) is adopted without change in this final rule.

10 CFR 50.55a(b)(2)(xxvi)—Pressure Testing Mechanical Joints

Section 50.55a(b)(2)(xxvi) of the proposed rule would have supplemented the test provisions in IWA–4540 of the 2001 Edition and the 2002 and 2003 Addenda of Section XI of the ASME BPV Code to require that Class 1, 2, and 3 mechanical joints be

pressure tested in accordance with IWA–4540(c) of the 1998 Edition of Section XI. The requirements to pressure test Class 1, 2, and 3 mechanical joints undergoing repair and replacement activities were deleted in the 1999 Addenda of Section XI. Therefore, pressure testing of mechanical joints is no longer required by Section XI when performing IWA–4000 repair and replacement activities. The proposed rule would have retained the pressure and testing requirements in IWA–4540(c) of the 1998 Edition when using the 2001 Edition through 2003 Addenda because there was no justification for eliminating the requirements for pressure testing Class 1, 2, and 3 mechanical joints. Pressure testing of mechanical joints affected by repair and replacement activities is necessary to ensure and verify the integrity of the pressure boundary. In the proposed rule, the NRC requested that commenters provide additional information that can be used to justify the elimination of the pressure tests requirements in IWA–4540(c) of the 1998 Edition of Section XI.

Several commenters stated that the Code requirement to conduct a system leakage test during operation at nominal operating pressure to verify leakage after reassembly of a mechanical joint was deleted in the 1999 Addenda of Section XI. The commenters indicated that this Code requirement was deleted because mechanical joint leakage is not prohibited by Section XI. The commenters contend that Section XI does not provide leakage acceptance criteria, and it has always been the responsibility of each licensee to determine if the leakage is acceptable and if corrective action is required. Furthermore, they contend that the purpose of the system leakage test in the 1998 Edition and earlier editions and addenda of Section XI is to monitor for leakage not verify the structural integrity of the pressure boundary. One commenter pointed out that the revised system leakage test requirements in the 1999 Addenda and later editions and addenda are consistent with the construction requirements for mechanical joint leakage in Section III of the ASME Code. Section III does not prohibit leakage at mechanical connections and only requires that mechanical connection leakage not mask leakage at other joints. Commenters stated that operators and system engineers periodically monitor systems for leakage and evaluate if corrective action is warranted when leakage is identified. Commenters also stated that post maintenance test programs specify requirements for leak testing mechanical connections following reassembly. Section XI does not provide any acceptance criteria for mechanical joint leakage following reassembly, and it has always been the responsibility of licensees to determine if corrective action is warranted.

The NRC and commenters generally agree that repaired or replaced mechanical joints should be pressure tested following Code repair and replacement activities. However, the NRC and commenters disagree on the role of the Code for providing this guidance. The NRC believes that it is inappropriate to rely on regulations or programs other than the Code, such as testing requirements in Appendix B of 10 CFR Part 50, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' to provide detailed test requirements for mechanical joint repair and replacement activities. With the exception of Section XI, there are no other NRC regulations that provide detailed guidance on pressure testing mechanical joints that are repaired or replaced in accordance with Section XI. The test requirements in Section XI are technically correct and are also consistent with the test requirements in Appendix B of 10 CFR Part 50. After consideration of public comments, the NRC finds that Code pressure testing of mechanical joints after repair and replacement activities is still warranted, and that reliance on programs which are not under Code jurisdiction is not an appropriate substitute for specifying Code repair and replacement requirements.

One commenter states that it is inappropriate for the NRC to modify the use of Code provisions that were previously accepted by the NRC. The NRC disagrees. The modification in § 50.55a(b)(2)(xxvi) was not included in the final rule that incorporated by reference the 1999 Addenda of Section XI in § 50.55a (67 FR 60520: September 26, 2002) due to an oversight by the NRC. The NRC did not identify that these Code provisions were added when it reviewed the 1999 Addenda of Section XI. The NRC has determined that this modification should only apply to those licensees who implement the 2001 Edition and later editions and addenda of Section XI, and should not be backfit to those licensees who update their ISI programs to the 1998 Edition with the 1999 and 2000 Addenda in accordance with § 50.55a(g)(4)(ii). The NRC has determined it is acceptable not to backfit the licensees who update their ISI programs to the 1998 Edition with the 1999 and 2000 Addenda, because those licensees will be required at the next 10-year interval to update their ISI programs to prohibit the relevant Code provisions. Thus, any problems would be caught during the next 10-year interval. The prohibition of the relevant Code provisions is not considered a backfit because they are imposed only as part of the routine updating required as part of the 120-month updating and do not constitute a significant change to, or fundamental modification of, the existing ISI program.

For these reasons, § 50.55a(b)(2)(xxvi) is adopted without change in this final rule.

10 CFR 50.55a(b)(2)(xxvii)—Removal of Insulation

The proposed modification in § 50.55a(b)(2)(xxvii) consisted of two parts. The first part would have supplemented a new provision in IWA–5242(a) to require that insulation be removed before conducting visual examinations on bolting susceptible to stress corrosion cracking (SCC). The purpose of IWA–5242 is to periodically examine bolted connections for evidence of boric acid leakage. The 17–4 precipitation-hardened (PH) stainless steels and the 410 stainless steels installed in borated systems are susceptible to SCC when aged at a temperature below 1100 °F or have a Rockwell Method C hardness value above 30. A–286 stainless steel studs or bolts are also susceptible to SCC when preloaded to 100,000 pounds per square inch or higher. Thus, the insulation must be removed to visually examine these bolting materials. Code Case N–616, ''Alternative Requirements for VT–2 Visual Examination of Classes 1, 2, and 3 Insulated Pressure Retaining Bolted Connections Section XI, Division 1,'' included, among other things, a provision allowing bolted connections with certain bolting materials to be examined without removing the insulation. However, this could prevent identification of signs of degraded bolting if the bolting is susceptible to SCC. The provisions of Code Case N–616 were added to IWA–5242(a) in the 2003 Addenda of Section XI of the ASME BPV Code. The NRC also conditionally accepted the use of Code Case N–616 in Regulatory Guide 1.147, by requiring that insulation be removed to examine 17–4 PH stainless steel or 410 stainless steel studs or bolts aged at a temperature below 1100 °F or with a Rockwell Method C hardness value above 30; and A–286 stainless steel studs or bolts preloaded to 100,000 pounds per square inch or higher.

One commenter stated that the ASME determined that a VT–2 visual examination may not be able to detect

SCC in 17–4 PH and 410 stainless steel installed in borated systems and recommended that NRC not adopt the modification in § 50.55a(b)(2)(xxvii) requiring removal of insulation prior to examining 17–4 PH and 410 stainless steel studs or bolts. The NRC agrees that it is not the intent of a VT–2 visual examination to detect SCC. However, VT–2 visual examination is an effective method for determining when conditions necessary to support SCC, such as boric acid leakage on or near a bolted connection, are present. The NRC believes that it is not prudent to attempt to detect boric acid leakage with insulation in place on connections bolted with materials susceptible to SCC. For these reasons, § 50.55a(b)(2)(xxvii) requiring that insulation be removed when conducting visual examinations on bolting susceptible to SCC is adopted without change in this final rule.

The second part of § 50.55a(b)(2)(xxvii) in the proposed rule would have supplemented IWA–5242(a) to require that a VT–2 examination of bolted connections be performed during system leakage tests. One commenter noted that the reason for this part of the proposed modification was not specifically addressed in the statement of considerations for the proposed rule. The NRC agrees. The proposed rule identified two areas in IWA–5242(a) that need to be supplemented, and the statement of considerations only described one of the areas. The reason for the second part of § 50.55a(b)(2)(xxvii) is as follows. Requirement (a) of Code Case N–533–1, ''Alternative Requirements for VT–2 Visual Examination of Class 1, 2, and 3 Insulated Pressure-Retaining Bolted Connections,'' states that a ''system pressure test and VT–2 visual examination shall be performed each refueling outage for Class 1 connections and each period for Class 2 and 3 connections without removal of insulation.'' With the exception of Requirement (a), the other provisions of Code Case N–533–1 were added to IWA–5242(a) in the 2003 Addenda of Section XI of the ASME BPV Code. The NRC proposed this modification because it appeared that all of the provisions of Code Case N–533–1 were not added in the 2003 Addenda. After further review, the NRC concludes that VT–2 examination of insulated bolted connections during system leakage tests is required by Tables IWB/C/D–2500–1 and by IWA–5241 of Section XI. Tables IWB/C/D–2500–1 require VT–2 visual examination during system leakage testing for all pressure retaining components. Paragraph IWA–5241 requires VT–2 visual examination of the accessible external exposed surfaces of pressure-retaining components for evidence of leakage and applies to insulated and non-insulated components. Therefore, the proposed requirement that a VT–2 examination of bolted connections be performed during system leakage tests is not adopted in this final rule.

10 CFR 50.55a(b)(2)(xxviii)—Reconciliation of Quality Assurance Requirements

Section 50.55a(b)(2)(xxviii) of the proposed rule would have supplemented a new provision in IWA–4226.1 to require that repair/replacement components be manufactured, procured, and controlled as safety-related under a quality assurance program meeting the requirements of Appendix B to 10 CFR Part 50. The proposed rule stated that the purpose of IWA–4226.1 (2003 Addenda) and Code Case N–554–2, ''Alternative Requirements for Reconciliation of Replacement Items and Addition of New Systems,'' Section XI, Division 1 is to provide requirements for reconciling design requirements when using later editions of a construction code or Section III. The proposed rule stated that IWA–4226.1 and Code Case N–554–2 do not require reconciliation of the quality assurance requirements for certification, Code symbol stamping, data reports, and authorized inspection. For example, a component manufactured in a commercial shop that does not have a quality assurance program could be used in a safety-related application without having to reconcile quality assurance requirements. In Regulatory Guide 1.147, the NRC conditionally accepted the use of Code Case N–554–2 by requiring that repair/replacement components be manufactured, procured, and controlled as safety-related under a quality assurance program meeting the requirements of Appendix B to 10 CFR Part 50. The modification in § 50.55a(b)(2)(xxviii) in the proposed rule would have imposed the same quality assurance requirements on IWA–4226.1.

One commenter stated that the proposed modification in § 50.55a(b)(2)(xxviii) would prevent licensees from using a commercial grade dedication program to fabricate or procure components that are no longer available through an Appendix B supplier. The commenter proposed a revision to § 50.55a(b)(2)(xxviii) that would allow licensees to use a commercial grade dedication program to fabricate or procure components, if necessary. The NRC notes that it was not the intent of the modification in § 50.55a(b)(2)(xxviii) in the proposed rule to prevent licensees from using a commercial grade dedication program to fabricate or procure components that are no longer available through an Appendix B supplier. Another commenter stated the proposed modification in § 50.55a(b)(2)(xxviii) is unnecessary because the revision to IWA–4226.1 in the 2003 Addenda is not associated with the fabrication or procurement of components. This same commenter stated that a component manufactured in a commercial shop that does not have a quality assurance program would not be permitted in an application within the jurisdiction of Section XI unless that practice was permitted by the original Construction Code. In this case, a licensee may purchase replacement material, parts, or components from a commercial vendor and dedicate them for use in a nuclear power plant in accordance with its quality assurance program. The NRC agrees with the second commenter. The proposed modification in § 50.55a(b)(2)(xxviii) is unnecessary because the revision to IWA–4226.1 (2003 Addenda) does not change component procurement or fabrication requirements. Furthermore, the existing modification in § 50.55a(b)(2)(xvii), Reconciliation of Quality Requirements, requires that replacement parts be purchased, to the extent necessary, in accordance with the licensee's quality assurance program. In consideration of public comments, § 50.55a(b)(2)(xxviii) is not adopted in this final rule.

2.3 ASME OM Code

The proposed rule would have revised § 50.55a(b)(3) to incorporate by reference the 2001 Edition and the 2002 and 2003 Addenda of the ASME OM Code. Accordingly, the existing modifications for motor-operated valves, snubbers, and manual valves in § 50.55a(b)(3)(ii), § 50.55a(b)(3)(v), and § 50.55a(b)(3)(vi), respectively, would continue to apply when using the 2001 Edition through 2003 Addenda of the ASME OM Code. The modifications in § 50.55a(b)(3)(ii), § 50.55a(b)(3)(v), and § 50.55a(b)(3)(vi) continue to apply to the 2001 Edition through 2003 Addenda of ASME OM Code because the earlier Code provisions on which these regulations are based were not revised in the 2001 Edition through 2003 Addenda of the ASME OM Code to address the underlying issues which led to the NRC to impose the modifications. There were no public comments

received on § 50.55a(b)(3), § 50.55a(b)(3)(ii), § 50.55a(b)(3)(v), and § 50.55a(b)(3)(vi) and, therefore, these provisions are adopted without change in this final rule.

10 CFR 50.55a(b)(3)(i)—Quality Assurance

The proposed rule would have revised the existing quality assurance requirements in § 50.55a(b)(3)(i) to state that ISTA–1500 is applicable when using the 1998 Edition and later editions and addenda of the ASME OM Code. Subsections of the ASME OM Code were renumbered in the 1998 Edition; therefore, § 50.55a(b)(3)(i) is revised to account for the renumbering. This revision does not change requirements in a substantive manner. There were no public comments received on § 50.55a(b)(3)(i) and, therefore, this provision is adopted without change in this final rule.

10 CFR 50.55a(b)(3)(iii)—Code Case OMN–1

The proposed rule would have revised § 50.55a(b)(3)(iii) to eliminate the authorization to use Code Case OMN–1. The existing regulation in § 50.55a(b)(3)(iii) authorizes the use of Code Case OMN–1. Code Case OMN–1 is now approved in Regulatory Guide 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code.'' Regulatory Guide 1.192 (Revision 0) was incorporated by reference into § 50.55a in a final rule dated July 8, 2003 (68 FR 40469). Thus, it is no longer necessary to authorize the use of Code Case OMN–1 in § 50.55a(b)(3)(iii) because this code case is now included in Regulatory Guide 1.192. There were no public comments received on § 50.55a(b)(3)(iii) and, therefore, this provision is adopted without change in this final rule.

10 CFR 50.55a(b)(3)(iv)—Check Valve Monitoring Program

The proposed rule would have revised the existing modification for the check valve monitoring program in § 50.55a(b)(3)(iv) to continue prohibiting use of the 1995 Edition through 2002 Addenda of the ASME OM Code. The modification in (b)(3)(iv) does not apply to the 2003 Addenda of the ASME OM Code because the earlier Code provisions on which this regulation was based were revised in the 2003 Addenda of the ASME OM Code to address the underlying issues which led to the NRC to impose the modification. The check valve monitoring program requirements in Appendix II of the 2003 Addenda of the ASME OM Code are equivalent to the check valve monitoring program requirements in § 50.55a(b)(3)(iv). There were no public comments received on (b)(3)(iv) and, therefore, this provision is adopted without change in this final rule.

3. Section-by-Section Analysis for 50.55a

Paragraph (b)(1). This paragraph requires new applicants for a nuclear power plant who submit an application for a construction permit under 10 CFR Part 50 after the effective date of this rule use the 2001 Edition and the 2002 and 2003 Addenda of Section III, Division 1 of the ASME BPV Code for the design and construction of the reactor coolant pressure boundary and Quality Group B and C components. The statement of considerations for the proposed rule (69 FR 886) indicated that the proposed rule would require, inter alia, applicants for design certifications under 10 CFR Part 52 to use the 2001 Edition and the 2002 and 2003 Addenda of Section III, Division 1 of the ASME BPV Code. However, the language of the proposed rule did not provide for such applicability, and upon further consideration, the NRC believes that additional issues relating to the application of ASME Code to design certifications and other regulatory processes in Part 52 need to be considered. Accordingly, the NRC has decided not to extend by rulemaking these ASME BPV Code provisions to design certifications, and no rule change is necessary to accomplish this. This paragraph also requires that existing modifications and limitations for weld leg dimensions, seismic design, and independence of inspection in §§ 50.55a(b)(1)(ii), 50.55a(b)(1)(iii), and 50.55a(b)(1)(v), respectively, apply to the 2001 Edition through 2003 Addenda of Section III, Division 1 of the ASME BPV Code.

Paragraph (b)(1)(ii). This paragraph reconciles the change in footnote numbers in Figures NC–3673.2(b)–1 and ND–3673.2(b)–1 in Section III, Division 1 of the ASME BPV Code that were renumbered. There are no substantive changes in this paragraph.

Paragraph (b)(1)(vi). This paragraph approves the use of Subsection NH, ''Class 1 Components in Elevated Temperature Service,'' 1995 Addenda through 2003 Addenda, for only the design and construction of Type 316 stainless steel pressurizer heater sleeves where service conditions do not cause the component to reach temperatures exceeding 900 °F. Licensees may not employ the special design methodologies for high temperatures described in Subsection NH for the design and construction of other Class 1 reactor coolant pressure boundary component applications absent specific approval by the NRC.

Paragraph (b)(2). This paragraph requires licensees of nuclear power plants to use the 2001 Edition and the 2002 and 2003 Addenda of Section XI, Division 1 of the ASME BPV Code when updating their inservice inspection programs in their subsequent 120-month interval under § 50.55a(g)(4)(ii). Existing modifications and limitations for quality assurance, Class 1 piping, underwater welding, certification of nondestructive examination personnel, substitution of alternative method, and Table IWB–2500–1 examination requirements in §§ 50.55a(b)(2)(x), 50.55a(b)(2)(xi), 50.55a(b)(2)(xii), 50.55a(b)(2)(xviii), 50.55a(b)(2)(xix), and 50.55a(b)(2)(xxi), respectively, apply to the 2001 Edition through 2003 Addenda of Section XI, Division 1 of the ASME BPV Code. This paragraph also adds Footnote 10 which states that enhanced reactor pressure vessel head inspections have been imposed by order at pressurized water reactors, and that the NRC will determine the need for supplemental inspection requirements to be imposed through rulemaking.

Paragraph (b)(2)(viii). This paragraph requires that the existing modification for examination of concrete containments in § 50.55a(b)(2)(viii) apply to the 2001 Edition through 2003 Addenda of Section XI, Division 1 of the ASME BPV Code, and that a new modification, § 50.55a(b)(2)(viii)(G), apply to the 2001 Edition through 2003 Addenda of Section XI, Division 1 of the ASME BPV Code.

Paragraph (b)(2)(viii)(G). This new paragraph requires that corrosion protection medium be restored in accordance with the quality assurance program requirements specified in IWA–1400 following IWL–4000 repair and replacement activities conducted on concrete containment post-tensioning systems when using the 2001 Edition through 2003 Addenda Section XI, Division 1 of the ASME BPV Code.

Paragraph (b)(2)(ix). This paragraph requires that the existing modification for examination of metal containments and the liners of concrete containments in § 50.55a(b)(2)(ix) apply to the 2001 Edition through 2003 Addenda of Section XI, Division 1 of the ASME BPV Code.

Paragraph (b)(2)(xiii). This paragraph no longer includes the authorization to use Code Case N–513. Authorization to use Code Case N–513 is now provided in Regulatory Guide 1.147, which has been incorporated by reference into § 50.55a.

Paragraph (b)(2)(xiv). The paragraph requires that the existing modification for Appendix VIII personnel qualification in § 50.55a(b)(2)(xiv) apply to the 2001 Edition through 2003 Addenda of Section XI, Division 1, of the ASME BPV Code. The paragraph also corrects an oversight by clarifying that the annual practice requirements in VII–4240 of Appendix VII of Section XI, Division 1 of the ASME BPV Code may be used.

Paragraph (b)(2)(xv). This paragraph requires the existing modification for Appendix VIII specimen set and qualification requirements in § 50.55a(b)(2)(xv) apply to the 2001 Edition of Section XI, Division 1 of the ASME BPV Code.

Paragraph (b)(2)(xv)(C)(1). This paragraph specifies that the flaw depth sizing provisions in Subparagraph 3.2(c) of Supplement 4 to Appendix VIII of Section XI, Division 1 of the ASME BPV Code are not applicable when Appendix VIII is implemented in accordance with the provisions in § 50.55a(b)(2)(xv).

Paragraph (b)(2)(xv)(J). This paragraph no longer includes the authorization to use Code Case N–552. Authorization to use Code Case N–552 is now provided in Regulatory Guide 1.147, which has been incorporated by reference into § 50.55a. Paragraph (b)(2)(xv)(J) is reserved for future use.

Paragraph (b)(2)(xvii). This paragraph limits the existing modification for reconciliation of quality requirements in § 50.55a(b)(2)(xvii) to apply only to the 1995 Addenda through 1998 Edition of Section XI, Division 1 of the ASME BPV Code.

Paragraph (b)(2)(xx). This paragraph limits the existing modification for system leakage tests in § 50.55a(b)(2)(xx) to apply only to the 1997 Addenda through 2002 Addenda of Section XI, Division 1 of the ASME BPV Code.

Paragraph (b)(2)(xxii). This new paragraph prohibits the use of the provision in IWA–2220, 2001 Edition and the 2002 and 2003 Addenda of Section XI, Division 1 of the ASME BPV Code, that allows the use of an ultrasonic examination method to conduct a surface examination. Licensees must conduct an IWA–2220 surface examination using magnetic particle, liquid penetrant, or eddy current method.

Paragraph (b)(2)(xxiii). This new paragraph prohibits the use of the provisions for eliminating mechanical processing of thermally cut surfaces in IWA–4461.4.2 of the 2001 Edition through 2003 Addenda of Section XI, Division 1 of the ASME BPV Code.

Paragraph (b)(2)(xxiv). This new paragraph prohibits the use of Appendix VIII and the supplements to Appendix VIII and Article I–3000 of the 2002 and 2003 Addenda of Section XI, Division 1 of the ASME BPV Code. Licensees are required to implement Appendix VIII and its supplements in accordance with the alternative provided in paragraph (b)(2)(xv). Licensees are also required to use the coverage requirements in paragraph (b)(2)(xv).

Paragraph (b)(2)(xxv). This new paragraph prohibits the use of IWA–4340, 2001 Edition and the 2002 and 2003 Addenda of Section XI that allows the mitigation of defects by modification.

Paragraph (b)(2)(xxvi). This new paragraph requires that the Class 1, 2, and 3 mechanical joint pressure and test provisions in IWA–4540(c) of the 1998 Edition of Section XI of the ASME Code be used when repair and replacement activities are conducted in accordance with the 2001 Edition and the 2002 and 2003 Addenda of Section XI of the ASME BPV Code.

Paragraph (b)(2)(xxvii). This new paragraph requires that the insulation be removed from 17–4 PH or 410 stainless steel studs or bolts aged at a temperature below 1100 °F or having a Rockwell Method C hardness value above 30, and from A–286 stainless steel studs or bolts preloaded to 100,000 pounds per square inch or higher when performing visual examinations in accordance with IWA–5242 of the 2003 Addenda of Section XI, Division 1 of the ASME BPV Code.

Paragraph (b)(3). This paragraph requires licensees of nuclear power plants to use the 2001 Edition and the 2002 and 2003 Addenda of the ASME OM Code when updating their inservice test programs in their subsequent 120-month inspection intervals under § 50.55a(f)(4)(ii). This paragraph also requires the existing modifications and limitations for quality assurance, motor-operated valve testing, snubbers, and manual valves in §§ 50.55a(b)(3)(i), 50.55a(b)(3)(ii), 50.55a(b)(3)(v), and 50.55a(b)(3)(vi), respectively, apply to the 2001 Edition through 2003 Addenda of the ASME OM Code.

Paragraph (b)(3)(i). This paragraph reconciles the different subsection and paragraph numbers of the ASME OM Code that were renumbered in the 1998 Edition and subsequent editions and addenda. There are no substantive changes in this paragraph.

Paragraph (b)(3)(iii). This paragraph no longer includes the authorization to use Code Case OMN–1. Authorization to use Code Case OMN–1 is now provided in Regulatory Guide 1.192 which has been incorporated by reference into § 50.55a. Paragraph (b)(3)(iii) is reserved for future use.

Paragraph (b)(3)(iv). This paragraph limits the existing modification for the check valve monitoring program in § 50.55a(b)(3)(iv) to the 1995 Edition through 2002 Addenda of the ASME OM Code.

4. Generic Aging Lessons Learned Report

In July 2001, the NRC issued, ''Generic Aging Lessons Learned (GALL) Report,'' NUREG–1801, Volumes 1 and 2, for use by applicants in preparing their license renewal applications. The GALL report evaluates existing generic programs, documents the bases for determining when generic existing programs are adequate without change, and documents when generic existing programs should be augmented for license renewal. Section XI, Division 1 of the ASME BPV Code is one of the generic existing programs in the GALL report that is evaluated as an aging management program (AMP) for license renewal. Subsections IWB, IWC, IWD, IWF, IWE, and IWL of the 1995 Edition up to and including the 1996 Addenda of Section XI of the ASME BPV Code for inservice inspection were evaluated in the GALL report, and the conclusions in the GALL report are valid for these edition and addenda.

In the GALL report Sections XI.M1, ''ASME Section XI Inservice Inspection, Subsections IWB, IWC, and IWD,'' XI.S1, ''ASME Section XI, Subsection IWE,'' XI.S2, ''ASME Section XI, Subsection IWL,'' and XI.S3, ''ASME Section XI, Subsection IWF,'' describe the evaluation and technical bases for determining the adequacy of Subsections IWB, IWC, IWD, IWE, IWL, and IWF, respectively. In addition, many other AMPs in the GALL report rely in part, but to a lesser degree, on the requirements in the ASME Code, Section XI (*i.e.*, XI.M3, XI.M4, XI.M5, XI.M6, XI.M7, XI.M8, XI.M9, XI.M11, XI.M12, XI.M13, XI.M14, XI.M15, XI.M16, XI.M18. XI.M24, XI.M25, and XI.M32).

The NRC has completed an evaluation of Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the ASME BPV Code (2001 Edition and the 2002 and 2003 Addenda) as part of the § 50.55a amendment process to determine if the conclusions of the GALL report are also applicable for AMPs that rely upon the ASME Code editions and addenda which are incorporated by reference into § 50.55a by the final rule. The NRC finds that the 2001 Edition and 2002 and 2003 Addenda of Sections III and XI of the ASME BPV Code are acceptable and the conclusions of the GALL report remain valid. Accordingly, an applicant may

use Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the ASME BPV Code (2001 Edition and the 2002 and 2003 Addenda) as acceptable alternatives to the requirements of the 1995 Edition up to and including the 1996 Addenda of the ASME Code, Section XI referenced in the GALL AMPs without the need to submit these alternatives for NRC review in its plant-specific license renewal application. Similarly, a licensee approved for license renewal that relied on the GALL AMPs may use Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the ASME BPV Code (2001 Edition and the 2002 and 2003 Addenda) as acceptable alternatives to the AMPs described in the GALL report. However, a licensee must assess and follow applicable NRC requirements with regard to changes to its licensing basis.

The GALL report identified areas of the 1995 Edition with the 1996 Addenda of Section XI of the ASME Code that require augmentation for license renewal. A license renewal applicant may either augment their AMPs in these areas as described in the GALL report or propose alternatives for NRC review in its plant-specific license renewal application. The GALL report's conclusions with respect to augmentation in connection with a license renewal application also apply when implementing the 2001 Edition and the 2002 and 2003 Addenda of Section XI of the ASME Code.

5. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Web site (Web). The NRC's interactive rulemaking Web site is located at *http://ruleforum.llnl.gov.* These documents may be viewed and downloaded electronically via this Web site.

NRC's Public Electronic Reading Room (PERR). The NRC's public electronic reading room is located at *http://www.nrc.gov/reading-rm/adams.html.*

NRC Staff Contact. Single copies of the **Federal Register** Notice, Regulatory Analysis, Environmental Assessment, and Resolution of Public Comments can be obtained from Stephen Tingen, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Alternatively, you may contact Mr. Tingen at (301) 415–1280, or via e-mail at: *sgt@nrc.gov.*

Document	PDR	Web	PERR	NRC staff
Order EA–03–009	X	X	ML 030380470	X
Revised Order EA–03–009	X	X	ML 040220181	X
SECY–03–0078	X	X	ML 030700408	X
Federal Register Notice	X	X	ML 041200758	X
Regulatory Analysis	X	X	ML 041200761	X
Environmental Assessment	X	X	ML 041200768	X
Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 13.	X	X	ML 040230509.	
Regulatory Guide 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' Revision 0.	X	X	ML 030730430.	
NUREG–1801, ''Generic Aging Lessons Learned (GALL) Report''.	X	X	Volume 1—ML 012060392, Volume 2—ML 012060514.	

6. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that if agencies establish technical standards, the agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. Pub. L. 104–113 requires Federal agencies to use industry consensus standards to the extent practical, however, it does not require Federal agencies to endorse a standard in its entirety. The law does not prohibit an agency from generally adopting a voluntary consensus standard while taking exception to specific portions of the standard if those provisions are deemed to be ''inconsistent with applicable law or otherwise impractical.'' Furthermore, taking specific exceptions furthers the Congressional intent of Federal reliance on voluntary consensus standards because it allows the adoption of substantial portions of consensus standards without the need to reject the standards in their entirety because of limited provisions which are not acceptable to the agency.

The NRC is amending its regulations to incorporate by reference a more recent edition and addenda of Sections III and XI of the ASME BPV Code and ASME OM Code for construction, inservice inspection, and inservice testing of nuclear power plant components. ASME BPV and OM Codes are national consensus standards developed by participants with broad and varied interests in which all interested parties (including the NRC and licensees of nuclear power plants) participate. In a staff requirements memorandum dated September 10, 1999, the Commission indicated its intent that a rulemaking identify all portions of an adopted voluntary consensus standard which are not adopted and to provide a justification for not adopting such portions. The portions of the ASME BPV Code and OM Code which the NRC does not adopt, or partially adopts, are identified in Section 2 of this final rule and the regulatory analysis. The justification for not adopting portions of the ASME BPV Code, as set forth in these statements of consideration and regulatory analysis for this rule satisfy the requirements of Section 12(d)(3) of Pub. L. 104–113, Office of Management and Budget (OMB) Circular A–119 and the Commission's direction in the staff requirements memorandum dated September 10, 1999.

7. Finding of No Significant Environmental Impact: Availability

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required.

This rulemaking will not significantly increase the probability or consequences of accidents; no changes are being made in the types of effluents that may be

released off-site; there is no increase in occupational exposure; and, there is no significant increase in public radiation exposure. Therefore, there are no significant radiological impacts associated with the proposed action. The rulemaking does not involve non-radiological plant effluents and has no other environmental impact. Therefore, no significant non-radiological impacts are associated with the action.

The determination of this environmental assessment is that there will be no significant off-site impact to the public from this action. The NRC has prepared an environmental assessment on this final rule. The environmental assessment is available as indicated in Section 5, Availability of Documents, under the **SUPPLEMENTARY INFORMATION** heading.

The NRC requested the views of the States on the environmental assessment for the rule and did not receive any comments from the States.

8. Paperwork Reduction Act Statement

This final rule decreases the burden on licensees for recordkeeping requirements related to examinations, tests, and repair and replacement activities. The industry annual public burden reduction for this information collection is estimated at 713 hours. Because the burden reduction for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB, approval number 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information collection or an information collection requirement unless the requesting document displays a currently valid OMB control number.

9. Regulatory Analysis

The NRC has prepared a regulatory analysis on this final rule. The analysis is available for review in the NRC's Public Document Room, located in One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The regulatory analysis is available as indicated in Section 5, Availability of Documents, under the **SUPPLEMENTARY INFORMATION** heading.

10. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the Small Business Size Standards set forth in regulations issued by the Small Business Administration at 13 CFR Part 121.

11. Backfit Analysis

The NRC's Backfit Rule, 10 CFR 50.109, states that the Commission shall require the backfitting of a facility only when it finds the action to be justified under specific standards stated in the rule. Section 50.109(a)(1) defines backfitting as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position after issuance of the construction permit or the operating license or the design approval.

Section 50.55a requires nuclear power plant licensees to construct ASME BPV Code Class 1, 2, and 3 components in accordance with the rules provided in Section III, Division 1 of the ASME BPV Code; inspect Class 1, 2, 3, Class MC, and Class CC components in accordance with the rules provided in Section XI, Division 1 of the ASME BPV Code; and test Class 1, 2, and 3 pumps and valves in accordance with the rules provided in the ASME OM Code. This rule incorporates by reference the 2001 Edition and the 2002 and 2003 Addenda of Section III, Division 1 of the ASME BPV Code; Section XI, Division 1 of the ASME BPV Code; and the ASME OM Code.

Incorporation by reference of more recent editions and addenda of Section III, Division 1 of the ASME BPV Code does not affect a plant that has received a construction permit or an operating license or a design that has been approved because the edition and addenda to be used in constructing a plant are, by rule, determined on the basis of the date of the construction permit and are not changed thereafter except voluntarily by the licensee. Thus, incorporation by reference of a more recent edition and addenda of Section III, Division 1 does not constitute a ''backfitting'' as defined in § 50.109(a)(1).

Incorporation by reference of more recent editions and addenda of Section XI, Division 1, of the ASME BPV Code and the ASME OM Code affect the inservice inspection (ISI) and inservice testing (IST) programs of operating reactors. However, the Backfit Rule generally does not apply to incorporation by reference of later editions and addenda of the ASME BPV Code (Section XI) and OM Code. The NRC's longstanding policy has been to incorporate later versions of the ASME Codes into its regulations. This is codified in § 50.55a which requires licensees to revise their ISI and IST programs every 120 months to the latest edition and addenda of Section XI of the ASME BPV Code and the ASME OM Code incorporated by reference into § 50.55a that is in effect 12 months prior to the start of a new 120-month ISI and IST interval. Thus, when the NRC endorses a later version of the Code, it is implementing this longstanding policy and requirement.

Other circumstances where the NRC does not apply the Backfit Rule to the endorsement of a later Code are as follows:

(1) When the NRC takes exception to a later ASME BPV Code or OM Code provision but merely retains the current existing requirement, prohibits the use of the later Code provision, limits the use of the later Code provision, or supplements the provisions in a later Code, the Backfit Rule does not apply because the NRC is not imposing new requirements. However, the NRC explains any such exceptions to the Code in the Statement of Considerations and regulatory analysis for the rule.

(2) When an NRC exception relaxes an existing ASME BPV Code or OM Code provision but does not prohibit a licensee from using the existing Code provision, the Backfit Rule does not apply because the NRC is not imposing new requirements.

(3) Modifications and limitations imposed during previous routine updates of § 50.55a have established a precedent for determining which modifications or limitations are backfits or require a backfit analysis (final rules dated August 6, 1992 (57 FR 34666), August 8, 1996 (61 FR 41303), September 22, 1999 (64 FR 51370), and September 26, 2002 (67 FR 60520)). The application of the backfit requirements to modifications and limitations in the current rule are consistent with the application of backfit requirements to modifications and limitations in previous rules.

There are some circumstances in which the endorsement of a later ASME BPV Code or OM Code introduces a

backfit. In these cases, the NRC would perform a backfit analysis or documented evaluation in accordance with § 50.109. These include the following:

(1) When the NRC endorses a later provision of the ASME BPV Code or OM Code that takes a substantially different direction from the existing requirements, the action is treated as a backfit. An example was the NRC's initial endorsement of Subsections IWE and IWL of Section XI which imposed containment inspection requirements on operating reactors for the first time. The final rule dated August 8, 1996 (61 FR 41303), incorporated by reference in § 50.55a the 1992 Edition with the 1992 Addenda of IWE and IWL of Section XI to require that containments be routinely inspected to detect defects that could compromise a containment's structural integrity. This action expanded the scope of § 50.55a to include components that were not considered by the existing regulations to be within the scope of ISI. Since those requirements involved a substantially different direction, they were treated as backfits, and justified in accordance with the standards of 10 CFR 50.109.

(2) When the NRC requires implementation of later ASME BPV Code or OM Code provision on an expedited basis, the action is treated as a backfit. This applies when implementation is required sooner than it would be required if the NRC simply endorsed the Code without any expedited language. An example was the rule dated September 22, 1999 (64 FR 51370), which incorporated by reference the 1989 Addenda through the 1996 Addenda of Section III and Section XI of the ASME BPV Code and the 1995 Edition with the 1996 Addenda of the ASME OM Code. The final rule expedited the implementation of the 1995 Edition with the 1996 Addenda of Appendix VIII of Section XI of the ASME BPV Code for qualification of personnel and procedures for performing ultrasonic examinations. The expedited implementation of Appendix VIII was considered a backfit because licensees were required to implement the new requirements in Appendix VIII prior to the next 120-month ISI program inspection interval update. Another example was the final rule dated August 6, 1992 (57 FR 34666), which incorporated by reference in § 50.55a the 1986 Addenda through the 1989 Edition of Section III and Section XI of the ASME BPV Code. The final rule added a requirement to expedite the implementation of the revised reactor vessel shell weld examinations in the 1989 Edition of Section XI. Imposing these examinations was considered a backfit because licensees were required to implement the examinations prior to the next 120-month ISI program inspection interval update.

(3) When the NRC takes an exception to a ASME BPV Code or OM Code provision and imposes a requirement that is substantially different from the existing requirement as well as substantially different than the later Code. An example was the adoption of dissimilar metal piping weld UT examination coverage requirements in the final rule dated September 26, 2002 (67 FR 60529), that incorporated by reference in § 50.55a the 1997 though 2000 Addenda of Section XI. Dissimilar metal piping weld examination coverage requirements, although contained in the 1989 Edition and earlier editions and addenda of Section XI, are not addressed in the 1989 Addenda and later editions and addenda of Section XI. Therefore, the addition of dissimilar metal piping weld examination coverage requirements to the regulation was necessary.

10 CFR 50.55a(b)(1)(vi)—Subsection NH

The modification, § 50.55a(b)(1)(b)(vi), adds a new limitation on the use of Subsection NH of the 1995 through 2003 Addenda of Section III of the ASME BPV Code for the design and construction of Class 1 reactor coolant pressure boundary components. Subsection NH was added to Section III of the ASME BPV Code in the 1995 Addenda. The NRC has determined that this subsection was adopted in a final rule dated September 22, 1999 (64 FR 51370), without performing an adequate technical review.

As discussed earlier, the NRC has determined that Subsection NH has been used to design and construct Type 316 stainless steel pressurizer heater sleeves that reach temperatures of up to 900 °F, and that the use of Subsection NH for this application is acceptable. However, the NRC has not performed a full technical review of Subsection NH for other Class 1 components in future advanced reactor designs such as liquid metal and high-temperature gas-cooled reactor designs where service conditions could reach 1500 °F. Section 50.55a(b)(1)(vi) in this final rule limits the application of Subsection NH to only pressurizer heater sleeves constructed from Type 316 stainless steel material where service conditions do not cause the component to reach temperatures exceeding 900 °F. The Backfit Rule does not apply to this limitation because, with the exception of Type 316 stainless steel pressurizer heater sleeves, licensees have not applied the provisions in Subsection NH to other Class 1 reactor coolant pressure boundary components. The Backfit Rule does not apply to rules that revise requirements that existing licensees have not applied or for future combined license applicants and design certification applicants even though such a rule may impact an applicant or licensee who was considering applying the provisions of Subsection NH to Class 1 reactor coolant pressure boundary components. For these reasons, the NRC concludes that limiting the application of Subsection NH to only Type 316 stainless steel pressurizer heater sleeves where service conditions do not cause the component to reach temperatures exceeding 900 °F does not constitute a backfit as defined in 10 CFR 50.109(a)(1).

12. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

13. Miscellaneous Public Comments on Proposed Rule

Class MC Supports

Several commenters stated that the ISI requirements for Class MC supports are not specifically addressed in § 50.55a(g). The commenters requested that NRC revise § 50.55a(g)(4) to clarify that Class MC supports must be included in ISI programs. The NRC disagrees with the commenters. The existing regulation in § 50.55a(g) states that Class MC components and their ''integral attachments'' must meet the ISI requirements set forth in Section XI. The use of ''integral attachment'' in the regulation is consistent with the terminology used in Subsection IWF of Section XI (see Figure IWF–1300–1). The provisions for the ISI of Class 1, 2, 3, and MC Component supports are included in the scope of Subsection IWF. The use of the term ''integral attachment'' is used in Table IWF–1300–1 and includes welded supports to MC components.

NRC Participation on ASME Code Committees

Several commenters stated that the number of modifications and limitations imposed by the NRC on later editions and addenda of the ASME Codes have

significantly increased and that the ASME and NRC committee members should strive to minimize the number of modifications and limitations. The NRC agrees that the number of modifications and limitations should be kept to a minimum. OMB Circular A–119, ''Federal Participation in the Development and Use of voluntary Consensus Standards and in Conformity Assessment Activities,'' requires agency representatives on committees to ascertain the views of the agency to the extent possible and express views consistent with established agency views. It should be noted, however, that unanticipated events occasionally change the NRC position on an issue during final consideration.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Public Law 95–601, sec. 10, 92 Stat. 2951(42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. Section 50.55a is amended by:

■ (a) Removing and Reserving paragraphs (b)(2)(xv)(J) and (b)(3)(iii).

■ (b) Revising the introductory text of paragraph (b)(1), paragraph (b)(1)(ii), the introductory text of paragraph (b)(2), the introductory text of paragraphs (b)(2)(viii) and (b)(2)(ix), paragraph (b)(2)(xiii), paragraph (b)(2)(xiv), and the introductory text of paragraph(b)(2)(xv), paragraph (b)(2)(xv)(C)(*1*), paragraph (b)(2)(xvii), paragraph (b)(2)(xx), the introductory text of paragraph (b)(3), paragraph (b)(3)(i), and the introductory text of paragraph (b)(3)(iv).

■ (c) Adding paragraphs (b)(1)(vi), (b)(2)(viii)(G), and (b)(2)(xxii) through (b)(2)(xxvii), and Footnote 10.

§ 50.55a Codes and standards.

* * * * *

(b) * * *

(1) As used in this section, references to Section III of the ASME *Boiler and Pressure Vessel Code* refer to Section III, and include the 1963 Edition through 1973 Winter Addenda, and the 1974 Edition (Division 1) through the 2003 Addenda (Division 1), subject to the following limitations and modifications:

* * * * *

(ii) *Weld leg dimensions.* When applying the 1989 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section, licensees may not apply paragraph NB–3683.4(c)(1), the footnote to circumferential fillet welded and socket welded joints in Figure NC–3673.2(b)–1 that permit a socket weld leg dimension to be less than 1.09 of the nominal wall thickness of the pipe or the footnote to circumferential fillet welded and socket welded joints in figure ND–3673.2(b)–1 that permit a socket weld leg dimension to be less than 1.09 of the nominal wall thickness of the pipe.

* * * * *

(vi) *Subsection NH.* The provisions in Subsection NH, ''Class 1 Components in Elevated Temperature Service,'' 1995 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section, may only be used for the design and construction of Type 316 stainless steel pressurizer heater sleeves where service conditions do not cause the component to reach temperatures exceeding 900 °F.

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, and include the 1970 Edition through the 1976 Winter Addenda, and the 1977 Edition (Division 1) through the 2003 Addenda (Division 1), subject to the following limitations and modifications:[10]

* * * * *

(viii) *Examination of concrete containments.* Licensees applying Subsection IWL, 1992 Edition with the 1992 Addenda, shall apply paragraphs (b)(2)(viii)(A) through (b)(2)(viii)(E) of this section. Licensees applying Subsection IWL, 1995 Edition with the 1996 Addenda, shall apply paragraphs (b)(2)(viii)(A), (b)(2)(viii)(D)(*3*), and (b)(2)(viii)(E) of this section. Licensees applying Subsection IWL, 1998 Edition through the 2000 Addenda shall apply paragraphs (b)(2)(viii)(E) and (b)(2)(viii)(F) of this section. Licensees applying Subsection IWL, 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, shall apply paragraphs (b)(2)(viii)(E) through (b)(2)(viii)(G) of this section.

* * * * *

(G) Corrosion protection material must be restored following concrete containment post-tensioning system repair and replacement activities in accordance with the quality assurance program requirements specified in IWA–1400.

(ix) *Examination of metal containments and the liners of concrete containments.* Licensees applying Subsection IWE, 1992 Edition with the 1992 Addenda, or the 1995 Edition with the 1996 Addenda, shall satisfy the requirements of paragraphs (b)(2)(ix)(A) through (b)(2)(ix)(E) of this section. Licensees applying Subsection IWE, 1998 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, shall satisfy the requirements of paragraphs (b)(2)(ix)(A), (b)(2)(ix)(B), and (b)(2)(ix)(F) through (b)(2)(ix)(I) of this section.

* * * * *

(xiii) *Mechanical clamping devices.* Licensees may use the provisions of Code Case N–523–1, ''Mechanical Clamping Devices for Class 2 and 3 Piping.'' Licensee choosing to apply Code Case N–523–1 shall apply all of its provisions.

(xiv) *Appendix VIII personnel qualification.* All personnel qualified for performing ultrasonic examinations in accordance with Appendix VIII shall receive 8 hours of annual hands-on training on specimens that contain cracks. Licensees applying the 1999 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section may use the annual practice requirements in VII–

4240 of Appendix VII of Section XI in place of the 8 hours of annual hands-on training provided that the supplemental practice is performed on material or welds that contain cracks, or by analyzing prerecorded data from material or welds that contain cracks. In either case, training must be completed no earlier than 6 months prior to performing ultrasonic examinations at a licensee's facility.

(xv) *Appendix VIII specimen set and qualification requirements.* The following provisions may be used to modify implementation of Appendix VIII of Section XI, 1995 Edition through the 2001 Edition. Licensees choosing to apply these provisions shall apply all of the following provisions under this paragraph except for those in § 50.55a(b)(2)(xv)(F) which are optional.

* * * * *

(C) * * *

(*1*) A depth sizing requirement of 0.15 inch RMS must be used in lieu of the requirements in Subparagraphs 3.2(a) and 3.2(c), and a length sizing requirement of 0.75 inch RMS must be used in lieu of the requirement in Subparagraph 3.2(b).

* * * * *

(J) [Reserved]

* * * * *

(xvii) *Reconciliation of Quality Requirements.* When purchasing replacement items, in addition to the reconciliation provisions of IWA–4200, 1995 Addenda through 1998 Edition, the replacement items must be purchased, to the extent necessary, in accordance with the licensee's quality assurance program description required by 10 CFR 50.34(b)(6)(ii).

* * * * *

(xx) *System leakage tests.* When performing system leakage tests in accordance IWA–5213(a), 1997 through 2002 Addenda, a 10-minute hold time after attaining test pressure is required for Class 2 and Class 3 components that are not in use during normal operating conditions, and no hold time is required for the remaining Class 2 and Class 3 components provided that the system has been in operation for at least 4 hours for insulated components or 10 minutes for uninsulated components.

(xxii) *Surface Examination.* The use of the provision in IWA–2220, ''Surface Examination,'' of Section XI, 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, that allow use of an ultrasonic examination method is prohibited.

(xxiii) *Evaluation of Thermally Cut Surfaces.* The use of the provisions for eliminating mechanical processing of thermally cut surfaces in IWA–4461.4.2 of Section XI, 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section are prohibited.

(xxiv) *Incorporation of the Performance Demonstration Initiative and Addition of Ultrasonic Examination Criteria.* The use of Appendix VIII and the supplements to Appendix VIII and Article I–3000 of Section XI of the ASME BPV Code, 2002 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, is prohibited.

(xxv) *Mitigation of Defects by Modification.* The use of the provisions in IWA–4340, ''Mitigation of Defects by Modification,'' Section XI, 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section are prohibited.

(xxvi) *Pressure Testing Class 1, 2, and 3 Mechanical Joints.* The repair and replacement activity provisions in IWA–4540(c) of the 1998 Edition of Section XI for pressure testing Class 1, 2, and 3 mechanical joints must be applied when using the 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section.

(xxvii) *Removal of Insulation.* When performing visual examinations in accordance with IWA–5242 of Section XI, 2003 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of the section, insulation must be removed from 17–4 PH or 410 stainless steel studs or bolts aged at a temperature below 1100 °F or having a Rockwell Method C hardness value above 30, and from A–286 stainless steel studs or bolts preloaded to 100,000 pounds per square inch or higher.

(3) As used in this section, references to the OM Code refer to the ASME *Code for Operation and Maintenance of Nuclear Power Plants,* and include the 1995 Edition through the 2003 Addenda subject to the following limitations and modifications:

(i) *Quality Assurance.* When applying editions and addenda of the OM Code, the requirements of NQA–1, ''Quality Assurance Requirements for Nuclear Facilities,'' 1979 Addenda, are acceptable as permitted by ISTA 1.4 of the 1995 Edition through 1997 Addenda or ISTA–1500 of the 1998 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(3) of this section, provided the licensee uses its 10 CFR Part 50, Appendix B, quality assurance program in conjunction with the OM Code requirements. Commitments contained in the licensee's quality assurance program description that are more stringent than those contained in NQA–1 govern OM Code activities. If NQA–1 and the OM Code do not address the commitments contained in the licensee's Appendix B quality assurance program description, the commitments must be applied to OM Code activities.

* * * * *

(iii) [Reserved]

(iv) *Appendix II.* Licensees applying Appendix II, ''Check Valve Condition Monitoring Program,'' of the OM Code, 1995 Edition with the 1996 and 1997 Addenda, shall satisfy the requirements of (b)(3)(iv)(A), (b)(3)(iv)(B), and (b)(3)(iv)(C) of this section. Licensees applying Appendix II, 1998 Edition through the 2002 Addenda, shall satisfy the requirements of (b)(3)(iv)(A), (b)(3)(iv)(B), and (b)(3)(iv)(D) of this section.

* * * * *

Footnotes to § 50.55a:

* * * * *

[10] Supplemental inservice inspection requirements for reactor vessel pressure heads have been imposed by Order EA–03–09 issued to licensees of pressurized water reactors. The NRC expects to develop revised supplemental inspection requirements, based in part upon a review of the initial implementation of the order, and will determine the need for incorporating the revised inspection requirements into 10 CFR 50.55a by rulemaking.

Dated at Rockville, Maryland this 14th day of September, 2004.

For the U.S. Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 04–21561 Filed 9–30–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AH53

Criminal History Check: Assessment of Application Fee

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect an administrative change in the method of calculating the agency's application fee for criminal history checks requested by licensees. The amendment establishes the application fee amount as the sum of the user fee charged by the Federal Bureau of Investigation (FBI) for performing

criminal history checks on fingerprint records and an NRC handling charge assessed to ensure full recovery of NRC's administrative costs related to fingerprint record processing. The resulting increase in the fee is quite small ($3.00). The amendment also provides for the NRC to publish its current criminal history check fee on the NRC public Web site. The NRC will continue to notify licensees directly (by e-mail) whenever the application fee is adjusted.

EFFECTIVE DATE: October 1, 2004.

ADDRESSES: Publicly available documents related to this rulemaking may be viewed on public computers in the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O–1 F21. The PDR reproduction contractor will make copies of documents for a fee. Selected documents can be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Smith, Security Branch, Division of Facilities and Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–7739, e-mail *pas5@nrc.gov.*

SUPPLEMENTARY INFORMATION: NRC licensees authorized to operate nuclear power reactors under 10 CFR part 50 must ensure that any individual granted access to Safeguards Information or unescorted access to the nuclear power facility has passed a criminal history check performed by the FBI. 10 CFR part 73, which implements Section 149 of the Atomic Energy Act of 1954, as amended, requires licensees to submit a fingerprint record for any such individual to the NRC, which forwards that record to the FBI for analysis. Based on criminal history information received from the FBI, the licensee must determine whether to grant or to deny the individual unescorted access to the facility or access to Safeguards Information.

10 CFR 73.57(d) details how licensees are to submit fingerprint records and requires that each application for a criminal history check be accompanied by payment of the application fee. Section 149 of the Atomic Energy Act requires that the costs of these NRC record checks shall be paid by the licensee or licensee applicant. In the past, the application fee was equal to the amount charged NRC by the FBI for checking fingerprint records submitted on behalf of licensees. This FBI user fee, currently $24.00, includes a $2.00 handling fee retained by the NRC to offset administrative costs associated with the processing of licensee submissions. However, a recent audit of the NRC's criminal history check program found that the actual cost to the NRC of processing each fingerprint check application is more than twice the $2.00 agency handling charge included in the FBI user fee. As a result, the NRC has not been recovering the full cost of the criminal history program from those licensees using the service.

In order to recover full program costs from licensee users, the NRC is increasing the amount of the criminal history check application fee by $3.00, to $27.00 per fingerprint record submitted. The higher amount will close the gap between the current handling charge and the NRC's actual administrative costs related to processing of licensee applications. This final rule amends § 73.57(d)(3) to specify that the application fee for criminal history checks is the sum of the FBI user fee and the supplemental NRC processing charge required to fully cover internal administrative costs connected with the program.

The dollar amount of the application fee was removed from § 73.57(d)(3) by a final rule published on January 6, 1994 (59 FR 661). This was done to allow the NRC to adjust the application fee as necessary to ensure cost recovery without undertaking a burdensome rulemaking to effect a minor fee change. The 1994 final rule also provided that the NRC would publish notice of any future cost adjustments in the **Federal Register**. This final rule changes the procedure for notifying NRC licensees of fee adjustments. The amendment requires the NRC to post the amount of the current application fee on the Criminal History Program web page, accessible from the NRC's Electronic Submittals page at *http://www.nrc.gov/site-help/eie.html.* The NRC will continue its current practice of directly informing affected licensees of any fee changes. Licensees will be notified of future fee adjustments via e-mail.

Administrative Procedure Act

The NRC finds for good cause that the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). Congress has mandated that the NRC recover its full administrative costs in implementing Section 149 of the Atomic Energy Act of 1954, as amended, and the fee increase established here is quite small. Therefore, notice and public comment would be unnecessary and contrary to the public interest. The final rule is effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. This final rule changes the way in which the NRC's fingerprint check application fee is assessed, enabling the agency to recover the full administrative cost of the criminal history program from licensee users. The rule also establishes a new mechanism for informing licensees of any future fee adjustments. This action is administrative in nature and does not involve the establishment or application of a technical standard containing generally applicable requirements.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c) because the rule is of a minor or non-policy nature. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule. Because of the nature of the rule, this action does not raise environmental justice concerns.

Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget under approval number 3150–0002.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this rulemaking. This final rule makes an administrative change in the method of calculating the NRC's application fee for criminal history checks requested by licensees. The amendment is required to ensure that the NRC recovers the full cost of the criminal history program from licensees using the service. Because this rule implements the Section 149 requirement that the cost of the criminal history check be paid by the licensee or applicant, a regulatory analysis is unnecessary.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule and a backfit analysis is not required because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

■ For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

■ 2. In § 73.57, paragraph (d)(3) is revised to read as follows:

§ 73.57 Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees.

* * * * *

(d) * * *

(3) (i) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security, at (301) 415–7404). Combined payment for multiple applications is acceptable.

(ii) The application fee is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a nuclear power plant licensee, and an administrative processing fee assessed by the NRC. The NRC processing fee covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission publishes the amount of the fingerprint check application fee on the NRC public Web site. (To find the current fee amount, go to the Electronic Submittals page at *http://www.nrc.gov/site-help/eie.html* and select the link for the Criminal History Program.) The Commission will directly notify licensees who are subject to this regulation of any fee changes.

* * * * *

Dated at Rockville, Maryland, this 20th day of September, 2004.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Executive Director for Operations.

[FR Doc. 04–21766 Filed 9–30–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE212, Special Condition 23–151–SC]

Special Conditions; ARINC, Inc.; Raytheon Models 200, 300, and B300; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to ARINC, Inc.; 1632 S. Murray Boulevard; Colorado Springs, CO 80916 for a Supplemental Type Certificate for the Raytheon Model King Air 200, 300 and B300 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The novel and unusual design features include the installation of a Digital Air Data Computer on the copilot side. The Digital Air Data Computer will be either an IS&S ADDU (Air Data Display Unit) or a Thommen AD32 Air Data Display for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is September 20, 2004. Comments must be received on or before November 1, 2004.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE212, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE212. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE212.'' The postcard will be date stamped and returned to the commenter.

Background

On February 9, 2004, ARINC, Inc.; 1632 S. Murray Boulevard, Colorado Springs, CO 80916, made application to the FAA for a new Supplemental Type Certificate for the Raytheon Model 200, 300, and B300 airplanes. The Raytheon Models of concern are approved under TC No. A24CE. The proposed modification incorporates a novel or unusual design feature, a digital air data computer, which may be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, ARINC, Inc. must show that the Raytheon Model 200, 300, and B300 aircraft meet the following provisions, or the applicable regulations in effect on the date of application for the change to the Raytheon Model 200, 300, and B300: For those areas modified or impacted by the installation of the IS&S ADDU (Air Data Display Unit) or a Thommen AD32 Air Data Display system, the following paragraphs as amended by Amendments 23–1 through 23–54 must be complied with: §§23.305, 23.307, 23.365, 23.603, 23.609, 23.611, 23.613, 23.625, 23.627, 23.771, 23.773, 23.777, 23.1301, 23.1303, 23.1309, 23.1311, 23.1321, 23.1322, 23.1325, 23.1331, 23.1335, 23.1351, 23.1357, 23.1359, 23.1361, 23.1365, 23.1367, 23.1381, 23.1431, 23.1529, 23.1541, 23.1543, 23.1581 and the special conditions adopted by this rulemaking action. For systems that are not modified or impacted by the installation, the original certification basis listed on TC No. A24CE are still applicable.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of §21.16.

Special conditions, as appropriate, as defined in §11.19, are issued in accordance with §11.38 after public notice and become part of the type certification basis in accordance with §21.101.

Special conditions are initially applicable to the models for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of §21.101.

Novel or Unusual Design Features

ARINC, Inc. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include the addition of a digital Air Data computer, which may be susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz ...	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50

Frequency	Field strength (volts per meter)	
	Peak	Average
2 MHz–30 MHz	100	100
30 MHz–70 MHz ...	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz ...	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz ...	2000	200
18 GHz–40 GHz ...	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability: As discussed above, these special conditions are applicable to Raytheon Model 200, 300, and B300 airplanes. Should ARINC, Inc. apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the models listed. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Raytheon Model 200, 300, and B300 airplanes modified by ARINC, Inc. to add a digital Air Data computer.

1. Protection of Electrical and Electronic Systems From High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on September 20, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–22019 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19170; Directorate Identifier 2004–NE–18–AD; Amendment 39–13809; AD 2004–20–04]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada PT6B–36A and PT6B–36B Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney Canada (PWC) PT6B–36A and PT6B–36B turboshaft engines with compressor rear hubs, part number (P/N) 3018111 installed. This AD requires reviewing, and correcting if necessary the critical part record for compressor rear hubs, P/N 3018111. This AD also requires removing compressor rear hubs from service that exceed the published part life limit, before further flight. This AD results from the discovery of a compressor rear hub, P/N 3018111, that exceeded the published life limit. This occurred because the operator used an incorrect life limit calculation contained in a PWC Service Bulletin. We are issuing this AD to prevent uncontained failure of the compressor rear hub and damage to the airplane.

DATES: Effective October 18, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 18, 2004.

We must receive any comments on this AD by November 30, 2004.

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

• DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

• Fax: (202) 493–2251.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this AD from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1. This information may be examined at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001, on the internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You may examine the comments on this AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, recently notified us that an unsafe condition might exist on PWC PT6B–36A and PT6B–36B turboshaft engines. Transport Canada advises that a compressor rear hub, P/N 3018111, was discovered that exceeded the published life limit. This occurred because the operator used an incorrect life limit calculation. PWC investigated and confirmed that PWC Service Bulletin (SB) No. 11002, Original issue-through-Revision 7, incorrectly listed the Flight Count Factor (FCF) of 1 for compressor rear hubs, P/N 3018111. The correct FCF for that part is 3.

Relevant Service Information

We have reviewed and approved the technical contents of PWC SB No. 11002, Revision 8, dated June 11, 2003, that provides the service life limit and correct FCF for compressor rear hubs P/N 3018111. Transport Canada classified this service bulletin as mandatory and issued AD CF–2003–16, dated June 27, 2003, to ensure the airworthiness of these PT6B–36A and PT6B–36B turboshaft engines in Canada.

Bilateral Airworthiness Agreement

These PWC PT6B–36A and PT6B–36B turboshaft engines are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, Transport Canada kept the FAA informed of the situation described above. We have examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other PWC PT6B–36A and PT6B–36B turboshaft engines of the same type design. We are issuing this AD to prevent uncontained failure of the compressor rear hub and damage to the airplane. This AD requires reviewing, and correcting if necessary the critical part record for compressor rear hubs, P/N 3018111. This AD also requires removing compressor rear hubs from service that exceed the published part life limit, before further flight. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Docket Management System (DMS)

We have implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, we post new AD actions on the DMS and assign a DMS docket number. We track each action and assign a corresponding Directorate identifier. The DMS docket No. is in the form ''Docket No. FAA–200X–XXXXX.'' Each DMS docket also lists the Directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. FAA–2004–19170; Directorate Identifier 2004–NE–18–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

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

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–20–04 Pratt & Whitney Canada: Amendment 39–13809. Docket No. FAA–2004–19170; Directorate Identifier 2004–NE–18–AD.

Effective Date

(a) This AD becomes effective October 18, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada (PWC) PT6B–36A and PT6B–36B turboshaft engines with compressor rear hubs, part number (P/N) 3018111 installed. These engines are installed on, but not limited to, Sikorsky S–76B helicopters.

Unsafe Condition

(d) This AD results from results from the discovery of a compressor rear hub, P/N 3018111, that exceeded the published life limit. This occurred because the operator used an incorrect life limit calculation contained in a PWC Service Bulletin. We are issuing this AD to prevent uncontained failure of the compressor rear hub and damage to the helicopter.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Within 30 days or at the next engine shop visit, whichever occurs first after the effective date of this AD, do the following:

(1) Using the Flight Count Factor of 3, review and correct the critical part record for compressor rear hubs, P/N 3018111. Use paragraph 3 of the Accomplishment Instructions of PWC Service Bulletin (SB) No. PT6B–72–11002, Revision 8, dated June 11, 2003, to do this.

(2) Remove the compressor rear hub from service before further flight, if its life limit is found to be at or higher than the published life limit in PWC SB No. PT6B–72–11002, Revision 8, dated June 11, 2003.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(h) Under 14 CFR part 39.23, we are limiting the special flight permits for this AD by allowing the engine to operate an additional 25 cycles-in-service or 25 operating hours, whichever occurs first, for moving the helicopter to a location where the requirements of this AD can be done.

Material Incorporated by Reference

(i) You must use Pratt & Whitney Canada Service Bulletin No. PT6B–72–11002, Revision 8, dated June 11, 2003, to perform the reviews and corrections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueuil, Quebec, Canada J4G1A1. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001, on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Related Information

(j) Transport Canada airworthiness directive CF–2003–16, dated June 27, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on September 24, 2004.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–21913 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–35–AD; Amendment 39–13806; AD 2004–20–01]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney Canada (PWC) models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines. This AD requires initial and repetitive gap inspections of the bypass valve cover, on certain part number (P/N) mechanical fuel controls (MFCs), and replacement of those MFCs as mandatory terminating action to the repetitive inspections. This AD is prompted by sixteen reports of loss of engine throttle response and overspeed, eight of which resulted in in-flight shutdown. We are issuing this AD to prevent loss of throttle response and overspeed, resulting in engine in-flight shutdown.

DATES: This AD becomes effective November 5, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 5, 2004.

ADDRESSES: You can get the service information identified in this AD from Honeywell Engines & Systems, Technical Publications Department, 111 South 34th Street, Phoenix, Arizona 85034; telephone (602) 365–5535; fax (602) 365–5577.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at

the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to PWC models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines. We published the proposed AD in the **Federal Register** on December 10, 2003 (68 FR 68802). That action proposed to require initial and repetitive gap inspections of the bypass valve cover, on certain part number (P/N) mechanical fuel controls (MFCs), and replacement of those MFCs as mandatory terminating action to the repetitive inspections.

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

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

There are about 2,800 PWC models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines of the affected design in the worldwide fleet. We estimate that 473 engines installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it will take about 0.1 work hour per engine to perform the inspection, about 1 work hour per engine to replace the MFC during maintenance, and that the average labor rate is $65 per work hour. Required parts will cost about $72,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $34,089,819. The manufacturer has stated that it may provide the new design MFCs at no cost to operators, and that if the MFC is replaced at shop visit, no additional labor costs will be incurred.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

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

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

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–35–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–20–01 Pratt & Whitney Canada: Amendment 39–13806. Docket No. 2003–NE–35–AD.

Effective Date

(a) This AD becomes effective November 5, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada (PWC) models PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines, with mechanical fuel controls (MFCs), part numbers (P/Ns) 3244841–21, 3244853–17, 3244855–15, 3244857–14, 3244858–23, 3244871–5, 3244873–4, and 3244874–4, installed. These engines are installed on, but not limited to, Aerospatiale ATR 42 and ATR 72, BAE Systems (Operations) Limited ATP, Bombardier Inc. DHC–8–200 series, DHC–8–300 series, CL–215T, and CL–415, Construcciones Aeronauticas, S.A. (CASA) C–295, Fokker Aircraft B.V. F27 Mark 050, and Mark 060 airplanes.

Unsafe Condition

(d) This AD is prompted by sixteen reports of loss of engine throttle response and overspeed, eight of which resulted in in-flight shutdown. We are issuing this AD to prevent loss of throttle response and overspeed, resulting in engine in-flight shutdown.

Compliance

(e) Compliance with this AD is required as indicated, unless already done.

Initial Gap Inspection

(f) Within 500 hours time-in-service (TIS) after the effective date of the AD, perform a gap inspection between the MFC bypass valve cover and the MFC main body, and disposition the MFC. Follow paragraphs 5.0 through 5.3 of Honeywell Service Information Bulletin (SIB) No. 82, dated September 14, 2001, to do the inspection and MFC disposition.

Repetitive Gap Inspections

(g) At intervals of 1,500 hours TIS from the last gap inspection, perform repetitive gap inspections between the MFC bypass valve cover and the MFC main body and disposition the MFC. Follow paragraphs 5.0 through 5.3 of Honeywell SIB No. 82, dated September 14, 2001, to do the inspection and MFC disposition.

Mandatory Terminating Action

(h) Within 4,500 hours TIS or 24 months from the effective date of this AD, whichever occurs first, replace the MFC with an MFC not having a P/N listed in paragraph (c) of this AD.

(i) Replacement of the MFC with an MFC whose P/N is not listed in paragraph (c) of this AD constitutes mandatory terminating action to the repetitive inspection requirements specified in paragraph (g) of this AD. Information on new design replacement MFCs can be found in PWC Service Bulletin No. PW100–72–21562, Revision 2, dated December 7, 2000.

Material Incorporated by Reference

(j) You must use Honeywell Service Information Bulletin No. 82, dated September 14, 2001, to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Honeywell Engines & Systems, Technical Publications Department, 111 South 34th Street, Phoenix, Arizona 85034; telephone (602) 365–5535; fax (602) 365–5577. You can review copies at FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Related Information

(k) None.

Issued in Burlington, Massachusetts, on September 24, 2004.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–21911 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–254–AD; Amendment 39–13805; AD 2004–19–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires modification of the rear spar web of the wing, cold expansion of certain attachment holes for the forward pintle fitting and certain holes at the actuating cylinder anchorage of the main landing gear (MLG), repetitive inspections for fatigue cracking in certain areas of the rear spar of the wing, and corrective action if necessary. That AD also provides for optional terminating action for the requirements of the AD. This amendment revises certain compliance times for the inspection. The actions specified by this AD are intended to detect and correct fatigue cracking, which may lead to reduced structural integrity of the wing and the MLG. This action is intended to address the identified unsafe condition.

DATES: Effective November 5, 2004.

The incorporation by reference of a certain publication, as listed in the regulations, is approved by the Director of the Federal Register as of November 5, 2004.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 30, 2000 (65 FR 34069, May 26, 2000); February 14, 1994 (59 FR 1903, January 13, 1994); and June 11, 1993 (58 FR 27923, May 12, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–10–15, amendment 39–11739 (65 FR 34069, May 26, 2000), which is applicable to certain Airbus Model A320 series airplanes, was published in the **Federal Register** on February 13, 2004 (69 FR 7176). The action proposed to retain the requirements of AD 2000–10–15 (modification of the rear spar web of the wing, cold expansion of certain attachment holes for the forward pintle fitting and certain holes at the actuating cylinder anchorage of the main landing gear (MLG), and repetitive inspections for fatigue cracking in certain areas of the rear spar of the wing; and corrective action if necessary; with optional terminating action for those requirements). The notice of proposed rulemaking (NPRM) proposed to revise the threshold and repetitive intervals for the inspection.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed AD

One commenter supports the AD as proposed.

Request To Revise Certain Compliance Time

One commenter, an airline operator, suggests that the grace period (60 days) specified in paragraph (c)(1) of the proposed AD is overly restrictive. The operator requests that the grace period be changed to correspond to the next C-check (18 months for this operator). This recommended grace period would provide sufficient time for operators to do the optional terminating modification specified in the proposed AD. The operator reports that the modification (which has been done on 80 percent of its fleet to date) has revealed only one cracked fastener hole, representing 0.05 percent of all fastener holes inspected. The operator asserts that its proposed grace period would still allow for the safe continued airworthiness of the affected airplanes.

The FAA agrees with the commenter's request and rationale. We agree that the proposed 60-day grace period was unnecessarily restrictive. The commenter's proposed grace period approximates the grace periods mandated by the parallel French airworthiness directive. We have accordingly revised the grace period in paragraph (c)(1) of this final rule.

Additional Change to the Final Rule

Because the language in Note 2 of the proposed AD is regulatory in nature, that note has been redesignated as paragraph (d) of this final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

This AD will affect about 126 airplanes of U.S. registry. The following table provides the cost estimates of the actions currently required by AD 2000–10–15:

COST ESTIMATES

Action	Work hours	Hourly labor rate	Parts cost	Cost per airplane
Modification	60	$65	$0	$3,900
Cold expansion	600	65	0	39,000
Inspection	24	65	0	[1] 1,560
Optional terminating action	750	65	[2] 27,036–32,727	75,786–81,477

[1] Per inspection cycle.
[2] Depending on airplane configuration.

This AD will not add any new actions and therefore will not add any economic burden on operators—except for the additional cost associated with a potentially shortened inspection interval.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD, 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 adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11739 (65 FR 34069, May 26, 2000), and by adding a new airworthiness directive (AD), amendment 39–13805, to read as follows:

2004–19–11 Airbus: Amendment 39–13805. Docket 2001–NM–254–AD. Supersedes AD 2000–10–15, Amendment 39–11739.

Applicability: Model A320 series airplanes, certificated in any category, except those modified in accordance with Airbus Modification 24591 (Airbus Service Bulletin A320–57–1089, dated December 22, 1996; Revision 01, dated April 17, 1997; Revision 02, dated November 6, 1998; or Revision 03, dated February 9, 2001).

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in certain areas of the rear spar of the wing, which may lead to reduced structural integrity of the wing and the main landing gear (MLG), accomplish the following:

Restatement of Certain Requirements of AD 2000–10–15

Modification

(a) For airplanes having manufacturer's serial numbers (MSN) 003 through 008 inclusive, and 010 through 021 inclusive: Prior to the accumulation of 12,000 total flight cycles, or within 500 flight cycles after June 11, 1993 (the effective date of AD 93–08–15, amendment 39–8563), whichever occurs later, modify the inner rear spar web of the wing in accordance with Airbus Service Bulletin A320–57–1004, Revision 1, dated September 24, 1992; or Revision 2, dated June 14, 1993.

(b) For airplanes having MSNs 002 through 051 inclusive: Prior to the accumulation of 12,000 total flight cycles, or within 2,000 flight cycles after February 14, 1994 (the effective date of AD 93–25–13, amendment 39–8777), whichever occurs later, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with Airbus Service Bulletin A320–57–1060, dated December 8, 1992; or Revision 2, dated December 16, 1994.

(1) Perform a cold expansion of all the attachment holes for the forward pintle fitting of the MLG, except for the holes that are for taper-lok bolts.

(2) Perform a cold expansion of the holes at the actuating cylinder anchorage of the MLG.

Note 1: Accomplishment of the cold expansion in accordance with Airbus Service Bulletin A320–57–1060, Revision 1, dated April 26, 1993, is also acceptable for compliance with the requirements of paragraph (b) of this AD.

New Requirements of This AD

Ultrasonic Inspection

(c) Do an ultrasonic inspection for cracking of the rear spar of the wing, in accordance with Airbus Service Bulletin A320–57–1088, Revision 04, dated August 6, 2001. Inspect at the applicable time specified in paragraph 1.E. of the service bulletin, except as required by paragraphs (c)(1) and (c)(2) of this AD.

(1) For any airplane that has not been inspected but has exceeded the applicable specified compliance time in paragraph 1.E. of the service bulletin as of the effective date of this AD: Inspect within 18 months after the effective date of this AD.

(2) For any airplane that has been inspected before the effective date of this AD: Repeat the inspection within 3,600 flight cycles after the most recent inspection.

(d) An inspection done before the effective date of this AD in accordance with Airbus Service Bulletin A320–57–1088, Revision 02, dated July 29, 1999; or Revision 03, dated February 9, 2001; is acceptable for compliance with the requirements of the initial inspection required by paragraph (c) of this AD.

Repetitive Inspections

(e) Repeat the inspection required by paragraph (c) of this AD at intervals not to exceed 3,600 flight cycles or 6,700 flight hours, whichever occurs first, until the requirements of paragraph (g) have been done.

Corrective Action

(f) If any crack is found during any inspection required by paragraph (c) or (e) of this AD: Before further flight, repair in accordance with a method approved by

either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

Optional Terminating Action

(g) Modification of all specified fastener holes in the rear spar of the wing terminates the initial and repetitive inspections required by paragraphs (c) and (e) of this AD, if the modification is done in accordance with Airbus Service Bulletin A320–57–1089, Revision 02, dated November 6, 1998; or Revision 03, dated February 9, 2001. If done before the airplane accumulates 12,000 total flight cycles, the modification also terminates the actions required by paragraphs (a) and (b) of this AD.

Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions must be done in accordance with the service bulletins listed in Table 1 of this AD.

TABLE 1.—SERVICE BULLETINS INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Airbus Service Bulletin A320–57–1004	1	September 24, 1992.
Airbus Service Bulletin A320–57–1004	2	June 14, 1993.
Airbus Service Bulletin A320–57–1060	Original	December 8, 1992.
Airbus Service Bulletin A320–57–1060	2	December 16, 1994.
Airbus Service Bulletin A320–57–1088	04	August 6, 2001.

(1) The incorporation by reference of Airbus Service Bulletin A320–57–1088, Revision 04, dated August 6, 2001, is approved by the Director of the Federal Register as of November 5, 2004.

(2) The incorporation by reference of Airbus Service Bulletin A320–57–1004, Revision 2, dated June 14, 1993; and Airbus Service Bulletin A320–57–1060, Revision 2, dated December 16, 1994; was approved previously by the Director of the Federal Register as of June 30, 2000 (65 FR 34069, May 26, 2000).

(3) The incorporation by reference of Airbus Service Bulletin A320–57–1060, dated December 8, 1992, was approved previously by the Director of the Federal Register as of February 14, 1994 (59 FR 1903, January 13, 1994).

(4) The incorporation by reference of Airbus Service Bulletin A320–57–1004, Revision 1, dated September 24, 1992, was approved previously by the Director of the Federal Register as of June 11, 1993 (58 FR 27923, May 12, 1993).

(5) Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in French airworthiness directive 2001–249(B), dated June 27, 2001.

Effective Date

(i) This amendment becomes effective on November 5, 2004.

Issued in Renton, Washington, on September 21, 2004.

Kalene C. Yanamura,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21816 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[Docket No. IN–154–FOR]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Indiana proposed revisions to and additions of rules pertaining to blasting schedules and blaster certification. Indiana submitted the amendment at its own initiative and intends to revise its program to improve operational efficiency.

EFFECTIVE DATE: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (317) 226–6700. E-mail: *IFOMAIL@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the July 26, 1982, **Federal Register** (47 FR 32071). You can also find later actions concerning the Indiana program and program amendments at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Amendment

By letter dated June 2, 2004 (Administrative Record No. IND–1727), Indiana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Indiana sent the amendment at its own initiative. Indiana proposed revisions to and additions of rules pertaining to blasting schedules and blaster certification. Indiana intends to revise its program to improve operational efficiency.

We announced receipt of the proposed amendment in the July 19, 2004, **Federal Register** (69 FR 42937). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 18, 2004. We received comments from one Federal agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at

30 CFR 732.15 and 732.17. We are approving the amendment as described below.

A. Minor Revisions to Indiana's Rules

Indiana proposed minor wording, editorial, punctuation, grammatical, or recodification changes to the following previously-approved rules: 312 Indiana Administrative Code (IAC) 25–6–31(a)(3) and (b), 25–9–5(c), and 25–9–8(b)(1) and (2).

Because these changes are minor, we find that they will not make Indiana's rules less effective than the corresponding Federal regulations.

B. 312 IAC 25–6–31 Surface Mining; Explosives; Publication of Blasting Schedule

Indiana proposed to remove the last sentence in subsection (c) that requires revised blasting schedules to be approved by the director of the Department of Natural Resources before publication and distribution. The deleted sentence duplicates a provision that is also found at 312 IAC 25–6–32(a). The Indiana regulation at 312 IAC 25–6–32(a) requires the permittee to submit the blasting schedule required by 312 IAC 25–6–31 to the director of the Department of Natural Resources for approval 60 days before publishing the schedule.

The counterpart Federal regulation at 30 CFR 816.64(a) requires operators to conduct blasting operations at times approved by the regulatory authority and announced in the blasting schedule. Deleting the last sentence in subsection (c) will not render Indiana's rule less effective than the counterpart Federal regulation. Therefore, we are approving the deletion of this sentence.

C. 312 IAC 25–9–5 Examinations

Indiana proposed to revise subsection (g) by allowing an applicant who fails an examination to retake the examination two times without reapplying and by requiring an applicant who fails the examination three times to retake the certified blaster training course.

The counterpart Federal regulation at 30 CFR 850.14 requires regulatory authorities to ensure that candidates for blaster certification are examined, at a minimum, in the topics set forth in 30 CFR 850.13(b). They do not contain provisions that govern examination procedures. We find that Indiana's proposed revisions will allow the State more flexibility in administering its blaster certification examinations and will not alter the effectiveness of its previously approved provisions. We also find that the added requirements appear reasonable and are not inconsistent with the requirements of the counterpart Federal regulation at 30 CFR 850.14. Therefore, we are approving Indiana's revisions to subsection (g).

D. 312 IAC 25–9–8 Renewal

Indiana proposed to add new subdivision (b)(3) that requires certified blasters to obtain a minimum of 15 hours of additional training in the topics found in 312 IAC 25–9–3 in order to renew their blaster certification. Also, each certified blaster must provide documentation of the training, and the training must be approved by the Department of Natural Resources. Indiana also proposed to add new language to subsection (c) to require blasters whose certifications are not renewed for more than 1 year after expiration to retake the examination under 312 IAC 25–9–5 and demonstrate completion of 15 hours of additional training in the previous 36 months. In addition, if the certification is not renewed for five years after expiration, the certification will not be renewable.

The counterpart Federal regulation at 30 CFR 850.15 does not contain specific requirements concerning renewal of blaster certifications. The Federal regulation at 30 CFR 850.15(a) requires regulatory authorities to certify, for a fixed period, candidates examined and found to be competent and to have the necessary experience to accept responsibility for blasting operations in surface coal mining operations. Also, the Federal regulation at 30 CFR 850.15(c) allows regulatory authorities to require the periodic reexamination, training, or other demonstration of continued blaster competency.

We find that Indiana's above proposed requirements are reasonable and are consistent with the counterpart Federal regulation at 30 CFR 850.15 and do not alter the effectiveness of the State's previously approved blaster certification provisions. Therefore, we are approving them.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On June 10, 2004, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1729A). The United States Fish and Wildlife Service responded on July 12, 2004 (Administrative Record No. IND–1731), that it noted no significant issues related to wildlife conservation.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On June 10, 2004, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IND–1729A). EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 10, 2004, we requested comments on Indiana's amendment (Administrative Record No. IND–1729A), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Indiana sent us on June 2, 2004.

We approve the rules proposed by Indiana with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 914, which codify decisions concerning the Indiana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Indiana program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Indiana program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 3, 2004.

Charles E. Sandberg,

Regional Director, Mid-Continent Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

PART 914—INDIANA

■ 1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 914.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
June 2, 2004	October 1, 2004	312 IAC 25–6–31(c); 25–9–5(g); 25–9–8(b)(3) and (c).

[FR Doc. 04–22018 Filed 9–30–04; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Jacksonville 04–112]

RIN 1625–AA00

Safety Zone: Port Canaveral, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Atlantic Ocean in the Port Canaveral Entrance Channel. The safety zone is established for the safety of marine vessels transiting a shoaled area within the navigation channel as a result of Hurricane Frances.

DATES: This rule is effective from 10 a.m. on September 10, 2004, through 10 a.m. on December 10, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Jacksonville 04–112 and are available for inspection or copying at Coast Guard Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, Florida, 32211, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant James R. Bigbie at Coast Guard Marine Safety Office, Jacksonville, FL, tel: (904) 232–2640, ext. 105.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule could be issued, and delaying the rule's effective date are contrary to public safety because immediate action is necessary to protect the public and waters of the United States.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Immediate action is necessary to protect the public and waters of the United States. The Coast Guard will issue a broadcast notice to mariners and may place Coast Guard vessels in the vicinity of this zone to advise mariners of the restriction.

Background and Purpose

This rule is needed to protect marine craft transiting the Port Canaveral Entrance Channel. The safety zone includes all those waters shoreward of a boundary that originates on the beach in position 28°21′24″ N 080°36′12″ W; and extends east to 28°21′24″ N 080°30′18″ W; then north to 28°24′48″ N 080°30′18″ W; then west to the beach where the zone will terminate at position 28°24′48″ N 080°35′00″ W. Anchoring, mooring, or transiting within this zone is prohibited, unless authorized by the Captain of the Port, Jacksonville, FL.

Regulatory Evaluation

This regulation is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential cost and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS) because these regulations will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant economic impact upon a substantial number of small entities because although the safety zone will apply to all vessels transiting the port with a draft greater than 22 feet, traffic will be allowed to pass through the zone with the permission of the Coast Guard Captain of the Port and the impact on routine navigation is expected to be minimal.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. A new temporary § 165.T07–112 is added to read as follows:

§ 165.T07–112 Safety Zone Cape Canaveral, FL.

(a) *Location.* The Coast Guard is establishing a temporary safety zone in the Atlantic Ocean—Port Canaveral Channel. The safety zone includes all those waters shoreward of a boundary that originates on the beach in position 28° 21′ 24″ N 080° 36′ 12″ W; and extends east to 28° 21′ 24″ N 080° 30′ 18″ W; then north to 28° 24′ 48″ N 080° 30′ 18″ W; then west to the beach where the zone will terminate at position 28° 24′ 48″ N 080° 35′ 00″ W. Anchoring, mooring, or transiting within this zone is prohibited, unless authorized by the Captain of the Port, Jacksonville, FL.

(b) *Regulations.* The general regulations governing safety zones as contained in 33 CFR 165.23 apply. Vessels with a draft of 22 feet or less may transit within this safety zone. Vessels with a draft greater than 22 feet may not operate within this safety zone without prior approval from the Captain of the Port, Jacksonville, FL. The Captain of The Port may be contacted on a 24 hour basis by calling Lieutenant Patrick Eiland at (321) 784–6781.

(c) *Dates.* This rule is effective from 10 a.m. on September 10, 2004, through 10 a.m. on December 10, 2004.

Dated: September 10, 2004.

David. L. Lersch,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 04–22141 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–117]

RIN 1625–AA87

Security Zone; Queen Mary II Visit, Portland, ME, Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving and fixed security zone around the Queen Mary II while in the Portland, Maine, Captain of the Port zone. This security zone is necessary to ensure public safety and prevent potential sabotage or terrorist acts against the vessel. Persons and vessels will be prohibited from entering this security zone without the permission of the Captain of the Port, Portland, Maine during the specified closure period.

DATES: This rule is effective from 12:01 a.m. EDT on September 27, 2004, through 12:01 a.m. EDT on October 10, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD01–04–117 and are available for inspection or copying at Marine Safety Office Portland, 27 Pearl Street, Portland, ME 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign J. B. Bleacher, Port Operations Department, Marine Safety Office Portland at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the warnings given by national security and intelligence officials that there is an increased risk that further subversive or terrorist activity may be launched against the United States, a heightened level of security has been established around the Queen Mary II while in the Portland, Maine, Captain of the Port zone. This security zone is needed to protect the passenger vessel, persons aboard the passenger vessel, the public, waterways, ports and adjacent facilities from potential sabotage or other subversive acts, accidents, or other events of a similar nature taken upon the Queen Mary II while in the Portland, Maine, Captain of the Port zone. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It is necessary and prudent to enact this temporary security zone in order to properly protect the vessel, passengers, crew and others in the maritime community from possible terrorist actions. Any delay in the effective date of this rule is impractical and contrary to the public interest.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing operations in the Middle East have made it prudent for U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. The Captain of the Port, Portland, Maine, will notify the maritime community of the periods during which the security zone will be enforced. Broadcast notifications will also advise the maritime community of the boundaries of the zone.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a security zone must obey any direction or order of the Captain of the Port or the designated Coast Guard on-scene representative. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port. Any violation of any security zone described herein, is punishable by, among others, civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than $250,000 for an individual and $500,000 for an organization), in rem liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Due to these concerns, a temporary security zone around the Queen Mary II is necessary to ensure the safety and protection of the passengers aboard. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (the ''Magnuson Act''), and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Discussion of Rule

This rule establishes a security zone around the Queen Mary II while the vessel is underway, anchored, moored, or in the process of mooring in the Captain of the Port, Portland, Maine zone between September 27, 2004, and October 10, 2004. This temporary security zone is necessary to ensure public safety and prevent potential sabotage or terrorist acts against the vessel and the surrounding area.

Regulatory Evaluation

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

This rule is not significant for the following reasons: the impact on navigation will be for a minimal amount of time, and delays, if any, will be short in length as vessels will have ample space to navigate around the zone. Moreover, broadcast notifications will be made to the maritime community advising them of the boundaries of the zone and Coast Guard and other law enforcement assets will be on-scene to direct vessels away from the zone. These law enforcement assets will be recognizable by law enforcement insignia, markings, and warning lights.

Small Entities

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

For reasons enumerated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the zone during the specified closure period. However, this rule will not have a significant economic impact on a

substantial number of small entities due to the minimal time that vessels will be restricted from the area of the zone, and the vessels' ability to navigate safely around the zone.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If this rule would affect your small business, organization or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ensign Jarrett B. Bleacher at Marine Safety Office Portland, (207) 780–3251.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3427). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation, since implementation of this action will not result in any: (1) Significant cumulative impacts on the human environment; (2) Substantial controversy or substantial change to existing environmental conditions; (3) Impacts on properties protected under the National Historic Preservation Act or (4) Inconsistencies with any Federal, State or local laws or administrative determinations relating to the environment. A final ''Environmental Analysis Checklist'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–117 to read as follows:

§ 165.T01–117 Security Zone; Queen Mary II Visit, Portland, Maine, Captain of the Port Zone.

(a) *Location.* The following area is a security zone:

All navigable waters within the Portland, Maine, Captain of the Port Zone, extending from the surface to the sea floor, within a 300-yard radius of the Queen Mary II while it is underway, anchored, moored, or in the process of mooring.

(b) *Effective period.* This section is effective from 12:01 a.m. EDT on September 27, 2004, through 12:01 a.m. EDT on October 10, 2004.

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port (COTP), Portland, Maine or his designated representative.

(2) All persons and vessels must comply with the instructions of the COTP, or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels.

(3) The Captain of the Port, Portland Maine or his designated representative will notify the maritime community of periods during which these zones will be enforced. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(d) *Enforcement.* The COTP will enforce this zone and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: September 23, 2004.

Stephen P. Garrity,

Captain, U. S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 04–22138 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7812–8]

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interpretative rule.

SUMMARY: This interpretative rule concerns the applicability of the NESHAP for secondary aluminum producers, 40 CFR part 63, subpart RRR, to a specific type of facility which thermally delaminates aluminum foil from paper and plastic and then mechanically granulates the recovered metal. We decided to reconsider this matter after reviewing two applicability determinations which were issued by EPA regional offices for facilities of this type operated by the U.S. Granules Corporation in Plymouth, IN, and Henrietta, MO. We concluded that these applicability determinations reflected conflicting constructions of subpart RRR, and that the determinations should be vacated while we undertook a review to develop a uniform national construction of the rule.

In today's interpretative rule, we conclude that a delamination chamber of the type operated by the U.S. Granules facilities is a ''scrap dryer/delacquering kiln/decoating kiln'' as that term is defined in 40 CFR 63.1503. Accordingly, we believe that the facilities operated by U.S. Granules in Plymouth and Henrietta, and any other facilities which may engage in similar operations, are subject to the emission control requirements of subpart RRR.

EFFECTIVE DATE: This interpretative rule will take effect on November 1, 2004. After that date, this interpretative rule will govern all decisions concerning the applicability of 40 CFR part 63, subpart RRR, to affected facilities by EPA and by State and local permitting authorities.

FOR FURTHER INFORMATION CONTACT: For specific questions concerning the interpretation of 40 CFR part 63, subpart RRR, adopted in this notice, contact Scott Throwe at EPA by telephone at: (202) 564–7013, or by e-mail at: *throwe.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* This interpretative rule concerns applicability of 40 CFR part 63, subpart RRR, to specific facilities that thermally delaminate aluminum foil from paper and plastic and then mechanically granulate the recovered metal. This interpretative rule determines that these facilities are secondary aluminum production facilities as defined by subpart RRR, and that such facilities are therefore subject to regulation under that subpart. This interpretative rule does not govern determinations regarding the applicability of subpart RRR to other types of activities or operations, although the rationale for the conclusions in this interpretative rule may be relevant in other contexts.

Judicial Review. This interpretative rule is based on a determination of nationwide scope and effect. Under section 307(b)(1) of the CAA, judicial review of this interpretative rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 30, 2004. Moreover, under section 307(b)(2) of the CAA, any judicial review of this interpretative rule must be obtained pursuant to section 307(b)(1) and this interpretation may not be subjected to separate judicial review in any civil or criminal proceedings for enforcement.

I. Background for This Interpretative Rule

This interpretative rule is the outcome of a review by EPA of the applicability of the NESHAP for secondary aluminum producers, 40 CFR part 63, subpart RRR, to a specific type of facility which thermally delaminates aluminum foil from paper and plastic and then mechanically granulates the recovered metal. This review was undertaken following the decision of EPA to vacate two applicability determinations which were previously made by the EPA regional offices concerning facilities of this type owned and operated by the U.S. Granules Corporation.

One of these applicability determinations concerned the U.S. Granules facility in Plymouth, Indiana and was made by the EPA Region 5 Air Enforcement and Compliance Assurance Branch on August 21, 2002, in response to a request for such a determination by U.S. Granules dated August 14, 2002. Notice of this applicability determination (Control No. M020112) was published in the **Federal Register** on February 13, 2003. 68 FR 7373. EPA Region 5 based its conclusions in this determination on a phrase in the definition in subpart RRR of a ''scrap dryer/delaquering kiln/decoating kiln'' which states that such units are used to remove contaminants from aluminum scrap ''prior to melting.'' EPA Region 5 concluded that the delamination chamber at the Plymouth facility does not fit within this definition because all processing of the recovered aluminum at the Plymouth facility is entirely mechanical and the recovered aluminum is never melted.

The other applicability determination concerned the U.S. Granules facility in Henrietta, Missouri, and was made by the EPA Region 7 Air Permitting and Compliance Branch on October 22, 2002, in response to a request for such a determination by U.S. Granules dated

October 11, 2002. Notice of this applicability determination (Control No. M020117) was also published in the **Federal Register** on February 13, 2003. 68 FR 7373. In the determination concerning the Henrietta facility, Region 7 concluded that the delamination chamber at the Henrietta facility is within the definition of a ''scrap dryer/delacquering kiln/decoating kiln'' even though the recovered aluminum is not melted at the Henrietta facility. Region 7 reasoned that the phrase ''prior to melting'' in the definition is merely intended to indicate that the recovery process is normally performed before the recovered aluminum is placed in a furnace to be melted. Region 7 noted that it is the use of heat to remove contaminants from scrap aluminum that generates the emissions of dioxins and furans that subpart RRR is intended to control. Region 7 also found that a unit at the Henrietta facility that dries alumninum chips was a ''thermal chip dryer'' subject to subpart RRR.

After issuance of these two applicability determinations, EPA determined that these determinations reflected conflicting constructions concerning the applicability of subpart RRR to aluminum delamination operations like those conducted at the U.S. Granules facilities. EPA also determined that the retention of such conflicting constructions would be inappropriate as a matter of law and policy. Accordingly, EPA decided to vacate both of these applicability determinations and to commence a process to adopt a single uniform construction of subpart RRR which would apply to all operations like those conducted at the U.S. Granules facilities.

The decision to vacate the determination concerning the Plymouth facility was announced in a letter to U.S. Granules dated June 19, 2003. The decision to vacate the Henrietta determination was announced in a letter to U.S. Granules dated June 23, 2003. Although the vacature of each of these applicability determinations was final and effective on the date that each letter announcing that vacature was signed, EPA also published a notice announcing vacature of these two applicability determinations. 68 FR 42397, September 3, 2003.

Following issuance of the affirmative determination concerning the applicability of subpart RRR to the Henrietta facility, U.S. Granules Corporation brought an action seeking judicial review of that determination. *U.S. Granules Corp.* v. *Whitman,* No. 03–1946 (8th Circuit). After EPA vacated the Henrietta determination and published the notice of vacature, U.S. Granules moved to dismiss its petition for review. That case was dismissed on September 4, 2003.

II. Interpretation Adopted by This Rule

After EPA decided to adopt a single uniform construction of subpart RRR which would apply to all operations like those conducted at the U.S. Granules facilities, EPA concluded that the appropriate vehicle to announce such a uniform construction is an interpretative rule. The interpretation adopted in an interpretative rule is binding on all EPA offices and permitting authorities, thereby assuring a uniform and predictable outcome. However, the reasonableness of the construction of subpart RRR adopted in this interpretative rule is still subject to appropriate judicial review.

This interpretative rule is limited solely to the question of whether a delamination chamber of the type operated at the Plymouth and Henrietta U.S. Granules facilities is a ''scrap dryer/delacquering kiln/decoating kiln'' as that term is defined in 40 CFR 63.1503. Although we believe that the affirmative applicability determination concerning the unit that dries aluminum chips at the Henrietta facility was correct, we do not believe it is necessary to revisit that determination because counsel for U.S. Granules advised EPA in a letter dated December 23, 2002, that U.S. Granules did not contest the determination concerning the chip dryer and that U.S. Granules intended to decomission and remove the chip dryer from that facility before the effective date of subpart RRR.

This interpretative rule is intended to be nationwide in scope and effect. It applies to any and all facilities that operate delamination units similar to those operated at the U.S. Granules Plymouth and Henrietta facilities, although we note that U.S. Granules believes that there are no other sources in North America that thermally delaminate aluminum scrap and then mechanically granulate the recovered metal.

We note at the outset that subpart RRR applies to ''each new and existing scrap dryer/delacquering kiln/decoating kiln'' at a facility that is a major source or area source of hazardous air pollutants. 40 CFR 63.1500(b)(3) and 63.1500(c)(2). 40 CFR 63.1503 defines a ''scrap dryer/delacquering kiln/decoating kiln'' as ''a unit used primarily to remove various organic contaminants such as oil, paint, lacquer, ink, plastic, and/or rubber from aluminum scrap (including used beverage containers) prior to melting.''

The delamination chambers at the U.S. Granules Plymouth and Henrietta facilities use heat to separate aluminum foil from paper and plastic in scrap, but the chambers operate at a maximum temperature of 900 degrees Fahrenheit and no melting of the recovered aluminum occurs in the chamber. If an identical delamination unit were located at a facility that itself melts the recovered aluminum, there would be no question that it would fit within this definition, and we do not understand U.S. Granules to dispute that conclusion. It is also clear that the delamination units used by U.S. Granules perform the same general type of operations for recovery of aluminum from scrap that EPA intended to regulate in subpart RRR. However, we acknowledge that the use of the phrase ''prior to melting'' in the definition of a scrap dryer/delacquering kiln/decoating kiln cannot simply be disregarded. In its affirmative applicability determination, Region 7 argues that the phrase ''prior to melting'' indicates that the recovery of aluminum from scrap would normally occur prior to melting. However, we think this argument is not persuasive unless the phrase in question was intended to be solely illustrative, and that is not clear on the face of the definition. If our conclusion turned solely on this factor, we would be more inclined to amend the rule in a manner which resolved the ambiguity than to try and construe the existing definition.

Fortunately, we need not resolve this issue to conclude that the delamination chambers at the U.S. Granules facilities are within the definition. The negative applicability determination by Region 5 appears to be based on the argument by U.S. Granules that the recovered aluminum must be melted at the same facility in order for the definition to apply. However, nothing in the definition indicates that the subsequent melting of recovered aluminum must occur at the same facility that conducts the recovery operation. Our discussions with U.S. Granules personnel and our review of the company's Web site indicate that some of the customers who buy the recovered aluminum granules from U.S. Granules subsequently melt the purchased material to produce new aluminum products. While some customers may use the aluminum granules without melting them, those granules which are subsequently melted are produced by an identical recovery process. This is sufficient to confirm that the operations to recover aluminum from scrap at the U.S. Granules facilities should not be treated differently from otherwise similar operations at sources

who themselves melt the recovered aluminum.

If we were to construe the definition in any other way, this would permit other sources to evade the applicability of emission controls required by the rule by merely moving those operations which melt the recovered secondary aluminum to another site. This result would violate our established requirement that sources may not fragment an operation in order to avoid regulation under an applicable standard. *See* 40 CFR 63.4(b)(3). We decline to construe the definitions in subpart RRR in a manner which would allow secondary aluminum production facilities to fragment their operations to evade emission control requirements.

Based on this analysis, we conclude that the delamination chambers operated by the U.S. Granules Plymouth and Henrietta facilities, and any similar secondary aluminum operations which may be conducted now or in the future at other sources, are governed by subpart RRR. Although this interpretative rule will take effect on November 1, 2004, we note that subpart RRR itself is already in effect. That is why the letters that we sent to U.S. Granules vacating the two previous conflicting applicability determinations stated that, if we were to adopt a construction of subpart RRR resulting in a new positive applicability determination for the affected facilities, we would afford U.S. Granules a reasonable period to undertake any activities required to come into compliance or to establish continued compliance with subpart RRR. Consequently, U.S. Granules will be required to comply with subpart RRR within 240 days of the effective date of this Interpretative Rule.

III. Other Review Requirements

Under Executive Order 12866, (58 FR 51736, October 4, 1993), this interpretative rule is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget.

Section 553(b)(3)(A) of the Administrative Procedure Act provides that interpretative rules are not subject to notice-and-comment requirements under the Administrative Procedure Act. Interpretative rules which do not involve the internal revenue laws of the United States are not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because notice-and-comment requirements do not apply to this interpretative rule, this rule is also not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532 and 1535).

In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This interpretative rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This interpretative rule will not have significant direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This interpretative rule is also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This interpretative rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

In issuing this interpretative rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the interpretative rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This interpretative rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Our compliance with statutes and Executive Orders in promulgating the rule which is interpreted herein (40 CFR part 63, subpart RRR) is discussed in the **Federal Register** notice concerning the original promulgated rule (63 FR 15690, March 23, 2000), and in the **Federal Register** notice concerning subsequent amendments to that rule (67 FR 79808, December 30, 2002).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We have established an effective date of November 1, 2004. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: August 18, 2004.

Thomas V. Skinner,

Acting Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 04–22084 Filed 9–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7822–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion for the Dubose Oil Products Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Dubose Oil Products Site in Cantonment, Florida, from the National Priorities List (NPL), which is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA requests comments on this deletion. The EPA and the State have determined that all appropriate Fund-financed responses under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, the EPA and the State have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment. However, this deletion does not preclude future actions under Superfund.

DATES: Effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Caroline Robinson, Remedial Project Manager, U.S. Environmental Protection

Agency, Region 4, South Site Management Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30365, (404) 562–8930.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Dubose Oil Products Superfund Site, Cantonment, Florida.

A Notice of Intent to Delete for this site was published August 4, 2004, 69 FR 47072. The closing date for comments on the notice of Intent to Delete was September 3, 2004. The EPA received no comments.

The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action in the future. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 23, 2004.

J. I. Palmer, Jr.,

Regional Administrator, Region 4.

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the site Dubose Oil Products Superfund Site, Cantonment, Florida.

[FR Doc. 04–22083 Filed 9–30–04; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 04–150]

Schedule of Charges for Application Fees; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final rule, which was published in the **Federal Register** of Wednesday, July 7, 2004 (69 FR 41130). The final rule related to the Amendment of the Schedule of Application Fees.

DATES: Effective on October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Claudette E. Pride, 202–418–1995; E-mail: *Claudette.Pride@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections amends the Schedule of Applications Fees, 47 CFR 1.1102 *et seq.*, to adjust its fees for processing applications and other filings. Section 8(b) of the Communications Act, as amended, requires that the Commission review and adjust its application fees every two years after October 1, 1991.

Need for Correction

As published, the final rule contains an error which provides the wrong fee amount and payment type code for a license to operate a direct broadcast satellite in § 1.1107, Schedule of Charges for Applications and Other Filings for the International Service.

List of Subjects in 47 CFR Part 1

Practice and procedure.

■ Accordingly, 47 CFR part 1 is corrected by making the following correcting amendment:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

§ 1.1107 [Amended]

■ 2. In § 1.1107, in column 11.c., the fee amount is revised to read: ''$28,920.00''.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–21086 Filed 9–30–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2908, MB Docket No. 03–144, RM–10733, RM–10788, RM–10789]

Radio Broadcasting Services; Breckenridge, Crawford, Eagle, Fort Morgan, Greenwood Village, and Gunnison, CO; Laramie, WY; Loveland, Olathe and Strasburg, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a petition filed by Dana J. Puopolo requesting the allotment of Channel 299C3 at Gunnison, Colorado. *See* 68 FR 42663, published July 18, 2003. This document also denies a petition jointly filed by Lenora Alexander, former licensee of FM Station KAGM, KAGM Joint Venture, proposed licensee of Station KAGM, and On-Air Family, LLC, licensee of Station KBRU–FM proposing the reallottment of Channel 272A from Strasburg to Greenwood Village, Colorado, as its first local service, among other changes in Fort Morgan, Breckenridge, Eagle, and Loveland, Colorado and Laramie, Wyoming. This document also grants a counterproposal filed by Mayflower-Crawford Broadcasting requesting the allotment of Channel 272C2 at Crawford, Colorado, as its first local service. *See* **SUPPLEMENTARY INFORMATION**.

DATES: Effective November 5, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MB Docket No. 03–144 adopted September 15, 2004, and released September 20, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of the Report and Order in this proceeding in a report to

be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

To accommodate the Crawford allotment, this document also substituted Channel 299A for Channel 272A at Gunnison, Colorado and modified the license of Station KVLE(FM) accordingly; and changed the reference coordinates for vacant Channel 270C2 at Olathe, Colorado. Channel 272C2 can be allotted to Crawford consistent with the Commission's minimum distance separation requirements provided there is a site restriction of 20.9 kilometers (13 miles) southeast of the community. The reference coordinates for Channel 272C2 at Crawford are 38–32–05 North Latitude and 107–30–27 West Longitude. Station KVLE–FM license at Gunnison can be modified on Channel 299A at its current authorized transmitter site. The coordinates for Channel 299A at Gunnison are 38–33–53 NL and 106–55–38 WL. The new reference coordinates for vacant Channel 270C2 at Olathe are 38–26–25 NL and 108–09–47 WL. This site requires a site restriction 15.8 kilometers (9.8 miles) west of the community.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Accordingly, 47 CFR part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Crawford, Channel 272C2, and by removing Channel 272A and adding Channel 299A at Gunnison.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–22026 Filed 9–30–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket No. RSPA–99–6283 (HM–230)]

RIN 2137–AD40

Hazardous Materials Regulations; Compatibility With the Regulations of the International Atomic Energy Agency; Correction; Final Rule

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is correcting errors in a final rule in this docket, published in the **Federal Register** on September 13, 2004, that amended requirements in the Hazardous Materials Regulations (HMR) pertaining to the transportation of radioactive materials based on changes contained in the International Atomic Energy Agency (IAEA) publication, entitled ''IAEA Safety Standards Series: Regulations for the Safe Transport of Radioactive Material,'' 1996 Edition, No. TS–R–1.

DATES: *Effective Date:* This final rule is effective on October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Fred D. Ferate II, Office of Hazardous Materials Technology, (202) 366–4545, or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366–8553; Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On January 26, 2004, the Research and Special Programs Administration (RSPA, we) published a final rule under Docket HM–230 (69 FR 3632) amending requirements in the HMR pertaining to the transportation of radioactive materials based on changes contained in the IAEA publication entitled ''IAEA Safety Standards Series: Regulations for the Safe Transport of Radioactive Material,'' 1996 Edition, No. TS–R–1. On September 13, 2004, we published a final rule (69 FR 55113) that made corrections to the January 26, 2004 final rule.

This document corrects editorial and technical errors in the September 13, 2004 final rule which have come to our attention.

II. Section-by-Section Review

Part 171

Section 171.11

In paragraph (d)(6)(i), we are correcting a typographical error.

Part 173

Section 173.403

In § 173.403, we are correcting certain inadvertent omissions in the definition for *''Low Specific Activity (LSA) material.''*

Section 173.411

Paragraph (b)(2)(ii) is corrected to retain the wording that currently appears in the HMR, which was inadvertently changed in the September 13, 2004 final rule.

Section 173.427

Paragraph (b)(4) is corrected to specify that, for domestic transportation, exclusive use shipment of Low Specific Activity (LSA) material and Surface Contaminated Object (SCO) must be less than an A_2 quantity when in a packaging which meets the requirements of §§ 173.24, 173.24a, and 173.410. The current wording specifies that the shipment must be less than or equal to an A_2 quantity.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is not a significant action under the Regulatory Policies and Procedures of the Department of Transportation. The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the January 26, 2004 final rule. The Regulatory Evaluation is available for review in the public docket for this rulemaking.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local and Indian tribe requirements, but does not propose any regulation that has direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses the classification, packaging, marking, labeling, and handling of hazardous material, among other covered subjects and preempts any State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. This rule is necessary to incorporate changes already adopted in international standards. If the amendments adopted in this final rule were not made, U.S. companies, including numerous small entities competing in foreign markets, will be at an economic disadvantage. These companies would be forced to comply with a dual system of regulation. The amendments are intended to avoid this result.

Federal hazardous materials transportation law provides at 49 U.S.C. § 5125(b)(2) that, if the Secretary of Transportation issues a regulation concerning any of the covered subjects, the Secretary must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of our January 26, 2004 final rule, including the effective date of Federal preemption is October 1, 2004. Because this final rule makes editorial corrections, the effective date of Federal preemption of this final rule is also October 1, 2004.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply and a tribal summary impact statement is not required.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Polices

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant economic impact on a substantial number of small entities. The corrections contained in this final rule will have little or no effect on the regulated industry. Based on the assessment in the regulatory evaluation, to the January 26, 2004 final rule, I hereby certify that, while this rule applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. A detailed regulatory flexibility analysis prepared for the January 26, 2004 final rule is available for review in the docket.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Paperwork Reduction Act

This final rule imposes no new information collection requirements.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The Nuclear Regulatory Commission (NRC) prepared an environmental assessment (EA) of ''Major Revision to Packaging and Transportation of Radioactive Material Regulations,'' Final Report, March 2002, on its final rule which addresses issues also raised in this rulemaking. On the basis of this EA, we find that there are no significant environmental impacts associated with this final rule. A copy of the environmental assessment prepared by the NRC is available for review in the docket.

I. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

■ In consideration of the foregoing, we are making the following corrections to FR Doc. 04–20549, appearing on page 55113 in the **Federal Register** of Monday, September 13, 2004:

PART 171—[CORRECTED]

■ 1. On page 55116, in § 171.11, in paragraph (d)(6)(i), correct the reference ''§ 173.203(d)(10)'' to read ''§ 172.203(d)(10)''.

PART 173—[CORRECTED]

■ 2. On page 55116, in § 173.403, in the definition for ''*Low Specific Activity (LSA) material*,'' correct the introductory paragraph, and paragraphs (1)(iii), (3)(i) and (3)(ii) to read as follows:

§ 173.403 Definitions.

* * * * *

Low Specific Activity (LSA) material means Class 7 (radioactive) material with limited specific activity which satisfies the descriptions and limits set forth below. Shielding material surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of three groups:

(1) * * *

(iii) Radioactive material other than fissile material, for which the A_2 value is unlimited; or

* * * * *

(3) * * *

(i) The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

(ii) The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of Class 7 (radioactive) material per package by leaching when placed in water for seven days would not exceed 0.1 A_2; and

* * * * *

■ 3. On page 55117, in the first column, in § 173.411, correct paragraph (b)(2)(ii) to read as follows:

§ 173.411 Industrial packagings.

* * * * *

(b) * * *

(2) * * *

(ii) A significant increase in the radiation levels recorded or calculated at the external surfaces for the condition before the test.

* * * * *

■ 4. On page 55118, in the third column, in §173.427, correct paragraph (b)(4) to read as follows:

§ 173.427 Transport requirements for low specific activity (LSA) Class 7 (radioactive) materials and surface contaminated objects (SCO).

* * * * *

(b) * * *

(4) In a packaging which meets the requirements of §§ 173.24, 173.24a, and 173.410, but only for domestic transportation of an exclusive use shipment that is less than an A_2 quantity.

* * * * *

Issued in Washington, DC, on September 24, 2004 under authority delegated in 49 CFR Part 1.

Samuel G. Bonasso,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 04–22145 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2004–19209]

RIN 2127–AJ18

Federal Motor Vehicle Safety Standards; Platform Lifts for Motor Vehicles, Platform Lift Installations in Motor Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of the December 2002 final rule that established two new Federal motor vehicle safety standards, one for platform lifts and one for vehicles equipped with such lifts. The purpose of these standards is to prevent injuries and fatalities during lift operation. The agency received several petitions for reconsideration of the December 2002 final rule from platform lift manufacturers, vehicle manufacturers, and a transportation safety research organization. In response to these petitions, the agency is clarifying the applicability of the standards. This document also amends the definitions of certain operational functions, the requirements for lift lighting on public lifts, the interlock requirements, compliance procedures for lifts that manually deploy/stow, the environmental resistance requirements, the edge guard requirements, the wheelchair test device specifications, and the location requirements for public lift controls.

DATES: *Effective Dates:* The amendments in this rule are effective December 27, 2004.

Petitions: Petitions for reconsideration must be received by November 15, 2004, and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact William Evans, Office of Crash Avoidance Standards, at (202) 366–2272.

For legal issues, you may contact Christopher Calamita, Office of Chief Counsel, at (202) 366–2992, and fax them at (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background
II. Petitions for Reconsideration
A. Special Purpose Lifts
B. Definitions of ''Deploy'' and ''Stow''
C. Platform Lift Lighting on Public Use Lifts
D. Interlock Sensors
E. Lifts That Manually Stow and Deploy
F. Environmental Resistance
G. Platform Deflection
H. Edge Guards
I. Test Device
J. Control Systems
K. Minimum Load Requirements for Private Use Lifts
L. Threshold Warning Signal
M. Wheelchair Restraint Standards
N. Cost of Testing
III. Corrections
IV. Effective Date
V. Rulemaking Analyses and Notices

I. Background

On December 27, 2002, the agency published in the **Federal Register** (67 FR 79416) a final rule establishing Federal Motor Vehicle Safety Standard (FMVSS) No. 403, *Platform lift systems for motor vehicles,* and FMVSS No. 404, *Platform lift installation on motor vehicles* (final rule), effective December 27, 2004. These two new standards provide practicable, performance based requirements and compliance procedures for the regulations promulgated by the DOT under the American with Disabilities Act [1] (ADA). FMVSS Nos. 403 and 404 provide that only lift systems that comply with objective safety requirements may be placed in service.

FMVSS No. 403 establishes requirements for platform lifts that are

[1] Pub. L. 101–336, 42 U.S.C. 12101, *et seq.* The ADA directed the DOT to issue regulations to implement the transportation vehicle provisions that pertain to vehicles used by the public. Titles II and III of the ADA set specific requirements for vehicles purchased by municipalities for use in fixed route bus systems and vehicles purchased by private entities for use in public transportation to provide a level of accessibility and usability for individuals with disabilities. 42 U.S.C. 12204.

designed to carry passengers who rely on wheelchairs, scooters, canes, and other mobility aid devices in entering and exiting motor vehicles. The standard requires that these lifts meet minimum platform dimensions and maximum size limits for platform protrusions and gaps between the platform and either the vehicle floor or the ground. The standard also requires handrails, a threshold warning signal, and retaining barriers. Performance tests are specified for wheelchair retention on the platform, lift strength, and platform slip resistance requirements. A set of interlocks is prescribed to prevent accidental movement of a lift and the vehicle on which a lift is installed.

FMVSS No. 404 establishes requirements for vehicles equipped with platform lifts. The lifts must be certified as meeting FMVSS No. 403. The vehicle standard requires that the lifts be installed according to the lift manufacturer's instructions and must continue to meet all of the applicable requirements of FMVSS No. 403. The standard also required that specific information is made available to lift users.

Recognizing the different usage patterns of platform lifts on public transit versus that of platform lifts for individual use, the agency established separate requirements for public use lifts and private use lifts. S4.1.1 of FMVSS No. 404 requires that lift-equipped buses, school buses and multipurpose passenger vehicles other than motor homes with a gross vehicle weight rating greater than 4,536 kg (10,000 lb) must be equipped with a lift certified to all applicable public use lift requirements set forth in FMVSS No. 403. Since lifts on these vehicles will generally be subject to more stress and cyclic loads and will be used by more and varied populations, more requirements as to platform size, control, and handrails are appropriate.

As required by the ADA, FMVSS Nos. 403 and 404 are consistent with the Architectural and Transportation Barriers Compliance Board (ATBCB) guidelines published on September 6, 1991 (56 FR 45530). In order to provide manufacturers sufficient time to meet any new requirements established in FMVSS Nos. 403 and 404, the agency provided a two-year lead time. These standards will become effective December 27, 2004.

II. Petitions for Reconsideration

In response to the final rule, the agency received six petitions for reconsideration from platform lift manufacturers, vehicle manufacturers, and a transportation safety research organization. Specifically, petitions were received from: Lift-U, a platform lift manufacturer; Stewart & Stevenson, a platform lift manufacturer; Braun Industries Incorporated (Braun), an ambulance and ''mobile intensive care and a neo-natal land vehicles'' manufacturer; Braun Corporation (Braun Corp), a lift and vehicle manufacturer; Mac's Lift Gate, Inc. (Mac's Lift Gate), a manufacturer of special purpose lifts; Prevost Car, Inc. (Prevost), an over-the-road bus manufacturer; and the University of Pittsburgh Engineering Research Center on Wheelchair Transportation Safety (University of Pittsburgh), a transportation safety research organization.

The petitioners requested the agency establish an exclusion for special purpose lifts, and amend the definitions of ''deploy'' and ''stow,'' the platform lift lighting requirements, the interlock requirements, the fatigue endurance requirement, the environmental resistance requirements, the platform deflection requirements, the edge guard requirements, control system requirements, the minimum load standard for private lifts, and the threshold warning requirements.

In response to these petitions, the agency is amending FMVSS Nos. 403 and 404 to clarify the applicability of these standards so that they do not apply to special purpose lifts and lifts installed on ambulances, redefine ''deploy'' and ''stow'' to be less design restrictive, establish the lighting requirements as a vehicle requirement; permit lift manufacturers to rely on existing vehicle components to comply with the interlock requirements, exclude lifts that manually deploy and stow from specified lift performance requirements, permit a wider range of platform lift designs to comply with environmental resistance requirements for internally stowed lifts, provide more flexibility in the degree of platform deflection between the unloaded platform and the vehicle floor, reduce the required extension of continuous edge guards to inner platform edge, establish a performance based alternative to the continuous edge guard requirement, establish further specifications for the wheelchair test device, clarify the term ''control system,'' provide flexibility in the placement of the control system panel, and make several corrections to the regulatory text adopted by the final rule. The issues raised by the petitioners are addressed below.

A. Special Purpose Lifts

Braun and Mac's Lift Gate petitioned the agency to exclude special purpose lifts and vehicles equipped with special purpose lifts from the requirements of FMVSS Nos. 403 and 404, respectively. The petitioners argued that special purpose lifts and vehicles equipped with these lifts are used for medical transport only, such as the transport of individuals on cots, transport incubators, and isolet carriers. Braun and Mac's Lift Gate further argued that the size and configuration of special purpose lift systems are designed specifically to transport patients in cots or isolet carriers and prevent use by individuals using mobility aids such as wheel chairs, scooters, or canes. The petitioners stated that special purpose lifts are not intended to accommodate individuals in wheelchairs, mobility devices or individuals standing. In fact, the petitioners stated, the narrow width of most special purpose lifts makes it impossible to use for wheelchairs and mobility aids such as scooters. Therefore, the petitioners argued, because FMVSS Nos. 403 and 404 are intended to apply to lifts that accommodate individuals using canes, walkers, wheelchairs and mobility devices, it would be inappropriate to apply these regulations to lifts and vehicles equipped with lifts specifically designed to accommodate individuals for specialized medical transport.

Agency response: The agency is clarifying the applicability sections of FMVSS Nos. 403 and 404 to make it clear that these standards do not apply to lifts installed on medical transport vehicles for the purpose of loading and unloading cots and/or incubators, or to those vehicles themselves. NHTSA explained in the preamble to the final rule that its intent is to protect lift users aided by canes or walkers, as well as lift users seated in wheelchairs, scooters and other mobility devices in the course of ordinary transit.

FMVSS Nos. 403 and 404 are not intended to apply to systems involving specialized medical transport. Lifts used in specialized medical transport do not present the safety concerns addressed by these standards. The lifts described by the petitioners do not accommodate persons in wheelchairs, scooters, or other types of mobility devices as the platforms are generally far too narrow. Further, these specialized lifts transport individuals lying in cots and isolet carriers, and who generally have no control of their own mobility during transport.

Specialized medical lifts are not used in the ordinary transport of people with disabilities. Accordingly, this document amends the applicability sections of FMVSS Nos. 403 and 404 to clarify that special purpose lifts and the vehicles on

which they are installed are not regulated by these standards.

B. Definitions of ''Deploy'' and ''Stow''

Lift-U petitioned the agency for reconsideration of the definitions of ''deploy'' and ''stow.'' In its petition, Lift-U stated that the definition of ''deploy'' in the final rule specifies that a platform must deploy directly to one of the two loading positions. The petitioner explained that some lift models ''deploy'' from a stowed position to an extended position within the range of passenger operation instead of directly to one of the two loading positions. Lift-U stated that under this design, the raise or lower controls must be actuated to move the platform after it had been ''deployed'' to allow loading from either the vehicle or ground level loading position. Lift-U argued that the current definition of ''deploy'' would have the effect of prohibiting this design.

Lift-U also requested that the agency amend the definition of ''stow.'' The petitioner explained that ''stow'' with respect to a lift typically means that the devices are put away or placed in a position maintained during normal vehicle travel. However, the ''stowed'' position of a wheelchair retention device, a bridging device, or an inner roll stop used to allow a passenger to embark or disembark the platform may be an intermediate or extended position beyond the deployed position. Lift-U requested that the definition be amended to reflect this design variation properly.

Agency response: The agency grants Lift-U's petition with respect to the definitions of ''deploy'' and ''stow.'' While the definitions of ''deploy'' and ''stow'' in the final rule reflect a vast majority of platform lift designs, the agency recognizes there are a variety of active and passive lift designs in existence. For example, active wheelchair lifts require an additional entrance for wheelchair passengers, while passive wheelchair lifts use existing vehicle entrances. When stowed, a passive lift provides steps for passengers. When operational a passive lift forms a platform that lifts a wheelchair from the ground to the level of the vehicle floor. In recognition of existing design variations, the agency is amending these definitions to be less design restrictive.

In a typical lift design, the platform lift is mounted upright in the vehicle compartment. This type of lift will usually deploy directly to the vehicle loading position because the lift is close to this position when it deploys or unfolds. Some external lifts may deploy directly to the ground level loading position as they are close to that position when they deploy or unfold. However, passive lifts may deploy to an extended position so that they may be raised or lowered to one of the two loading positions. We see no safety problem with the any of these deployment methods so long as the maximum deployment speed is sufficiently slow to permit bystanders to move out of the path of a deploying platform lift, as required under S6.2.2.2. Accordingly, we are amending the definition of ''deploy'' in S4 of FMVSS No. 403 to reflect lift designs that move to an intermediate position when deployed.

To maintain consistency throughout FMVSS No. 403, the agency is also amending the control system requirements in S6.7.2.2 to reflect that a platform lift may deploy to an intermediate position as opposed to deploying directly to one of the two loading positions.

The agency also agrees with Lift-U that the position of a wheelchair retention device, bridging device, or inner roll stop during normal vehicle travel may not be the same as the position during passenger access to and from the platform. To reflect this design variety, we are amending the definition of ''stow'' in S4 of FMVSS No. 403, with respect to wheelchair retention devices, bridging devices, and inner-roll stops, to refer to the positioning during normal vehicle travel.

C. Platform Lift Lighting on Public Use Lifts

Under the final rule, public use platform lift manufacturers must provide lighting hardware along with detailed installation instructions that address the mounting, powering, location and positioning of lighting, as well as operational test procedures. The lighting equipment and installation instructions must permit a vehicle manufacturer to verify that, when installed according to the instructions, the lighting will be operational and meet the lighting requirements of FMVSS No. 403. When a lift manufacturer certifies the lift as complying with FMVSS No. 403, it is certifying that when the lighting equipment is installed as instructed on a vehicle for which the lift is intended (a list of suitable vehicles appears in the installation instructions), the lift will meet the applicable lighting requirements.

In petitions for reconsideration, both Prevost and the Braun Corp raised concerns regarding the lighting requirements for public use lifts.[2] Prevost specifically wanted to know if it is the responsibility of the lift manufacturer to incorporate lighting for the lift under FMVSS No. 403 or if it is the responsibility of the vehicle manufacturer to provide lighting under FMVSS No. 404.

The Braun Corp stated that identical lift products may be installed on a wide variety of vehicles. The Braun Corp claimed that although lift manufacturers can easily provide the method of interfacing platform lighting with the lift, they will have difficulty in determining the amount of lighting that will be required for each lift/vehicle application. Thus, the Braun Corp argued that the level of lighting intensity is application specific and should be determined at the time of lift installation. It further argued that public use vehicle manufacturers have already accepted responsibility for complying with the lighting requirements of 36 CFR 1192.31.[3] Therefore, the Braun Corp argued, compliance with the lighting standard should be the responsibility of the vehicle manufacturer.

Agency response: The agency structured the lighting requirements so that a platform lift system would be a complete, self-contained system ready for installation upon delivery to the vehicle manufacturer. While FMVSS No. 403 requires a lift manufacturer to provide the hardware and instructions necessary to install lighting in a manner that complies with the requirements of the standard, the agency explained that FMVSS No. 404 places the burden of complying with the lighting requirements on the vehicle manufacturer through compliance with the installation instructions (67 FR 79416, 79427).

The agency realizes that the vehicle manufacturers have traditionally provided lift lighting. Additionally, public use vehicle manufacturers already must comply with ADA lighting standards, which require lighting on doorways, step wells, lifts and ramps. In some cases, ADA required lighting in conjunction with other pre-existing vehicle lighting might already meet or exceed the lighting requirements of S6.4.11 in FMVSS No. 403. In these

[2] The final rule established stricter requirements for lifts designed to be installed on all buses and on multi-purpose passenger vehicles with a gross vehicle rate rating in excess of 4,536 kg to reflect differences in use patterns. These lifts are defined as public use lifts. We again note that the requirements of the ADA still apply to all lifts installed on vehicles used as public conveyances.

[3] Section 1192.31 of the ADA adopts the lighting standards sets forth in the ATBCB's Accessibility Guidelines for Transportation Vehicles.

instances, lighting provided by a lift manufacturer would be redundant with efforts already required of vehicle manufacturers. For these reasons, we are requiring that vehicle manufacturers comply with the lighting requirements through vehicle lighting systems as opposed to the installation of lighting systems provided by a lift manufacturer. Accordingly, the lighting requirements are moved to FMVSS No. 404.

Platform lift manufacturers will now be required to place a statement in the installation instructions stating that, ''Public use vehicle manufacturers are responsible for complying with the lift lighting requirements in Federal Motor Vehicle Safety Standard No. 404, *Platform lift installations in motor vehicles* (49 CFR 571.404).'' The platform lift lighting requirement formerly in S6.4.11 of FMVSS No. 403 is now a motor vehicle requirement in S4.1.5 of FMVSS No. 404. As they are already required to meet the applicable lighting requirements under the ADA, this will not be an additional burden for the vehicle manufacturers.

D. Interlock Sensors

In its petition for reconsideration, the Braun Corp also raised issues regarding the interlock requirements in FMVSS No. 403. The final rule established interlock requirements to prevent the forward or rearward motion of a vehicle while a platform lift is deployed. The agency determined that the compliance responsibility for the interlock requirements should rest with the platform lift manufacturer, and that the lift manufacturer must provide information identifying the appropriate vehicle make/model/year for installation of a particular lift design. Under the final rule, the lift manufacturer must certify that the installation hardware is fully compatible with those vehicles.

In response to this requirement, the Braun Corp argued that it is unreasonable to require a lift manufacturer to design door, brake and transmission interlocks to fit and immobilize all makes and models of vehicles. The Braun Corp explained that under current practice, lift manufacturers provide generic circuitry to interface with vehicle systems, but the design of an interlock is more appropriately the responsibility of the vehicle manufacturer.

Agency response: We recognize that it may be difficult for lift manufacturers to provide the vehicle parts necessary for interlocks to work with the lift circuitry. In many cases, the vehicle sensors and switches needed by these interlocks may already be part of existing vehicle systems. It may be possible for existing vehicle components to send and receive signals to and from the lift as part of the interlock system. We do not wish to discourage the use of interlock switches and sensors provided by vehicle manufacturers, which may provide better reliability than hardware supplied by the platform lift manufacturers.

Accordingly, the interlock requirements of FMVSS No. 403 are amended to permit lift manufacturers to rely on vehicle system components. The requirements established by this rule still require lift manufacturers to have prior knowledge of how a lift will interface with each particular vehicle model for which the lift is intended. However, S6.10.2 of FMVSS No. 403 is amended by this rule to relieve lift manufacturers from the responsibility of providing the entire interlock system. A platform lift manufacturer may provide less than a full interlock system intended to work in conjunction with a vehicle's existing components, as long as when the platform lift is installed according to the installation instructions, the interlock requirements of S6.10.2.1 through S6.10.2.7 are met.

E. Lifts that Manually Stow and Deploy

The final rule established several performance requirements in FMVSS No. 403 that involve the stowing and deploying of lifts, including: S6.2.2, *Maximum platform velocity*; S6.5.1, *Fatigue Endurance*; and S6.10.2.3, which requires an interlock to prevent the platform from stowing when occupied. Stewart & Stevenson requested clarification as to the application of these requirements to platform lifts that are stowed and deployed manually. With specific regard to the fatigue endurance test procedure, Stewart & Stevenson indicated that fatigue cycling test procedures under California Title 13, Department of California Highway Patrol, Commercial and Technical Services Section do not apply the stow/deploy functions if the platform lift is designed to stow and deploy manually. Regarding the interlock requirement, Stewart & Stevenson stated that platforms which are manually deployed and stowed cannot be stowed when the platform is occupied, and therefore an interlock is not necessary.

Agency response: The agency did not consider platform lifts designed to be stowed and deployed manually. When such lifts are in the process of stowing and deploying, the person who is manually performing the task is in control of the platform and the lift velocity during deployment or stowing. While being manually stowed or deployed, the platform is supported by the operator. Further, a platform that is stowed manually cannot by its nature be stowed until vacant. Accordingly, the agency has decided to exclude platform lifts that manually deploy/stow from the requirements relating to the stow and deploy functions in S6.2.2, S6.5.1, S6.10.2.3, S6.7.2, S7.10.5, and S7.10.6 of FMVSS No. 403.

F. Environmental Resistance

S6.3 of FMVSS No. 403 requires platform lifts to comply with environmental resistance requirements that reflect conditions lifts may experience during actual use. Hardware on a lift that stows inside an occupant compartment and is protected by an electrodeposited coating of nickel, or copper and nickel in accordance with ASTM B456–95, does not need to meet the environmental testing requirement of S6.3. This hardware is not subject to the environmental conditions potentially experienced by hardware on a lift that is stowed external to the passenger compartment.

Stewart & Stevenson objected to the use of the phrase ''occupant compartment'' when identifying the stow location of lifts excluded from the environmental test requirements. It claimed that some lifts stow within other ''sealed compartments'' such as baggage compartments and are equally protected from the elements as lifts that stow within the occupant compartment.

Additionally, Lift-U argued that lifts and hardware made of stainless steel as described in S5.2 of FMVSS No. 209, *Seat belt assemblies*,[4] should also be excluded from the environmental resistance test requirements.

Agency response: The agency agrees with both Stewart & Stevenson and Lift-U. The purpose of the environmental resistance requirement is to test the endurance of lifts and lift components when exposed to the elements. Less stringent requirements should apply to a lift that is stowed either in the occupant compartment or some other equivalent compartment. In both instances, the lift is protected against the exposure experienced by a lift that is stowed externally. Accordingly, we are amending S6.3 of FMVSS No. 403 to include lifts that stow internal to a sealed compartment that provides protection from the environment in the category of ''internal lifts.'' For internal lifts, only the attachment hardware is tested.

[4] S5.2(a) of FMVSS No. 209 states that, ''The test for corrosion resistance shall not be required for attachment hardware made from corrosion-resistant steel containing at least 11.5 percent chromium[.]''

Further, NHTSA has concluded that stainless steel (containing at minimum 11.5 percent chromium by weight) should be added to the list of materials that exclude hardware for lifts mounted inside a sealed compartment from the environmental test requirements. The agency has recognized the corrosion resistant properties of stainless steel in FMVSS No. 209, which excludes hardware made of corrosion-resistant steel with a minimum of 11.5 percent chromium from the environmental test requirements. Given the corrosion resistance properties of stainless steel, if a lift manufacturer desires to incur the additional expense of making an external lift and all of its associated hardware and components completely out of stainless steel, we believe it is appropriate to exclude such a lift from the environmental resistance tests in S7.3 of the final rule. However, a manufacturer must select which option it will rely on for certification by the time it certifies a lift and may not thereafter select a different option.

G. Platform Deflection

Under the platform deflection requirements in S6.4.5 of FMVSS No. 403, the angle of a platform relative to the vehicle floor cannot be more than 1.8 degrees when no load is present. In addition, the loaded platform may not deflect so that the angle of the loaded platform is more than three degrees from the angle of the unloaded platform. This limit on deflection prevents the platform from becoming unstable when loaded. We note that in a supplemental notice of proposed rulemaking (SNPRM), the agency initially proposed an unloaded deflection angle of one degree with respect to the vehicle floor. (65 FR 46228; July 27, 2000). In response to the SNPRM, Lift-U commented that the one-degree maximum was too restrictive, and would prohibit lifts designed to conform to the crown of various road surfaces. Therefore, the agency adopted the 1.8 degree maximum permissible deflection angle relative to the vehicle floor.

In responding to the final rule, Lift-U agreed with the maximum deflection of three degrees between the loaded and unloaded conditions. However, Lift-U argued that the overall maximum deflection (consisting of the unloaded deflection with respect to the vehicle floor plus the deflection between the loaded and unloaded conditions) should be a maximum of 4.8 degrees with no further limit on the angle of deflection between the unloaded platform and the vehicle floor. Lift-U stated that an absolute angle requirement would allow for various combinations of unloaded and loaded deflection angles that when summed together would be less than or equal to the maximum 4.8 degrees. The petitioner further argued that this flexibility would allow the lift to conform to the crown of various road surfaces when at the ground level loading positions. Lift-U also noted that the 4.8 degree maximum is in line with the ADA requirements for general access to buildings and therefore, persons relying on various mobility aids are familiar with slopes of this degree.

Agency response: The agency is granting Lift-U's petition to amend the platform deflection angle requirements. We are amending the platform deflection requirements to eliminate the 1.8 degree restriction for the angle of deflection between the unloaded platform and the vehicle floor. The overall deflection angle requirement of a maximum of 4.8 degrees will remain the same, assuring that a platform lift will not be at too great of a slope.

In cases in which there is no deflection upon loading, the unloaded deflection angle may be as high as 4.8 degrees with respect to the vehicle floor. The loaded deflection angle is still required to be less than or equal to 3 degrees with respect to the unloaded position. The 3-degree requirement will prevent a platform from suddenly tilting too much when a passenger moves onto the lift.

In all cases, the sum of the unloaded and loaded angles must not exceed 4.8 degrees. This permits flexibility of design and will eliminate the need to redesign of existing platform lifts. Additionally, the 4.8-degree maximum maintains consistency with the slope requirements for general building access under the ADA, a condition with which platform lift users will most likely be familiar.

H. Edge Guards

In response to a supplemental notice of proposed rulemaking, Lift-U had requested that the agency amend the requirement for continuous edge guards and allow them to be present and continuous along the sides of the platform to within three inches from the outer platform edge. The three-inch allowance at the outer edge was established to facilitate the loading and unloading of a lift passenger when space is limited. Reducing the length of the edge guard allows a lift occupant to turn his or her mobility device when the space directly in front of the platform is restricted. The December 2002 final rule addressed Lift-U's request.

In its petition for reconsideration, Lift-U stated that for passive lifts, edge guards that extend below the lowest step riser when the platform is stowed interfere with vehicle doors when closed. The petitioner further argued that edge guards within three inches of the inner edge of a platform may become a tripping hazard inside the bus, and recommended a three-inch allowance from the inner edge. It also stated that it may be unnecessary for edge guards to be continuous along the sides of a lift platform when there are obstacles such as handrails, retention devices and roll-stops that box the wheelchair in and keep it from going off the sides of the platform. It suggested having a performance test requirement for edge guards as an alternative to requiring continuous edge guards.

Agency response: NHTSA recognizes the problems that continuous edge guards cause on some passive lifts, particularly with edge guards located within three inches of the inner edge (vehicle side) of the platform. The ADA and the FTA both require that edge guards must not interfere with maneuvering into or out of a vehicle aisle. At the same time, barriers should prevent any of the wheels of a wheelchair or mobility aid from rolling off of the platform during its operation. For passive lifts, edge guards that extend below the lowest step riser when the lift is stowed could potentially interfere with bus door operation, as well as present a tripping hazard to passengers. Edge guards that extend past a point three inches from the inner edge of the platform may also become a tripping hazard in the isle of a vehicle when the lift is stowed. The existence of such an obstacle on the inner edge of the platform when stowed would be in violation of ADA if it interferes with maneuvering into or out of the aisle.

The three-inch allowance for the outside edge of the platform does not diminish safety, as the remaining edge guards and the outer barrier/wheelchair retention device box a wheelchair into the area of the platform and prevent the wheels of a mobility device from rolling off of the edge of the platform. For these same reasons, we see no safety reason for not allowing edge guards to stop within three inches of the inner edge of the platform. The edge guards that remain are adequate to prevent wheels of a mobility device from rolling off the edge of the platform. Accordingly, we are amending S6.4.6.1 of FMVSS No. 403 to require edge guards that extend continuously along each side of the platform lift to within three inches of the edges of the platform at both the ground and vehicle floor level loading positions.

In addition, the agency agrees that permitting compliance with a

performance test requirement as an alternative to continuous guards would be less design restrictive. Therefore, the agency is establishing a performance test as an alternative means to comply with the edge guard requirements.

The agency is amending S7.7, *Wheelchair retention device impact test,* of FMVSS No. 403 to include an edge guard performance test as an alternative to the continuous edge guard requirement. The test consists of operating a wheelchair test device from side-to-side and corner-to-corner on the platform. At the end of each test, all wheels of the wheelchair test device must be in contact with the platform surface. During the test, the footrests are removed from the wheelchair test device to test for the worse case scenario. A lift with sufficient edge guards, handrails, wheelchair retention devices and roll-stops to box a mobility aid onto the platform to prevent its wheels from rolling off the edge of the platform will comply with the edge guard requirements.

I. Test Device

To improve the repeatability of the newly established edge guard test, as well as other tests that use the wheelchair test device, the agency is amending S7.1.2, *Wheelchair test device,* to further specify the operating conditions. The specifications are amended to include a minimum level of battery charge and level of tire inflation. The agency is specifying that the charge on a battery be a minimum of 75 percent of rated nominal capacity.[5] Because repeatability can also depend on proper tire inflation, the pneumatic tires of the wheelchair test device are to be inflated to the wheelchair manufacturer's recommended pressure or, if no recommendation exists, to the maximum pressure that appears on the sidewalls of the tires.

J. Control Systems

Lift-U requested that the agency clarify the term ''control system'' as used in S6.7.1 through S6.7.5 in FMVSS No. 403, stating that as currently used, the term may be interpreted too broadly. Lift-U cited S6.7.5, which states, ''Any single point failure in the control system may not prevent the operation of any of the interlocks as specified in S6.10.'' Lift-U expressed concern that in this context the phrase ''control system'' may be interpreted as requiring lifts to have redundant or back-up control systems with functional checks on start up.

Lift-U also requested that the lift control location requirements for public use lifts in S6.7.7 be amended. As adopted in the final rule, S6.7.7 requires that lift controls for public use lifts, other than those used for backup operation, be positioned together and in a location such that a person facing the controls has a direct, unobstructed view of the platform lift passenger and the passenger's mobility aid, if applicable. Lift-U contends that many passive lifts are installed in the front doorway of buses. This installation allows ambulatory passengers to use steps when the lift is stowed and persons with disabilities to use the lift when it is deployed. Lift-U explained that the controls for these front door lifts are located on the vehicle dash. Therefore, Lift-U argued, the driver has an unobstructed view of the lift passenger and the passenger's mobility aid but must momentarily look at the dash to see the controls. The petitioner further argued that the requirement as written would eliminate this configuration, which is currently a prevalent design and does not present a safety problem.

Agency response: While the control system requirements in the final rule were derived from ADA requirements and FTA guidelines, we agree that as currently used in the standard, the phrase ''control system'' may be interpreted in an overly broad manner. For purposes of clarity, the agency is replacing the phrase ''control system'' with ''control panel switches'' in S6.7 of FMVSS No. 403.

Under the discussion of ''control systems'' in the final rule, the agency explained that ''each system would need to have a 'power' switch, a 'deploy' or 'unfold' switch, an 'up' switch and a ''down'' switch[.]'' This was intended to clarify that ''control system'' refers to the switches on the operator control panel. Replacing the phrase ''control system'' with the phrase ''control panel switches'' more accurately reflects intent of the final rule.

NHTSA also recognizes the restriction resulting from the positioning requirements for control panel switches. FTA guidelines indicate that the control console should be located in a position where the lift operator (driver) has a direct unobstructed view of the platform during lift operation.[6] This does not require the operator to have an unobstructed view of the platform while facing the controls. NHTSA believes that there is no significant reduction in the level of safety by simply requiring that the lift operator have an unobstructed view of the lift passenger and passenger's mobility aid. Accordingly, we are amending S6.7.7 to be consistent with FTA guidelines.

K. Minimum Load Requirements for Private Use Lifts

S4 of FMVSS No. 403 requires private use lifts to comply with a minimum standard load rating of 400 lb (181 kg) and public use lifts to comply with a minimum standard load rating of 600 lb (272 kg). The difference in standard load rating reflects the difference in use patterns between a private use lift and a public use lift.

The University of Pittsburgh petitioned to have both public and private use lifts comply with the 600 lb (272 kg) standard load rating. It indicated that the average weight of 26 commonly used wheelchairs is 199 pounds and the weight is often increased as a result of add-on devices such as a tilt-in-space seat. The University of Pittsburgh argued that when combined with the weight of a 250-pound occupant (the maximum occupant weight capacity of most power wheelchairs), a 400-pound minimum load rating is likely to be inadequate. The petitioner further argued that the lower load capacity requirement for private use lifts will place an unnecessary burden on users by requiring them to have knowledge of their combined wheelchair-user weight in order to determine appropriate lift capacity. It argued that the 400-pound minimum does not take into account later changes in a user's mobility device or subsequent users that may result in the lift capacity becoming exceeded. The University of Pittsburgh added that the required ''DOT-Private Use Lift'' labeling does not convey the load capacity associated with the lift, making it unnecessarily difficult to ascertain appropriate load capacity.

Agency response: The agency is denying the University of Pittsburgh's request to increase the load capacity of private-use lifts. We note that the SNPRM for the final rule proposed a 600-pound standard load for testing all lifts, both private and public. This single standard was based on harmonization with voluntary standards and guidelines, as well as the fact that it was possible for the weight of many power wheelchair/occupant combinations to approach 491 lbs. (weight of a 99th percentile male and a 250 lb. powered wheelchair).

In response to the SNPRM, several commenters requested that the standard be amended to permit a lower load

[5] This level is consistent with ANSI/RESNA WC/Volume 1–1998, Section 22: Set Up Procedures.

[6] FTA, ''Guideline Specifications for Passive Lifts, Active Lifts, Wheelchair Ramps, and Securement Devices,'' September 1992.

capacity for private use lifts, as private use lifts are not required to conform with ADA requirements or harmonize with the ADA Accessibility Guidelines for Buildings and Facilities. Commenters indicated that there are lifts in existence designed for smaller vehicles (some minivans) and lighter wheelchair/occupant loads (*e.g.*, a child in a manual wheelchair) that would be forced from the market if they had to be tested with a 600-pound load.

The agency has already recognized the different use patterns between public and private use lifts. Public use lifts are more heavily used and must accommodate many different types of mobility aids while private use lifts are used less frequently and are usually purchased for a specific individual and mobility aid. The lower load capacity for private use lifts gives manufacturers the flexibility to produce lifts for individuals with smaller vehicles or smaller load requirements. When an individual purchases or is prescribed a new vehicle equipped with a platform lift, the user must rely on present and anticipated needs in order to obtain a lift that best suits that individual. Further, S6.7.8.4 of FMVSS No. 403 requires that a lift's rated load must appear near the lift controls in addition to the statement ''DOT—Private Use Lift.'' This information must also appear in the vehicle owner's manual insert.

The load rating requirements established under the final rule provide more flexibility to lift manufacturers and more options to private lift users. At the same time, the standard ensures that users are aware of the load limitations of each lift. Therefore, the agency is maintaining a minimum 400-pound load capacity requirement for private use lifts. However, the 400-pound minimum load capacity does not prevent an individual from installing a lift with a higher load capacity. An individual could even install a lift certified to the public lift requirements.

L. Threshold Warning Signal

Under the final rule, private use lifts are required to have either an audible or visual threshold warning, while public use lifts are required to have both an audible and visual threshold warning. A threshold warning signal warns a lift user exiting a vehicle that the lift platform is more than one inch below the vehicle's floor reference plane and the platform threshold area is occupied by a portion of the lift user's body or mobility aid. The warning is to prevent users from exiting a vehicle when the platform is not in position.

Prevost petitioned the agency to eliminate the requirement for public use lifts to be equipped with both audio and visual threshold alarms. It indicated that trained drivers are always present while a lift is in operation and maintained that there are no dangers that justify a warning signal. Prevost argued that on their vehicles, the lift control panel is located just beside the lift and as soon as the lift user is inside the coach, the driver lowers the platform and shuts the door. It stated that because of this procedure, there is no danger that would warrant the need for threshold alarms.

Agency response: The basic threshold warning requirement in FMVSS No. 403 was derived from the SAE lift standard.[7] In private use applications, the specific lift user and his or her mobility aid are known quantities and the lift is usually purchased for that person's particular needs. In public use applications, lift users and their mobility aids are unknown quantities. The lift system is used by a wide variety of persons with various disabilities, impairments and mobility aids. Thus, the requirement of both visual and audible threshold warnings signals on public use vehicles equipped with lifts, is intended to provide a threshold warning system that will benefit the majority of public lift users.

As explained in the preamble of the final rule, NHTSA does not have the authority to regulate drivers or driver training. We can only regulate vehicles and vehicle equipment. Requirements and performance tests are written to further safety whether there is a trained driver/assistant present or not. In the public use environment, when lift users are positioned on the vehicle threshold area and are preparing to move onto the lift platform, it is important that they be warned when the platform is more than one inch below the vehicle floor level. Considering the wide variety of persons with various disabilities that a public use lift must accommodate and the height of the vehicle threshold above the ground, particularly on motor coaches, it is reasonable to require both audible and visual threshold-warning alarms. Therefore, the agency is denying Prevost's petition with regard to this issue.

M. Wheelchair Restraint Standards

In its petition for reconsideration of the Final Rule, Prevost also expressed concern with the lack of wheelchair restraint requirements in FMVSS No. 404 to address wheelchair securement once a wheelchair is inside a vehicle.

Agency response: The ADA and DOT regulations regarding securement of a mobility device remain in effect and are not altered by FMVSS Nos. 403 and 404. The ATBCB published guidelines for DOT to follow in implementing the ADA and stated, ''NHTSA was the appropriate agency to define safety tests for *platform lifts*.'' (Emphasis added). The DOT regulations contain requirements for platform lifts, as well as, securement devices for wheelchairs and other mobility aids (49 CFR, Part 38, Subpart B). FMVSS Nos. 403 and 404 apply only to platform lifts designed to carry persons aided by canes or walkers, as well as, persons seated in wheelchairs, scooters and other mobility devices into and out of motor vehicles. Relative to mobility aid securement devices, the ADA requirements are applicable and require at least two mobility aid securement locations on vehicles in excess of 22 feet in length and at least one mobility aid securement location on vehicles less than or equal to 22 feet in length. In addition, the ADA provides requirements for mobility aid securement devices relative to design load, location/size, types of mobility aids accommodated, orientation, movement, stowage, and seat belts/shoulder harnesses. Aside from FMVSS No. 222, *School bus passenger seating and crash protection,* which provides performance tests for mobility aid securement devices in school buses, there are no other NHTSA mobility aid securement device requirements for other vehicles.

N. Cost of Testing

Several petitioners raised concern over the cost of various testing requirements and the cost of the platform lift regulations over all. Prevost stated that the time, cost and space necessary to perform the fatigue endurance testing required by S7.10 of FMVSS No. 403 would be excessive. Prevost indicated that a simple static test with a high enough safety factor could replace the endurance testing, while still assuring the robustness of the lift/vehicle attachment point. Further, Prevost expressed confusion as to whether it was the lift manufacturer or the vehicle manufacturer that is responsible for certifying to endurance requirements.

Stewart & Stevenson stated that permitting the fatigue endurance testing and the proof load testing (S7.11 of FMVSS No. 403) to be performed on a jig, as opposed to testing on a vehicle, would reduce the compliance costs. Stewart & Stevenson estimated that the cost of fatigue testing a platform lift on

[7] Society of Automotive Engineers (SAE) J2093, issued May 1995.

an over-the-road coach would cost $450,000 per test as compared to a cost of $35,000 per test using a jig. As such, Stewart & Stevenson requested that the standard be amended to clarify that certification testing can be performed through use of a jig, as opposed to testing performed on a vehicle.

Generally, the Braun Corporation disagreed with the agency's cost estimate of $300 per lift to comply with FMVSS No. 403 and 404. The Braun Corporation estimated that the cost for complying with the electrical portions of the standard would alone be $300 and that compliance with the mechanical aspects would be an additional $300. The Braun Corporation argued that this increase would translate to a retail cost of four to six times higher than that estimated by NHTSA and was concerned that higher consumer costs would reduce the options available to the end users.

Agency response: The agency maintains that the compliance costs estimated in the Final Rule are an accurate estimate, given the incorporation of industry and ADA guidelines into the standards, given that most commercial lifts already comply with the industry standards, and given that manufacturers must already comply with the ADA guidelines for public use lifts.

For clarification, FMVSS No. 403 is an equipment standard. All of the requirements contained therein apply to platform lifts and platform lift manufacturers. FMVSS No. 404 is a vehicle standard. All of the requirements therein apply to manufacturers of vehicles equipped with platform lifts. The lift manufacturer must certify that a lift complies with the fatigue endurance requirements specified in S6.5.1 of FMVSS No. 403 on all vehicles for which the lift is intended.[8]

The fatigue requirements in S6.5.1 and the related performance test in S7.10 not only verify the integrity of the lift, but also verify the integrity of the lift's attachment to the vehicle. Although lift attachment points usually do not move, some flexion may occur as the lift is cycled, which may eventually result in fracture and/or separation. Fatigue or life cycle testing is generally the best way to reveal such problems.

However, the self-certification process established by the National Traffic and Motor Vehicle Safety Act permits manufacturers to certify compliance with requirements in ways other than performing actual tests on all lift/vehicle combinations. Each FMVSS specifies performance requirements for the vehicle or equipment to which the standard applies. While manufacturers are not required to conduct certification tests in any particular manner, any manufacturer that wishes to base its certification of compliance on a test procedure that is different from that included in the standard must necessarily assess whether the results of the alternative test procedure are good predictors of the results of the test procedure specified in the standard.

Additionally, no lift manufacturers provided data that would demonstrate costs to manufacturers greater than those determined by the agency in the final rule. The agency expects the costs to decrease with regards to the electrical interlock requirements given that an amendment in this notice permits lift manufacturers to rely on interlock components already in companion vehicles. This will reduce the design and material costs for these systems.

III. Corrections

This document corrects several errors in the Final Rule. Lift-U noted that the final rule erroneously listed the threshold warning test in S7.4 of FMVSS No. 403 as a test that can be performed on a test jig when in fact, the procedure in S7.4 is performed on a lift/vehicle combination. Therefore, the regulatory text has been appropriately amended.

Further, the wheelchair retention device impact test, S7.7.1, to which the edge guard test was added, may be performed on a jig. The added edge guard test adopted by this document, S7.7.4, specifies testing on a lift/vehicle combination. The regulatory language has been amended in S7 to reflect these additions.

Lift-U also brought to our attention an error in S6.2.1 of FMVSS No. 403. The first sentence of S6.2.1 states, ''Throughout the range of passenger operation and during the lift operations specified in S7.6, the platform lift must meet the requirements of S6.2.2 through S6.2.4.'' S7.6 is the test for occupancy of the inner-roll stop and interlock function. S6.2.1 was intended to reference operations in S7.9, Static load test I—working load. S6.2.1 is amended accordingly. Additionally, S7.1.1 is amended to properly reference the appropriate load test provisions.

S7.9 is referenced throughout FMVSS No. 403. The interlock requirements in S6.10.2.3 references the operations in S7.9.7 and S7.9.8 as a test procedure. S6.10.2.3 requires that a platform not stow when the test block specified in S7.1.4 is placed with its narrow side down on any portion of the useable surface of the platform. However, the procedure in S7.9.7 that is referenced requires centering the load on the platform. The procedures in S6.10.2.3 and S7.9.7 are conflicting. To eliminate confusion, the references to S7.9.7 and S7.9.8 are removed from S6.10.2.3. S6.10.2.3 continues to reference the test device in S7.1.4, but the platform positioning procedures have been placed directly in S6.10.2.3, instead of relying on cross-referenced procedures.

Additionally, this document corrects several other minor errors. S6.2.4, *Maximum noise level of public use lifts,* erroneously refers to S6.4.2.2, which describes the operating volume for private use lifts. S7.7.2.2 is intended to set the lowest point of the footrests to a height of 50 mm, not 501 mm. S7.14.1 is intended to reference S7.14.2 through S14.4.4. Each of these sections has been amended accordingly. S6.4.9.3, S6.4.9.9, S7.7.4.1, and S7.13.2 are amended to provide consistency in the conversion of measurements to metric through out the standard.

IV. Effective Date

The amendments made in this rule are effective December 27, 2004, the same date the FMVSS Nos. 403 and 404 become effective. The final rule, which was published December 27, 2002, provided a two-year lead time in order to allow manufacturers sufficient time to comply with the requirements of FMVSS Nos. 403 and 404. The amendments made to FMVSS Nos. 403 and 404 in this document provide manufacturers more flexibility in complying with these standards. As such, manufacturers should be able to comply with the amended standard at the same time they are required to comply with FMVSS No. 403 and 404.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or

[8] Under S6.13.1 of FMVSS No. 403 a list of suitable vehicles must appear in the installation instructions. Vehicles may be identified by listing the make, model and year of the vehicles for which the lift is suitable, or by specifying the design elements that would make a vehicle an appropriate host for the particular lift.

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The December 2002 final rule was classified as significant because of the public policy consideration involved, as opposed to the economic implications. This document does not affect the public policy implications of the final rule. This document clarifies the application of FMVSS Nos. 403 and 404 as well as provides further flexibility in compliance.

The agency has concluded that the impacts of today's amendments are so minimal that a full regulatory evaluation is not required. Readers who are interested in the overall costs and benefits of the platform lift requirements are referred to the agency's Final Economic Assessment for the December 2002 final rule (Docket No. NHTSA–2002–13917–3). NHTSA has determined that today's rule does not change the costs and benefits estimated in the Final Economic Assessment.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This action will not have a significant economic impact on a substantial number of small businesses because it does not significantly change the costs of the December 2002 final rule. This action clarifies the requirements and test procedures of FMVSS Nos. 403 and 404, in part, through removing requirements not appropriate for certain platform lift designs. Additionally, this action provides additional flexibility for manufacturers by allowing lift manufacturers to rely on existing vehicle components to comply with the interlock requirements and through the adoption of a compliance alternative to the edge guard requirement.

C. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This action will not increase the cost of compliance with FMVSS Nos. 403 and 404 as adopted in the December 2002 Final Rule.

F. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The information disclosure requirements of FMVSS No. 403 and FMVSS No. 404 were granted OMB clearance; OMB No. 2127–0621. The amendments made to those standards do not result in any new information or information disclosure requirements.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Today's rule has been written with that directive in mind. We note that many of the requirements of today's rule are technical in nature. As such, they may require some understanding of technical terminology. We expect those parties directly affected by today's rule, *i.e.*, platform lift manufacturers and vehicle manufacturers to be familiar with such terminology.

J. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rulemaking does not directly involve health risks that disproportionately affect children.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [9] in its regulatory

[9] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They

Continued

activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

This document adds a performance based compliance option for edge guards. The agency searched for, but did not find any voluntary or industry standards to incorporate for this requirement.

L. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, the final rules for 49 CFR part 571, published at 67 FR 79416 (December 27, 2002), effective beginning December 27, 2004, are amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.403 is amended as follows:

■ A. By revising S3, the definitions of ''deploy'' and ''stow'' in S4, S6.2.1, S6.2.2.2, S6.2.4, S6.3.1, S6.3.2, S6.4.5, S6.4.6.1, S6.4.9.3, S6.4.9.9, S6.4.11, S6.5.1.1, S6.5.1.2, S6.7 through S6.7.2.2, S6.7.4, S6.7.5, S6.7.7, S6.10.2, S6.10.2.3, S7, S7.1.1, S7.1.2, S7.1.2.5, S7.1.2.6, S7.3.3, S7.7, S7.7.2.2, S7.10.5, S7.10.6, S7.13.2 and S7.14.1;

■ B. By adding S6.13.4.1, S7.1.2.11, S7.7.4 through S7.7.4.6; and

■ C. By removing S6.4.12.

The revisions and additions to § 571.403 read as follows:

§ 571.403 Standard No. 403; Platform lift systems for motor vehicles.

* * * * *

S3. *Application.* This standard applies to platform lifts designed to carry standing passengers, who may be aided by canes or walkers, as well as, persons seated in wheelchairs, scooters and other mobility aids, into and out of motor vehicles.

S4. *Definitions.*

* * * * *

Deploy means with respect to a platform, its movement from a stowed position to an extended position or, one of the two loading positions. With respect to a wheelchair retention device or inner roll stop, the term means the movement of the device or stop to a fully functional position intended to prevent a passenger from disembarking the platform or being pinched between the platform and vehicle.

* * * * *

Stow means with respect to a platform, its movement from a position within the range of passenger operation to the position maintained during normal vehicle travel; and, with respect to a wheelchair retention device, bridging device, or inner-roll stop, its movement from a fully functional position to a position maintained during normal vehicle travel.

* * * * *

S6.2.1 *General.* Throughout the range of passenger operation and during the lift operations specified in S7.9.3 through S7.9.8, the platform lift must meet the requirements of S6.2.2 through S6.2.4. These requirements must be satisfied both with and without a standard load on the lift platform, except for S6.2.2.2, which must be satisfied without any load.

* * * * *

S6.2.2.2 Except for platform lifts that manually stow (fold) and deploy (unfold), during the stow and deploy operations specified in S7.9.3 through S7.9.8, both the vertical and horizontal velocity of any portion of the platform must be less than or equal to 305 mm (12 inches) per second.

* * * * *

S6.2.4 *Maximum noise level of public use lifts.* Except as provided in S6.1.5, throughout the range of passenger operation specified in S7.9.4 through S7.9.7, the noise level of a public use lift may not exceed 80 dBa as measured at any lift operator's position designated by the platform lift manufacturer for the intended vehicle and in the area on the lift defined in S6.4.2.1. Lift operator position measurements are taken at the vertical centerline of the control panel 30.5 cm (12 in) out from the face of the control panel. In the case of a lift with a pendant control (*i.e.*, a control tethered to the vehicle by connective wiring), measurement is taken at the vertical centerline of the control panel 30.5 cm (12 in) out from the face of the control panel while the control panel is in its stowed or stored position. For the lift operator positions outside of the vehicle, measurements are taken at the intersection of a horizontal plane 157 cm (62 in) above the ground and the vertical centerline of the face of the control panel after it has been extended 30.5 cm (12 in) out from the face of the control panel.

* * * * *

S6.3.1 *Internally mounted platform lifts.* On platform lifts and their components internal to the occupant compartment of the vehicle or internal to other compartments that provide protection from the elements when stowed, attachment hardware must be free of ferrous corrosion on significant surfaces except for permissible ferrous corrosion, as defined in FMVSS No. 209, at peripheral surface edges or edges of holes on under-floor reinforcing plates and washers after being subjected to the conditions specified in S7.3. Alternatively, such hardware must be made from corrosion-resistant steel containing at least 11.5 percent chromium per FMVSS 571.209, S5.2(a) or must be protected against corrosion by an electrodeposited coating of nickel, or copper and nickel with at least a service condition number of SC2, and other attachment hardware must be protected by an electrodeposited coating of nickel, or copper and nickel with a service condition number of SC1, in accordance with ASTM B456–95, but such hardware may not be racked for electroplating in locations subjected to maximum stress. The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different option for the lift. The lift must be accompanied by all attachment hardware necessary for its installation on a vehicle.

pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

S6.3.2 *Externally mounted platform lifts.* On platform lifts and their components external to the occupant compartment of the vehicle and external to other compartments that provide protection from the elements when stowed, the lift and its components must be free of ferrous corrosion on significant surfaces except for permissible ferrous corrosion, as defined in FMVSS No. 209, at peripheral surface edges and edges of holes and continue to function properly after being subjected to the conditions specified in S7.3. Alternatively, such lifts and all associated hardware and components must be completely made from corrosion-resistant steel containing at least 11.5 percent chromium per FMVSS 571.209, S5.2(a). The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different option for the lift. The lift must be accompanied by all attachment hardware necessary for its installation on a vehicle.

* * * * *

S6.4.5 *Platform deflection.* The angle of the deployed platform, when stationary, and loaded with a standard load, must not exceed 4.8 degrees with respect to the vehicle floor and must not exceed 3 degrees with respect to the platform's unloaded position. The angles are measured between a vertical axis from the vehicle floor and an axis normal to the platform center as shown in Figure 1.

* * * * *

S6.4.6.1 The platform lift must have edge guards that extend continuously along each side of the lift platform to within 75 mm (3 inches) of the edges of the platform that are traversed while entering and exiting the platform at both the ground and vehicle floor level loading positions. The edge guards must be parallel to the direction of wheelchair movement during loading and unloading. Alternatively, when tested in accordance with S7.7.4, all portions of the wheels of the wheelchair test device must remain above the platform surface and after the control is released to Neutral, at the end of each attempt to steer the test device off the platform, all wheels of the wheelchair test device must be in contact with the platform surface. The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different option for the lift.

* * * * *

S6.4.9.3 The graspable portion of each handrail may not be less than 760 mm (30 inches) and more than 965 mm (38 inches) above the platform surface, measured vertically.

* * * * *

S6.4.9.9 When tested in accordance with S7.12.2, each handrail must withstand 1,112 N (250 lb/f) applied at any point and in any direction on the handrail without sustaining any failure, such as cracking, separation, fracture, or more than 100 mm (4 inches) of displacement of any point on the handrails relative to the platform surface.

* * * * *

S6.4.11 *Platform slip resistance.* When tested in accordance with S7.2, the coefficient of friction, in any direction, of any part of a wet platform surface may not be less than 0.65.

* * * * *

S6.5.1.1 *Public use lifts.* Except for lifts that manually stow (fold) and deploy (unfold), public use lifts must remain operable when operated through a total of 15,600 cycles: 7,800 unloaded Raise/Lower and Stow/Deploy operations and 7,800 loaded Raise/Lower operations as specified in S7.10. Public use lifts that manually stow (fold) and deploy (unfold) must remain operable when operated through a total of 15,600 cycles: 7,800 unloaded Raise/Lower operations and 7,800 loaded Raise/Lower operations. No separation, fracture, or breakage of any vehicle or lift component may occur as a result of conducting the fatigue test in S7.10.

S6.5.1.2 *Private use lifts.* Except for lifts that manually stow (fold) and deploy (unfold), private use lifts must remain operable when operated through a total of 4,400 cycles: 2,200 unloaded Raise/Lower and Stow/Deploy operations and 2,200 loaded Raise/Lower operations as specified in S7.10. Private use lifts that manually stow (fold) and deploy (unfold) must remain operable when operated through a total of 4,400 cycles: 2,200 unloaded Raise/Lower operations and 2,200 loaded Raise/Lower operations. No separation, fracture, or breakage of any vehicle or lift component may occur as a result of conducting the fatigue test in S7.10.

* * * * *

S6.7 *Control panel switches.*

S6.7.1 The platform lift must meet the requirements of S6.7.2 through S6.7.8 and, when operated by means of the control panel switches specified in S6.7.2, must perform the lift operations specified in S7.9.

S6.7.2 The platform lift system must have control panel switches that perform not less than the following functions: (platform lifts that manually stow (fold) and deploy (unfold) are exempt from S6.7.2.2 and S6.7.2.5).

S6.7.2.1 Enables and disables the lift control panel switches. This function must be identified as ''POWER'' if located on the control. The POWER function must have two states: ''ON'' and ''OFF''. The ''ON'' state must allow platform lift operation. When the POWER function is in the ''ON'' state, an indicator light on the controls must illuminate. The ''OFF'' state must prevent lift operation and must turn off the indicator light. Verification with this requirement is made throughout the lift operations specified in S7.9.3 through S7.9.8.

S6.7.2.2 Moves the lift from a stowed position to an extended position or, to one of the two loading positions. This function must be identified as ''DEPLOY'' or ''UNFOLD'' on the control.

* * * * *

S6.7.4 Except for the POWER function described in S6.7.2.1, the control panel switches specified in S6.7.2 must prevent the simultaneous performance of more than one function. Verification with this requirement is made throughout the lift operations specified in S7.9.3 through S7.9.8.

S6.7.5 Any single-point failure in the control panel switches may not prevent the operation of any of the interlocks as specified in S6.10.

* * * * *

S6.7.7 Control location for public use lifts: In public use lifts, except for the backup operation specified in S6.9, all control panel switches must be positioned together and in a location such that the lift operator has a direct, unobstructed view of the platform lift passenger and the passenger's mobility aid, if applicable. Verification with this requirement is made throughout the lift operations specified in S7.9.3 through S7.9.8. Additional controls may be positioned in other locations.

* * * * *

S6.10.2 The platform lift system must have interlocks or operate in such a manner when installed according to the installation instructions, as to prevent:

* * * * *

S6.10.2.3 Stowing of the platform lift when occupied by portions of a passenger's body, and/or a mobility aid. Platform lifts designed to be occupied while stowed and platform lifts that manually stow (fold) are excluded from this requirement. Verification with this requirement is made using the test device specified in S7.1.4. Move the deployed platform lift to a position within the range of passenger operation where it will stow if the control specified in S6.7.2.5 is actuated. Place

the test device specified in S7.1.4 on its narrowest side on any portion of the platform surface that coincides with the unobstructed platform operating volume described in S6.4.2. Using the operator control specified in S7.7.2.5, attempt to stow the lift. The interlock must prevent the lift from stowing.

* * * * *

S6.13.4.1 Installation instructions for public use lifts must contain the statement ''Public use vehicle manufacturers are responsible for complying with the lift lighting requirements in Federal Motor Vehicle Safety Standard No. 404, Platform Lift Installations in Motor Vehicles (49 CFR 571.404).''

* * * * *

S7. *Test conditions and procedures.* Each platform lift must be capable of meeting all of the tests specified in this standard, both separately, and in the sequence specified in this section. The tests specified in S7.4, S7.7.4 and S7.8 through S7.11 are performed on a single lift and vehicle combination. The tests specified in S7.2, S7.3, S7.5, S7.6, S7.7.1 and S7.12 through S7.14 may be performed with the lift installed on a test jig rather than on a vehicle. Tests of requirements in S6.1 through S6.11 may be performed on a single lift and vehicle combination, except for the requirements of S6.5.3. Attachment hardware may be replaced if damaged by removal and reinstallation of the lift between a test jig and vehicle.

* * * * *

S7.1.1 *Test pallet and load.* The surface of the test pallet that rests on the platform used for the tests specified in S7.9 through S7.11 and S7.14 has sides that measure between 660 mm (26 in) and 686 mm (27 in). For the tests specified in S7.9 and S7.10, the test pallet is made of a rectangular steel plate of uniform thickness and the load that rests on the test pallet is made of rectangular steel plate(s) of uniform thickness and sides that measure between 533 mm (21 in) and 686 mm (27 in). The standard test load that rests on the pallet is defined in S4.

S7.1.2 *Wheelchair test device.* The test device is an unloaded power wheelchair whose size is appropriate for a 95th percentile male and that has the dimensions, configuration and components described in S7.1.2.1 through S7.1.2.11. If the dimension in S7.1.2.9 is measured for a particular wheelchair by determining its tipping angle, the batteries are prevented from moving from their original position.

* * * * *

S7.1.2.5 Two pneumatic rear tires with a diameter not less than 495 mm (19.5 in) and not more than 521 mm (20.5 in) inflated to the wheelchair manufacturer's recommended pressure or if no recommendation exists, to the maximum pressure that appears on the sidewall of the tire;

S7.1.2.6 Two pneumatic front tires with a diameter not less than 190 mm (7.5 in) and not more than 216 mm (8.5 in) inflated to the wheelchair manufacturer's recommended pressure or if no recommendation exists, to the maximum pressure that appears on the sidewall of the tire;

* * * * *

S7.1.2.11 Batteries with a charge not less than 75 percent of their rated nominal capacity (for tests that require use of the wheelchair's propulsion system).

* * * * *

S7.3.3 For attachment hardware located within the occupant compartment of the motor vehicle or internal to other compartments that provide protection from the elements and not at or near the floor of the compartment, the period of the test is 25 hours, consisting of one period of 24 hours exposure to salt spray followed by one hour drying.

* * * * *

S7.7 *Wheelchair retention device impact test and edge guard test.*

* * * * *

S7.7.2.2 If the wheelchair retention device is an outer barrier, the footrests are adjusted such that at their lowest point they have a height 25 mm ± 2 mm (1 in ± 0.08 in) less than the outer barrier. If the wheelchair retention device is not an outer barrier, the footrests are adjusted such that at their lowest point they have a height 50 mm ± 2 mm (2 in ± 0.08 in) above the platform.

* * * * *

S7.7.4 Edge Guard Test. Determine compliance with S6.4.6 using the test device specified in S7.1.2 by performing the test procedure specified in S7.7.4.1 through S7.7.4.6. During the edge guard tests, remove the footrests from the wheelchair test device.

S7.7.4.1 Position the platform surface 90 mm ± 10 mm (3.5 in ± 0.4 in) above the ground level loading position.

S7.7.4.2 Place the test device on the platform surface with its plane of symmetry coincident with the lift reference plane within ± 10 mm (± 0.4 in), its forward direction of travel inboard toward the vehicle, and its position on the platform as far rearward as the wheelchair retention device or outer barrier will allow it to be placed.

S7.7.4.3 Adjust the control of the test device to a setting that provides maximum acceleration and steer the test device from side-to-side and corner-to-corner of the lift platform, attempting to steer the test device off the platform. After each attempt, when the wheelchair test device stalls due to contact with a barrier, release the control to Neutral and realign the test device to the starting position. Repeat this sequence at any level that is greater than 90 mm ± 10 mm (3.5 in ± 0.4 in) above the ground level loading position and less than 38 mm ± 10 mm (1.5 in ± 0.4 in) below the vehicle floor level loading position. Repeat this sequence at 38 mm ± 10 mm (1.5 in ± 0.4 in) below the vehicle floor level loading position.

S7.7.4.4 Next position the platform surface 38 mm ± 10 mm (1.5 in ± 0.4 in) below the vehicle floor level loading position.

S7.7.4.5 Reposition the test device on the platform surface with its plane of symmetry coincident with the lift reference plane within ± 10 mm (± 0.4 in), its forward direction of travel outboard away from the vehicle, and its position on the platform as far rearward as the wheelchair inner roll-stop or vehicle body will allow it to be placed.

S7.7.4.6 Adjust the control of the test device to a setting that provides maximum acceleration and steer the test device from side-to-side and corner-to-corner of the lift platform, attempting to steer the test device off the platform. After each attempt, when the wheelchair test device stalls due to contact with a barrier, release the control to Neutral and realign the test device to the starting position. Repeat this sequence at any level that is greater than 90 mm ± 10 mm (3.5 in ± 0.4 in) above the ground level loading position and less than 38 mm ± 10 mm (1.5 in ± 0.4 in) below the vehicle floor level loading position. Repeat this sequence at 38 mm ± 10 mm (1.5 in ± 0.4 in) below the vehicle floor level loading position.

* * * * *

S7.10.5 Public use lifts: Using the lift controls specified in S6.7.2, perform the operations specified in S7.10.5.1 through S7.10.5.3 in the order they are given. Public use lifts that manually stow (fold) and deploy (unfold) are not required to perform the stow and deploy portions of the tests.

* * * * *

S7.10.6 Private use lifts: Using the lift controls specified in S6.7.2, perform the operation specified in S7.10.6.1 through S7.10.6.3 in the order they are given. Private use lifts that manually stow (fold) and deploy (unfold) are not

required to perform the stow and deploy portions of the tests.

* * * * *

S7.13.2 Position the platform surface 90 mm ± 10 mm (3.5 in ± 0.4 in) above the ground level loading position. Apply 7,117 N (1,600 lbf) to the wheelchair retention device in a direction parallel to both the platform lift and platform reference planes. Attain the force within 1 minute after beginning to apply it.

* * * * *

S7.14.1 Perform the test procedures as specified in S7.14.2 through S7.14.4 to determine compliance with S6.5.3.

* * * * *

■ 3. Amend § 571.404 by revising S3 and S4.3 and adding S4.1.5 to read as follows:

§ 571.404 Standard No. 404; Platform lift installations in motor vehicles.

* * * * *

S3. *Application.* This standard applies to motor vehicles equipped with a platform lift designed to carry standing passengers who may be aided by canes or walkers, as well as, persons seated in wheelchairs, scooters and other mobility aids, into and out of the vehicle.

* * * * *

S4.1.5 *Platform lighting on public use lifts.* Public use lifts must have a light or a set of lights that provide at least 54 lm/m^2 (5 lm/sqft) of luminance on all portions of the surface of the platform, throughout the range of passenger operation. The luminance on all portions of the surface of the passenger-unloading ramp at ground level must be at least 11 lm/m^2 (1 lm/sqft).

* * * * *

S4.3 *Control panel switches.*

* * * * *

Issued: September 24, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–21976 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub–No. 11)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2004 Update

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The Board adopts its 2004 User Fee Update and revises its fee schedule to recover the costs associated with the January 2004 Government salary increases and to reflect changes in overhead costs to the Board.

EFFECTIVE DATE: These rules are effective October 31, 2004.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 565–1551, or Anne Quinlan, (202) 565–1727. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board's regulations at 49 CFR 1002.3 require that the Board's user fee schedule be updated annually. The regulation at 49 CFR 1002.3(a) provides that the entire fee schedule or selected fees can be modified more than once a year, if necessary. Fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d).

Because Board employees received a salary increase of 4.42% in January 2004, the Board is updating its user fees to recover the increased personnel costs. With certain exceptions, all fees, including those recently adopted or amended in *Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services—2002 New Fees,* STB Ex Parte No. 542 (Sub-No. 4) (STB served Mar. 29, 2004) will be updated based on the cost formula contained in 49 CFR 1002.3(d). In addition, changes to the overhead costs borne by the Board are reflected in the revised fee schedule.

The fee increases adopted here result from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services—1987 Update,* 4 I.C.C.2d 137 (1987). No new fees are being proposed in this proceeding. Therefore, the Board finds that notice and comment are unnecessary for this proceeding. *See Regulations Governing Fees For Services—1990 Update,* 7 I.C.C.2d 3 (1990); *Regulations Governing Fees For Services—1991 Update,* 8 I.C.C.2d 13 (1991); and *Regulations Governing Fees For Services—1993 Update,* 9 I.C.C.2d 855 (1993).

The Board concludes that the fee changes adopted here will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's Web site at *http://www.stb.dot.gov* or call the Board's Information Officer at (202) 565–1500. To purchase a copy of the decision, write to, call, e-mail, or pick up in person from ASAP Document Solutions, 9332 Annapolis Road, Suite 103 Lanham, Maryland 20706, (301) 577–2600, *asapdc@verizon.net.* [Assistance for the hearing impaired is available through Federal Information Relay Services (FIRS): (800) 877–8339.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: September 24, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey and Commissioner Buttrey.

Vernon A. Williams,

Secretary.

■ For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

■ 2. Section 1002.1 is amended by revising paragraphs (a) through (d) and (f)(1); the table in paragraph (g)(6); and paragraph (g)(7) to read as follows:

§ 1002.1 Fees for record search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Secretary, $13.00.

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $33.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of $23.00 per hour.

(d) Photocopies of tariffs, reports, and other public documents, at the rate of $1.10 per letter or legal size exposure. A minimum charge of $5.50 will be made for this service.

* * * * *

(f) * * *

(1) A fee of $58.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(g) * * *

(6) * * *

Grade	Rate
GS–1	$9.72
GS–2	10.59
GS–3	11.93
GS–4	13.39
GS–5	14.99
GS–6	16.71
GS–7	18.56
GS–8	20.56
GS–9	22.71
GS–10	25.01
GS–11	27.47
GS–12	32.93
GS–13	39.16
GS–14	46.27
GS–15 and over	54.43

(7) The fee for photocopies shall be $1.10 per letter or legal size exposure with a minimum charge of $5.50.

* * * * *

■ 2. In § 1002.2, paragraph (f) is revised as follows:

1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(1) An application for the pooling or division of traffic	$3,500
(2) (i) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303	1,600
(ii) A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered	2,600
(iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d)	2,100
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703	22,100
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	3,700
(ii) Minor amendment	80
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	400
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family	1,400
(7)–(10) [Reserved].	
PART II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings	
(11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	5,800
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	1,500
(iii) Petition for exemption under 49 U.S.C. 10502	10,000
(12) (i) An application involving the construction of a rail line	59,600
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	1,500
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	59,600
(iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10902(d)	200
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	2,600
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902	4,900
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	1,500
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902	5,300
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	1,300
(16)–(20) [Reserved].	
PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments)	17,700
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	3,000
(iii) A petition for exemption under 49 U.S.C. 10502	5,000
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act	350
(23) Abandonments filed by bankrupt railroads	1,500
(24) A request for waiver of filing requirements for abandonment application proceedings	1,400
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment	1,200
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	18,000
(27) (i) A request for a trail use condition in an abandonment proceeding under 16 U.S.C.1247(d)	200
(ii) A request to extend the period to negotiate a trail use agreement	350
(28)–(35) [Reserved].	
PART IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	15,100
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	8,200
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership 49 U.S.C. 11324:	
(i) Major transaction	1,191,400

Type of proceeding	Fee
(ii) Significant transaction	238,200
(iii) Minor transaction	6,200
(iv) Notice of an exempt transaction under 49 CFR 11802(d)	1,400
(v) Responsive application	6,200
(vi) Petition for exemption under 49 U.S.C. 10502	7,500
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a)	4,400
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise 49 U.S.C. 11324:	
(i) Major transaction	1,191,400
(ii) Significant transaction	238,200
(iii) Minor transaction	6,200
(iv) A notice of an exempt transaction under 49 CFR 11802(d)	1,100
(v) Responsive application	6,200
(vi) Petition for exemption under 49 U.S.C. 10502	7,500
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 11802(a)	4,400
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto 49 U.S.C. 11324:	
(i) Major transaction	1,191,400
(ii) Significant transaction	238,200
(iii) Minor transaction	6,200
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	1,000
(v) Responsive application	6,200
(vi) Petition for exemption under 49 U.S.C. 10502	7,500
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a)	4,400
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise 49 U.S.C. 11324:	
(i) Major transaction	1,191,400
(ii) Significant transaction	238,200
(iii) Minor transaction	6,200
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	1,100
(v) Responsive application	6,200
(vi) Petition for exemption under 49 U.S.C. 10502	5,300
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a)	4,400
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	1,900
(43) An application for approval of a rail rate association agreement 49 U.S.C. 10706	55,700
(44) An application for approval of an amendment to a rail rate association agreement 49 U.S.C. 10706:	
(i) Significant amendment	10,300
(ii) Minor amendment	80
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	600
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered	6,400
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	200
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act	200
(49)–(55) [Reserved].	
PART V: Formal Proceedings	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1)	66,600
(ii) A formal complaint involving rail maximum rates filed under the small rate case procedures	150
(iii) All other formal complaints (except competitive access complaints)	6,600
(iv) Competitive access complaints	150
(v) A request for an order compelling a rail carrier to establish a common carrier rate	200
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	7,000
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding	1,000
(ii) All other petitions for declaratory order	1,400
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	5,600
(60) Labor arbitration proceedings	200
(61) (i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d)	200
(ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings	300
(62) Motor carrier undercharge proceedings	200
(63) (i) Expedited relief for service inadequacies: A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency	200
(ii) Expedited relief for service inadequacies: A request for expedited relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacies	200

Type of proceeding	Fee
(64) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a)	450
(65)–(75) [Reserved].	
PART VI: Informal Proceedings	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706	950
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	100
(78) The filing of tariffs, including supplements, or contract summaries	[1] 1
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	50
(ii) Applications involving over $25,000	100
(80) Informal complaint about rail rate applications	450
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	50
(ii) Petitions involving over $25,000	100
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3)	150
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c).	[2] 32
(84) Informal opinions about rate applications (all modes)	200
(85) A railroad accounting interpretation	900
(86) (i) A request for an informal opinion not otherwise covered	1,100
(ii) A proposal to use on a voting trust agreement pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a)	4,000
(iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013(a) not otherwise covered	400
(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR 1108:	
(i) Complaint	75
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(iii) Third Party Complaint	75
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	150
(88) Basic fee for STB adjudicatory services not otherwise covered	200
(89)–(95) [Reserved].	
PART VII: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	[3] 25
(97) Request for service or pleading list for proceedings	[4] 19
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that:	
(i) Does not require a FEDERAL REGISTER notice:	
(a) Set cost portion	100
(b) Sliding cost portion	[5] 37
(ii) Does require a FEDERAL REGISTER notice:	
(a) Set cost portion	350
(b) Sliding cost portion	[5] 37
(99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam	150
(ii) Practitioners' Exam Information Package	25
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	50
(ii) Updated URCS PC version Phase III cost file—per year	[6] 25
(iii) Public requests for *Source Codes* to the PC version URCS Phase III	100
(101) Carload Waybill Sample data on recordable compact disk (R–CD):	
(i) Requests for Public Use File on R–CD—per year	[6] 250
(ii) Waybill—Surface Transportation Board or State proceedings on R–CD—per year	[6] 500
(iii) User Guide for latest available Carload Waybill Sample	50
(iv) Specialized programming for Waybill requests to the Board	[7] 87

[1] Per page. ($19 minimum change.)
[2] Per document.
[3] Per delivery.
[4] Per list.
[5] Per party.
[6] Per year.
[7] Per hour.

* * * * *

[FR Doc. 04–21984 Filed 9–30–04; 8:45 am]

BILLING CODE 4915–01–P

Proposed Rules

Federal Register
Vol. 69, No. 190
Friday, October 1, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19052; Airspace Docket No. 04–ANM–12]

RIN 2120–AA66

Proposed Revision of Jet Route 94

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to realign a segment of Jet Route 94 (J–94) between the Oakland, CA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Mustang, NV, VORTAC. Specifically, the FAA is proposing this realignment because the current route segment between the Oakland VORTAC and the Mustang VORTAC is unusable for navigation.

DATES: Comments must be received on or before November 15, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the FAA Docket No. FAA–2004–19052 and Airspace Docket No. 04–ANM–12 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2004–19052 and Airspace Docket No. 04–ANM–12) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19052 and Airspace Docket No. 04–ANM–12.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

The current segment of J–94 between the Manteca VORTAC and the Mustang VORTAC has been found to be unusable for navigation. The FAA has issued a Flight Data Center Notices to Airmen (NOTAM) advising users of this problem. To provide a means of navigating between the Oakland, CA, VORTAC and the Mustang, NV, VORTAC the FAA is issuing the following proposal.

Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to realign a segment of J–94. The proposed amendment would change the alignment of J–94 between the Oakland VORTAC and the Mustang VORTAC. This amendment would restore the use of J–94 for flights serving destinations between California and the East.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–94 [Revised]

From Oakland, CA, via Manteca, CA; **INT Manteca 030°M/047°T and Mustang, NV 192°M/208°T radials;** to Mustang, NV; Lovelock, NV; Battle Mountain, NV; Lucin, UT; Rock Springs, WY; Scottsbluff, NE; O'Neill, NE; Fort Dodge, IA; Dubuque, IA; Northbrook; Pullman, MI; Flint, MI; Peck, MI; to the INT of the Peck 100° radial with the United States/Canadian Border. From the United States/Canadian Border at its INT with the Buffalo, NY, 274° radial via Buffalo; Albany, NY, to Boston, MA.

* * * * *

Issued in Washington, DC, on September 24, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–22021 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2004–19051; Airspace Docket No. 04–AWP–6]

RIN 2120–AA66

Establishment of Restricted Area 2507E; Chocolate Mountains, CA

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Restricted Area 2507E (R–2507E), Chocolate Mountains, CA, as part of a U.S Marine Corps (USMC) training initiative. The USMC has requested the establishment of this airspace to support its Close Air Support Mission (CAS) within the Chocolate Mountains Range. The expanded restricted airspace is needed to conduct realistic aircrew training and to maintain the level of proficiency in modern tactics that is required for combat readiness.

DATES: Comments must be received on or before November 15, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2004–19051 and Airspace Docket No. 04–AWP–6, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2004–19051 and Airspace Docket No. 04–AWP–06) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2004–19051 and Airspace Docket No. 04–AWP–6.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

The airspace in the Chocolate Mountains Range currently consists of several restricted areas and a military operations area (MOA). A MOA is a type of nonregulatory special use airspace designated by the FAA to contain certain nonhazardous military flying activities. The Chocolate Mountains Range is used to train aircrews in the delivery of ordnance to support front line ground forces. The current restricted airspace in the Chocolate Mountains Range is too small to allow aircrew training in weapons delivery tactics that are used in a CAS environment. The expanded restricted airspace is needed to conduct realistic aircrew training and to maintain the level of proficiency in modern tactics that is required for combat readiness.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations

(14 CFR) part 73 (part 73) to establish R–2507E, Chocolate Mountains, CA, as part of a USMC training initiative. The USMC has requested the establishment of this airspace to support its CAS within the Chocolate Mountains Range. The proposed R–2507E will be contiguous with the existing R–2507S, extending from the surface to flight level (FL) 400 and will encompass a portion of the Abel North MOA. The proposed time of designation will be from 0700 to 2300 hours daily. Since the Chocolate Mountains Range complex is joint-use airspace, the restricted areas would only be scheduled when needed for training, and would be available for transit by non-participating aircraft when not in use.

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

Environmental Review

This proposal will be subject to the appropriate environmental analysis in accordance with FAA Order 1050.1E, Policies and Procedures for Considering Environmental Impacts, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

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

§ 73.25 [Amended]

2. § 73.25 is amended as follows:

* * * * *

R–2507E Chocolate Mountains, CA [New]

Boundaries. Beginning at lat. 33°17′06″ N., long. 115°04′ 35″ W., to lat. 33°14′26″ N., long. 114°59′ 00″ W., to lat. 33°14′26″ N., long. 114°56′ 35″ W., to lat. 33°10′21″ N., long. 114°56′ 26″ W., to lat. 33°08′45″ N., long. 114°56′ 43″ W.

Designated altitudes. Surface to FL 400.

Time of designation. 0700–2300 local daily other times by NOTAM.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. Commanding Officer, USMC Air Station, Yuma, AZ.

* * * * *

Issued in Washington, DC, on September 24, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–22020 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 642 and 698

RIN 3084–AA94

Prescreen Opt-Out Disclosure

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act) directs the FTC, in consultation with the federal banking agencies and the National Credit Union Administration, to adopt a rule to improve the required notice to consumers regarding their right to opt out of prescreened solicitations for credit or insurance. In this action, the FTC is proposing, and seeking comment on, a proposed Rule that would implement this requirement of the FACT Act. In addition, the FTC is proposing model forms that creditors and insurers may use to comply with the Rule.

DATES: Comments must be submitted on or before October 28, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''FACTA Prescreen Rule, Project No. R411010'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission, FACTA Prescreen Rule, Post Office Box 1030, Merrifield, VA 22116–1030. Please note that courier and overnight deliveries cannot be accepted at this address. Courier and overnight deliveries should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex R), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section.

Comments filed in electronic form should be submitted by clicking on the following weblink: *https://secure.commentworks.com/ftcprescreen/* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftcprescreen/* weblink. You may also visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should be submitted to the FTC as indicated above, and should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. postal mail at the Office of Management and Budget is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments received by the Commission, whether filed in paper or in electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Jeanne-Marie Burke or Kellie A. Cosgrove, Attorneys, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue,

NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Section 615(d) of the Fair Credit Reporting Act (FCRA) requires that any person who uses a consumer report in order to make an unsolicited firm offer of credit or insurance to the consumer, shall provide with each written solicitation a clear and conspicuous statement that:

(A) Information contained in the consumer's consumer report was used in connection with the transaction; (B) the consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer; (C) if applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral; (D) the consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and (E) the consumer may exercise the right referred to in subparagraph (D) by notifying a notification system established under section 604(e) [of the FCRA].

Section 615(d)(1) of the FCRA [15 U.S.C. 1681m(d)(1)].

The Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 117 Stat. 1952 (FACT Act or the Act) was signed into law on December 4, 2003. Section 213(a) of the FACT Act amends FCRA Section 615(d) to require that the statement mandated by Section 615(d) ''be presented in such format and in such type size and manner as to be simple and easy to understand, as established by the Commission, by rule, in consultation with the Federal banking agencies and the National Credit Union Administration.''

Therefore, having consulted with the federal banking agencies and the National Credit Union Association, the FTC proposes the following rule.

II. Section-by-Section Analysis of Proposed Rule

This proposed Rule carries out the Commission's mandate to improve prescreen notices so that they are simple and easy to understand. There are two components to making a notice simple and easy to understand: (1) Language and syntax that effectively convey the intended message to readers; and (2) presentation and format that call attention to the notice and enhance its readability. The proposed Rule establishes certain baseline requirements for these two components to ensure that the notices meet the statutory mandate. Within that broad framework, however, the proposed Rule provides flexibility to those making prescreened offers in designing their specific disclosures. The determination of whether a notice meets the ''simple and easy to understand'' standard is based on the totality of the disclosure and the manner in which it is presented, not on any single factor. The proposed Rule also provides a model disclosure to aid companies' compliance.

The proposed Rule: (1) Sets forth the purpose and scope of the Rule; (2) defines ''simple and easy to understand''; (3) requires a layered notice consisting of an initial, prominent statement that provides basic opt-out information, and a separate longer explanation that offers further details; (4) sets an effective date for the Rule; and (5) proposes model notices that may be used for compliance with the Rule and the FCRA.

A. Purpose and Scope

Proposed paragraph 642.1 sets forth the purpose and scope of the proposed Rule. Section 615(d) of the FCRA and this proposed Rule apply to any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, pursuant to Section 604(c) of the FCRA [15 U.S.C. 1681b(c)].

B. Definitions

Proposed paragraph 642.2 contains a definition for ''simple and easy to understand,'' the term used by Section 213(a) of the FACT Act.

Subparagraph (a) defines ''simple and easy to understand'' to mean plain language designed to be understandable to ordinary consumers. Factors to be considered in determining whether a statement is simple and easy to understand are provided. These factors generally are consistent with those cited in other recent rulemaking proceedings requiring understandable consumer notices.[1] Within these factors companies retain flexibility in determining how best to meet this standard.

C. Prescreen Opt-Out Notices

Paragraph 642.3 of the proposed Rule sets forth certain baseline formatting and language requirements for the disclosures required by Section 615(d) of the FCRA. This paragraph requires a ''layered'' notice—that is, both a short and long notice. Research in the area of consumer notices shows that disclosures tend to be more effective if they are written in a clear and concise manner that is easily understandable by the average consumer, and convey a limited amount of information.[2] One way to accomplish this, especially in instances when the information to be disclosed is voluminous or complex, is through a layered approach—imparting the most important information in a prominent location, with reference to a second location that provides additional details.[3]

The Commission understands that, in prescreened solicitations, space is at a premium. The Commission also recognizes that prescreened notices, under various laws, must disclose a

[1] *See* 16 CFR 313.3(b)(2) (financial privacy rule; examples of how a notice can be made to be ''reasonably understandable''); *see also* 69 FR 33324, 33327 (June 15, 2004) (notice of proposed affiliate marketing rule; examples of ''reasonably understandable'').

[2] G. Ray Funkhouser, *An Empirical Study of Consumers' Sensitivity to the Wording of Affirmative Disclosure Messages,* 3 J. Pub. Pol. & Mktg. 26 (1984). Comment #2 on Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act, Hunton & Williams (The Center for Information Policy Leadership) (available at *http://www.ftc.gov/os/comments/glbaltprivacynotices/03–31992–0002.pdf).*

[3] *See Id.;* Comment #24 on Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act, Peter Swire (available at *http://www.ftc.gov/os/comments/glbaltprivacynotices/03–31992–0024.pdf).*

significant amount of information.[4] The Commission believes that a layered notice will convey effectively the required information, while at the same time not unnecessarily increasing costs to those making prescreened offers.

In creating Section 213 of the FACT Act, Congress intended to ''enhance[] disclosure of the means available to opt out of prescreened lists.'' [5] Although there are several items of information that must be conveyed by the FCRA Section 615(d) notice, the purpose of Section 213(a) of the FACT Act amendments was to highlight for consumers their right to opt out of receiving prescreened solicitations and the available means of exercising that right.[6]

Therefore, the proposed Rule requires the short notice to inform consumers about the right to opt out of receiving prescreened solicitations and to specify a toll-free number for consumers to call to opt out. The long notice provides consumers with all of the additional information required by Section 615(d) of the FCRA. The Commission considers the layered notice prescribed by the proposed Rule to be an appropriate means of effecting the statutory purpose, but invites comment on whether there are more effective methods of communicating consumers' opt-out rights.

Under the proposed Rule, the short notice must be: (1) Prominent, clear, and conspicuous; (2) in a type size that is larger than the type size of the principal text on the same page, but in no event smaller than 12-point type; (3) on the front side of the first page of the principal promotional document in the solicitation, or, if provided electronically, on the first screen; (4) located on the page and in a format so that the statement is distinct from other text; and (5) in a typeface that is distinct from other typeface used on the same page.

With respect to the requirement that the notice appear on the front side of the first page of the principal promotional document, the question of what constitutes the ''principal promotional document'' is fact specific. In general, prescreened mailers contain several documents, including a cover letter describing the offer, an application form, and in some instances additional promotional materials. In these situations, the Commission generally would consider the cover letter to be the principal promotional document. The Commission also generally would consider a marketer to be in compliance with the proposed Rule if it includes the notice on the front of the document that is designed for consumers to see first when they open the envelope.

The proposed Rule does not mandate any specific language for the short notice; rather, it imposes a more general performance standard that the notice must be a ''simple and easy to understand'' statement that conveys consumers' opt-out right and how they can exercise their opt-out right. The proposed Rule also prohibits the addition of extraneous information in the short notice. The Commission considers the short notice to be the primary vehicle for conveying consumers' opt-out right, and the effectiveness of this communication could be diminished by adding additional language or concepts, however useful that information might be.[7]

The long notice must contain all information required by Section 615(d) of the FCRA and must also be presented in a manner that is simple and easy to understand. The proposed Rule does not prohibit marketers from including additional information in the long notice, provided that the additional information does not interfere with, detract from, contradict, or otherwise undermine the purpose of the opt-out notices.[8] The Commission invites comment on whether marketers should be prohibited from including additional information in the long notice and, if not, what restrictions would be appropriate.

The long notice must be clear and conspicuous and begin with a heading identifying it as the ''*OPT-OUT NOTICE.*'' The long notice must also be: (1) In a type size that is no smaller than the type size of the principal text on the same page, but in no event smaller than 8-point type; (2) in a typeface that is distinct from other typeface used on the same page; and (3) set apart from other text on the page.

The proposed Rule requires that the long notice appear in the solicitation and that the consumer be directed to the location of the long notice, but does not require that the long notice necessarily be in the same document as the short notice. This provision provides added flexibility to marketers in making the disclosures required by the proposed Rule. In the Commission's view, it is unnecessary to require both notices to appear in the same document as long as the marketer notifies the consumer about where to find the long notice. The Commission invites comment on whether the long notice should be required to appear in the same document as the short notice.

D. Effective Date

Paragraph 642.4 of the proposed Rule provides that the Rule would become effective 60 days after it is final. The Commission considers this amount of time adequate and appropriate to implement the limited requirements of the Rule. The Commission invites comment and specific information on whether a different time period to comply with the proposed Rule is necessary and appropriate.

E. Model Prescreen Opt-Out Notices

In addition to the requirements for the prescreen opt-out notices prescribed by Paragraph 642.3 of the proposed Rule, the Commission proposes model notices, to be published at 16 CFR Part 698, Appendix A. These notices include model language and also are intended to illustrate the proper placement and display of the language. The proposed illustrations are modeled on actual solicitations, but, except for the operative model language, substitute dummy text for the remainder of the solicitation to demonstrate more clearly proper format, manner, and type size of prescreen opt-out notices.

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[4] In addition to Section 615(d) of the FCRA, other federal laws may require disclosures in prescreened solicitations. For example, the Truth in Lending Act (TILA) and its implementing Regulation Z require, in certain credit offers relating to the cost of credit, a number of disclosures. Various state laws may also require disclosures.

[5] Section 213 of the FACT Act. Section 213 is titled, ''Enhanced Disclosure of the Means Available to Opt Out of Prescreened Lists.'' Although the title of a statutory section cannot limit that section, it may assist in explaining what was intended by that section.

[6] *See, e.g.*, 149 Cong. Rec. S13851–52 (daily ed. Nov. 4, 2003) (statement of Sen. Sarbanes) (noting that the amendments to the FCRA ''will require a summary of consumers' rights to opt-out of prescreened offers.''); 149 Cong. Rec. S13855 (daily ed. Nov. 4, 2003) (statement of Sen. Johnson) (noting that the amendments to the FCRA ''take[] important new steps to empower consumers to reduce unwanted credit solicitations.''); 149 Cong. Rec. S15806–07 (daily ed. Nov. 24, 2003) (statement of Sen. Sarbanes) (noting that the amendments to the FCRA will ''help ensure that consumers are aware of how to opt out of the prescreening process * * *. The FTC * * * will be required to write rules on the size and prominence of the disclosure of the opt-out telephone number that is included with offers of credit to consumers.'')

[7] *See, e.g.*, Funkhouser, *An Empirical Study of Consumers' Sensitivity to the Wording of Affirmative Disclosure Messages,* 3 J. Pub. Pol. & Mktg. at 31, 33 (finding that *''information must be presented simply and straightforwardly,''* and ''affirmative disclosures should say *exactly* what they are intended to mean.'') (Emphasis in the original).

[8] As discussed in Section III below, the Commission conducted a consumer study to gain information about consumer understanding of prescreen opt-out notices. In that study, examples of additional information that the Commission believes would likely comply with the proposed Rule were included in the notices tested and are discussed in Section III.

As described above, the FCRA requires that prescreen opt-out notices contain several items of information about the nature and limitations of the offer, as well as about consumers' right to opt out of such offers. The model language contained in the proposed Rule is designed to convey this information in a manner that is understandable to ordinary consumers. Because prescreened solicitations can be offered for credit or insurance, the model language also allows for alternatives that may be used, depending on the product offered. The Commission considers the model notices compliant with the statutory requirements, as well as with the requirements of the proposed Rule.

The Commission requests comment on whether the language of the model notices provides consumers with sufficient information regarding how they were selected for the offer, the reasons that they might not receive the offer, the consumers' right to opt out of prescreened solicitations, and how they can exercise that right.

III. Summary of Consumer Study

To gain a better understanding of consumer comprehension of prescreen opt-out notices in solicitations, the Commission commissioned a consumer study. This section briefly summarizes the key findings of the study to assist comment on this proposal. The report on the study is posted at *www.ftc.gov* (''Study Report''). Also posted is a report from the contractor who conducted the consumer survey (''Synovate Report'').

A. Overview

The study was conducted to compare the noticeability and comprehension of three different versions of an opt-out notice embedded in prescreened offers of credit. Respondents were recruited in shopping malls across the country, and were asked to look at one of three pre-screened credit card offers.

- *Version #1 (current).* This version included virtually verbatim the language from Section 615(d) of the FCRA, and is representative in content and placement (back page of the offer) of what is currently used in many prescreened credit card offers.
- *Version #2 (improved).* This version used simpler language, similar to that of the model notices in the proposed Rule. As with version #1, the notice was on the back of the offer, but its prominence was enhanced through contrasting print color and format.
- *Version #3 (layered).* This version had the same text and formatting as version #2, as well as an added, boxed ''short notice'' at the bottom of the front page with (1) a statement about the opt-out right and how to exercise it, and (2) a referral to the back for additional details.

Each participant in the study was shown one of the versions of the offer. Interviewers first asked the participant to read the offer and then removed it from view (''initial exposure'') before asking a series of questions about the noticeability and understandability of the opt-out notice. Then, each participant was shown the offer a second time and was directed to the opt-out notice (''forced exposure''), followed by another series of questions. The complete questionnaire and tabulations of responses are provided in the Synovate Report.

The main purpose of the study was to compare the effectiveness of the different versions of the notice in communicating the messages that consumers can opt out of prescreened offers, and how they can do so (*i.e.*, by calling a toll-free number or mailing an opt-out request to the consumer reporting agency). A second purpose was to gauge whether additional, ancillary information could be communicated effectively as part of the notice. Versions #2 and #3 (back page) contained three added items of information that may be relevant and useful to consumers making an opt-out decision. The added items related to the possible usefulness of prescreened offers in making product choices, the fact that opting out would not eliminate all mailed solicitations for credit or insurance, and the need to provide a social security number when calling the opt-out phone number.[9]

B. Key Findings

1. Opt-Out Messages

The study found that the layered version communicated the two opt-out messages more effectively than did the current version following both the initial and forced exposures, while the improved version was more effective than the current version following the forced exposure. The difference in effectiveness between the layered and improved versions, however, was less clear. With respect to the second message (how to exercise the opt-out right), the layered version was significantly more effective than the improved version following the initial exposure, but not statistically significantly more effective after the forced exposure.

These findings support the approach required by the proposed Rule. The simpler language of the layered notice is substantially more understandable to consumers than the language commonly used today. Moreover, the layered approach appears to be more effective in communicating how consumers can opt out of future offers than either of the other approaches tested.

2. Ancillary Messages

In general, the study had mixed results on the communication effectiveness of the three ancillary messages embedded in the improved and long notices. The study asked communication questions about two of the three ancillary messages (the possible benefits of prescreened offers and the fact that opting out would not eliminate all offers). After the initial exposure, neither the improved nor layered versions communicated either ancillary message effectively. After the forced exposure, however, as would be expected, communication levels of both messages were considerably higher. As described above, the proposed Rule would prohibit ancillary information in the short portion of the notice, but permit it in the long portion if it does not detract from the opt-out message.[10]

IV. Invitation To Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Written comments must be submitted on or before October 28, 2004. Comments should refer to ''FACTA Prescreen Rule, Project No. R411010'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission, FACTA Prescreen Rule, Post Office Box 1030, Merrifield, VA 22116–1030. Please note that courier and overnight deliveries cannot be accepted at this address. Courier and overnight deliveries should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex R), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which

[9] These items were selected as exemplars of the many types of information that may be relevant and useful to consumers.

[10] Whether additional information added to the long notice would detract from the opt-out message depends on individual circumstances, including the volume of the information added and whether that information in any way contradicted or interfered with the opt-out message. In general, the Commission would not consider the three items of information included in the notices tested in the survey to detract from the communication of the opt-out message.

confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [11]

Comments filed in electronic form should be submitted by clicking on the following weblink: *https://secure.commentworks.com/ftcprescreen/* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftcprescreen/* weblink. You may also visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should be submitted to the FTC as indicated above, and should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. postal mail at the Office of Management and Budget is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments received by the Commission, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

[11] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

V. Communications by Outside Parties to Commissioners and Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(5).

VI. Paperwork Reduction Act

The Commission has submitted this proposed Rule and a Supporting Statement for Information Collection Provisions to the Office of Management and Budget (''OMB'') for review under the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501–3517. As required by the FACT Act, the proposed Rule sets forth the format and manner of the disclosure notifying consumers of their right to opt out of prescreened solicitations.

The Commission staff estimates the paperwork burden of the Act and proposed Rule based on its knowledge of prescreened solicitations. The FTC expects that providing the notice to consumers would not significantly burden industry. The FCRA previously required that notices be given to consumers in prescreened solicitations; the FACT Act and this proposed Rule require that those notices be in a format, type size, and manner that is simple and easy to understand. The proposed Rule provides entities making prescreened solicitations with a general model form (provided in 16 CFR Part 698, Appendix A) that they may use to comply with the proposed Rule. The notices are standardized and machine-generated. Entities making prescreened solicitations would face a one-time burden to reprogram and update systems to revise the existing notice and to re-format solicitations.

The FTC estimates that between 500 and 750 entities make prescreened solicitations. The estimated time to revise the notice and re-format solicitations is approximately 8 hours (one business day); therefore, the total annual burden is estimated to be between 4,000 and 6,000 hours. The FTC estimates that the total cost for all affected firms will be between $110,000 and $167,000. This estimate is based on Bureau of Labor Statistics data (as of July, 2002), as follows: 2 hours of managerial/professional time [12] at $31.55 per hour; plus 6 hours of skilled technical labor at $26.44 per hour; multiplied by 500 and 750 entities, for a total of between $110,870 and $166,305.

The Commission invites comments that will enable it to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections 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 collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA''), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603–605.

The Commission does not anticipate that the proposed Rule will have a significant economic impact on a substantial number of small entities. The FCRA previously mandated the opt-out disclosure. The Act requires the Commission to adopt a rule to make the required disclosure simple and easy to understand. The proposed Rule applies to any entity that makes prescreened offers of credit or insurance. The Commission has been unable to determine the number of small entities that purchase prescreened lists from consumer reporting agencies. However, the Commission believes that very few small entities make prescreened offers. Based on discussions with various trade associations, the Commission estimates that very few small businesses engage in prescreened solicitations because many small businesses find it more cost effective to engage in point-of-sale solicitations and/or solicitations of existing customers. Although there may

[12] The legal, professional, and training costs of implementing this Rule are likely to be inconsequential. Such costs were already incurred when the FCRA first required prescreen opt-out disclosures. The nature of this proposed Rule limits additional costs in these areas by providing models for compliance with the proposed Rule. Therefore, the primary cost incurred by this proposed Rule will be incurred by the reformatting of solicitations.

be some small entities among the entities making prescreened offers, the economic impact of the proposed Rule is not likely to be significant on a particular entity, nor is the proposed Rule likely to have a significant economic impact on a substantial number of small entities. The minimal impact on creditors and insurers would likely consist of revising disclosures that they already give in order to make the disclosures simple and easy to understand, and the proposed Rule would provide model notices to aid in this undertaking.

Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed Rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed Rule, the number of these companies that are ''small entities,'' and the average annual burden for each entity. Although the Commission certifies under RFA that the Rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Considered

The Act directs the FTC to adopt a rule to improve the required notice to consumers regarding their right to opt out of prescreened solicitations for credit or insurance. In this action, the FTC is proposing, and seeking comment on, a proposed Rule that would implement this requirement of the FACT Act.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed Rule is to improve the required notice to consumers regarding their right to opt out of prescreened solicitations for credit or insurance by establishing a format, type size, and manner of the notice so that the notice will be simple and easy to understand. The proposed Rule is authorized by and based upon section 213(a) of the FACT Act, Pub. L. 108–159, 117 Stat. 1952.

C. Small Entities to Which the Proposed Rule Will Apply

As described above, the proposed Rule applies to any entity, including small entities, that makes prescreened offers of credit or insurance. The Commission has been unable to ascertain a precise estimate of the number of small entities that are creditors or insurers. Entities covered by the Rule include any entity that extends credit or insurance, including insurance companies, retailers, department stores, and banking institutions, if they are engaging in prescreened offers of credit. For these kinds of entities, the Small Business Administration defines small business to include, in general insurance companies and retailers whose annual receipts do not exceed $6 million in total receipts, and department stores whose annual receipts do not exceed $23 million in total receipts. For banking institutions, the Small Business Administration defines small business to include entities whose total assets do not exceed $150 million.[13]

However, not all businesses that extend credit or insurance are required to comply with the Rule. Rather, only such entities that make prescreened solicitations will be subject to the Rule's requirements. Although the number of small businesses that offer credit or insurance is large, the Commission estimates that only a small number of those businesses engage in prescreened solicitations. Based on discussions with various trade associations, the FTC understands that many small businesses do not find prescreened solicitations to be cost-effective. The Commission invites comment and information on this issue.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Under the proposed Rule, any entity making a prescreened offer of credit or insurance will be required to provide recipients of the offer with a disclosure regarding their right to opt out of such offers. These disclosures are to be in a form that is simple and easy to understand. As noted in the Paperwork Reduction Act analysis above, the estimated time to revise the notice and re-format solicitations is approximately 8 hours (one business day), and the total cost for all entities to comply with this Rule is between $110,00 and $167,000. The FTC is seeking comment on these cost and burden estimates.

[13] These numbers represent size standards for most entities in the industries mentioned above. A list of the SBA's size standards for all industries can be found at *http://www.sba.gov/size/indextableofsize.html*.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The Commission is not, at this time, aware of what particular alternative methods of compliance may comport with the statute and also reduce the impact of the proposed Rule on small entities that may be affected by the Rule. The statutory requirements are specific as to the information that must be conveyed in the disclosure. The Commission is given some flexibility in establishing the format, type size, and manner of the disclosure, so long as the disclosure is simple and easy to understand. The proposed Rule allows companies to retain flexibility in determining how best to meet the standards set forth by the proposed Rule. Therefore, the Commission seeks comment and information with regard to: (1) The existence of small business entities for which the proposed Rule would have a significant economic impact; (2) suggested alternative methods of compliance that, consistent with the statutory requirements, would reduce the economic impact of the Rule on such small entities; (3) whether the length or format of the disclosure should be adjusted to make it less burdensome while still satisfying the statutory requirements; (4) whether the effective date is appropriate; and (5) whether any particular small business has a need for a longer compliance period. If the comments filed in response to this notice identify small entities that are significantly affected by the Rule, as well as alternative methods of compliance that would reduce the economic impact of the Rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final Rule.

VIII. Questions for Comment on the Proposed Rule

The Commission seeks comment on all aspects of the proposed Rule. Without limiting the scope of issues on which it seeks comment, the Commission is particularly interested in receiving comments on the questions that follow. Responses to these questions should include detailed, factual supporting information whenever possible.

1. Are the proposed requirements for format and manner of disclosure appropriate and adequate to fulfill the purpose of enabling consumers to understand their right to opt out of receiving prescreened offers?

2. Does the layered notice requirement provide a simple and easy format for disclosing the required information? Are the type sizes proposed for the short notice and the long notice appropriate? Should they be larger? Should they be smaller?

3. Is the requirement that the short notice be ''on the first page of the principal promotional document in the solicitation'' sufficient to ensure that the short notice is prominent and noticeable? Should ''principal promotional document'' be a defined term? Should there be a safe harbor for placing the short notice on the first page of the document that is designed to be seen first by the consumer? What other factors should be considered in determining whether a document is the ''principal promotional document''?

4. Is there additional information that should be required in the short notice to enhance its simplicity and understandability? If additional information is needed, identify the information and state why it is needed.

5. Should the Rule allow additional information in the short notice? If so, what, if any, restrictions or conditions should apply to the inclusion of additional information?

6. Is there additional information that should be required in the long notice to enhance its simplicity and understandability? If additional information is needed, identify the information and state why it is needed.

7. Should the Rule prohibit information beyond that required by the statute from being included in the long notice?

8. Should the Rule require the long notice to appear in the same document as the short notice?

9. Is the effective date adequate and appropriate? If not, please specify what an appropriate effective date would be and provide specific information regarding why an effective date other than the date in this proposed Rule is necessary and appropriate. For example, is the effective date adequate for marketers to exhaust their existing inventories of solicitation forms, re-design the opt-out notice in order to incorporate the layered approach, and print solicitations with the new layered notices? Is there any small business that has a particular need for a longer period for compliance?

10. Are the model notices simple and easy to understand? Are there terms used in the model notice that are not likely to be understood by ordinary consumers? If so, what are those terms, and what other terms would be understandable? For example, is the term ''criteria'' understandable to ordinary consumers? Are ordinary consumers more likely to understand a term such as ''credit standards'' or ''requirements''?

11. Do the model notices adequately provide consumers with the information necessary to exercise their right to opt out? If additional information is needed, identify such information and state why it is needed.

12. Do the model notices offer helpful guidance for complying with the Rule?

13. The model long notice includes the name of the consumer reporting agency to whom the consumer can write to exercise the opt-out right. Is this helpful to consumers? Should the notice include the names of all nationwide consumer reporting agencies?

14. To what extent do credit and insurance providers make prescreened solicitations electronically? Describe the circumstances under which a prescreened solicitation would be made electronically. Are electronic prescreened offers likely to become more prevalent? Does the proposed rule adequately address prescreened offers that are made electronically?

15. What is the number and nature of entities that are covered by the Rule? Are any of these entities small businesses? (See *http://www.sba.gov/size/indextableofsize.html* for guidance on what constitutes a ''small business.'') If so, what is the number and nature of any such small business entities? How many of these small entities make prescreened offers of credit or insurance?

16. Please provide comment on any or all of the provisions in the proposed Rule with regard to (a) the impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the proposed Rule on small entities in light of the above analysis. Costs to ''implement and comply'' with the proposed Rule should include expenditures of time and money for any employee training, attorney, computer programmer, or other professional time, as well as notice reformatting, mailing, or other implementation costs.

17. Please describe ways in which the proposed Rule could be modified, consistent with the FACT Act's mandated requirements, to reduce any costs or burdens for small entities.

18. Please describe whether and how technological developments could reduce the costs to small entities of complying with the proposed Rule.

19. Please provide any information quantifying the economic costs and benefits of the proposed Rule for regulated entities, including small entities.

20. Please identify any relevant federal, state, or local rules that may duplicate, overlap, or conflict with the proposed Rule.

List of Subjects

16 CFR Part 642

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

16 CFR Part 698

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

Accordingly, for the reasons set forth in the preamble, the FTC proposes to amend chapter I, title 16, Code of Federal Regulations, as follows:

1. Add new part 642 to read as follows:

PART 642—PRESCREEN OPT-OUT NOTICES

Sec.
642.1 Purpose and scope.
642.2 Definitions.
642.3 Prescreen opt-out notices.
642.4 Effective date.

Authority: Public Law 108–159, sec. 213(a); 15 U.S.C. 1681m(d).

§ 642.1 Purpose and scope.

(a) *Purpose.* This part implements section 213(a) of the Fair and Accurate Credit Transactions Act of 2003, which requires the Federal Trade Commission to establish the format, type size, and manner of the notices to consumers, required by section 615(d) of the Fair Credit Reporting Act (''FCRA''), regarding the right to prohibit (''opt out'' of) the use of information in a consumer report to send them solicitations of credit or insurance.

(b) *Scope.* This part applies to any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to that person under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)).

§ 642.2 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Simple and easy to understand* means plain language designed to be

understood by ordinary consumers. For purposes of this part, factors to be considered in determining whether a statement is simple and easy to understand include:

(1) Use of clear and concise sentences, paragraphs, and sections;

(2) Use of short explanatory sentences;

(3) Use of definite, concrete, everyday words;

(4) Use of active voice;

(5) Avoidance of multiple negatives;

(6) Avoidance of legal and technical business terminology;

(7) Avoidance of explanations that are imprecise and reasonably subject to different interpretations; and

(8) Use of language that is not misleading.

(b) [Reserved]

§ 642.3 Prescreen opt-out notices.

Any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer, and that is provided to the person under section 604(c)(1)(B) of the FCRA (15 U.S.C. 1681b(c)(1)(B)), shall, with each written solicitation made to the consumer about the transaction, provide the consumer with the following notifications, both of which shall be in the same language as the offer of credit or insurance:

(a) *Short notice.*

(1) *Content.* The short notice shall be a simple and easy to understand statement that the consumer has the right to opt out of receiving prescreened solicitations, and the toll-free number the consumer can call to exercise that right. The short notice also shall direct the consumer to the existence and location of the long notice, and shall state the heading for the long notice required by paragraph (b)(2)(iv) of this section. The short notice shall not contain any other information.

(2) *Form.* The short notice shall be:

(i) Prominent, clear, and conspicuous;

(ii) In a type size that is larger than the type size of the principal text on the same page, but in no event smaller than 12-point type;

(iii) On the front side of the first page of the principal promotional document in the solicitation, or, if provided electronically, on the first screen;

(iv) Located on the page and in a format so that the statement is distinct from other text, such as inside a border; and

(v) In a typeface that is distinct from other typeface used on the same page, such as bolding, italicizing, underlining, and/or in a color that contrasts with the color of the principal text on the page, if the solicitation is in more than one color.

(b) *Long notice.*

(1) *Content.* The long notice shall be a simple and easy to understand statement that includes the information required by section 615(d) of the Fair Credit Reporting Act (15 U.S.C. 1681m(d)). The long notice shall not include any other information that interferes with, detracts from, contradicts, or otherwise undermines the purpose of the opt-out notices.

(2) *Form.* The long notice shall:

(i) Be clear and conspicuous;

(ii) Appear in the solicitation;

(iii) Be in a type size that is no smaller than the type size of the principal text on the same page, but in no event smaller than 8-point type;

(iv) Begin with a heading in capital letters and underlined, and identifying the long notice as the ''OPT-OUT NOTICE'';

(v) Be in a typeface that is distinct from other typeface used on the same page, such as bolding, italicizing, underlining, and/or in a color that contrasts with the color of the principal text on the page, if the solicitation is in more than one color; and

(vi) Be set apart from other text on the page, such as by including a blank line above and below the statement, and by indenting both the left and right margins from other text on the page.

§ 642.4 Effective date.

This part shall become effective sixty (60) days after this part becomes final.

PART 698—SUMMARIES, NOTICES, AND FORMS

2. Revise the authority citation in part 698 to read as follows:

Authority: 15 U.S.C. 1681e, 1681g, 1681j, 1681m(d), 1681s; Pub. L. 108–159, sections 151, 153, 211(c) and (d), 213, and 311, 117 Stat. 1952.

3. Amend § 698.1 by revising paragraph (b) to read as follows:

§ 698.1 Authority and purpose.

* * * * *

(b) *Purpose.* The purpose of this part is to comply with sections 607(d), 609(c), 609(d), 612(a), and 615(d) of the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactions Act of 2003, and Section 211 of the Fair and Accurate Credit Transactions Act of 2003.

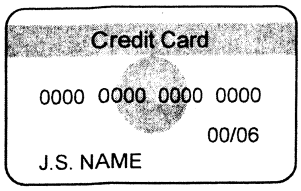
4. Add Appendix A to Part 698 as follows:

Appendix A to Part 698—Model Prescreen Opt-Out Notices

In order to comply with section 615(d) of the FCRA (15 U.S.C. 1681m(d)) and part 642 of this chapter, the following model notices may be used. These notices include model language and also are intended to illustrate the proper placement and display of the language. The proposed illustrations are modeled on actual solicitations, but, except for the operative model language, substitute dummy text for the remainder of the solicitation to demonstrate more clearly proper format, manner, and type size of prescreen opt-out notices.

BILLING CODE 6750–01–P

English Language Model Notice: Short Notice



Here's a Line About Credit

J.S. Name
12345 Friendly Street
City, ST 12345

Dear Ms. Name,

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

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We saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology.

Sincerely,

John W. Doe
President, Credit Card Company

PFOR 00 MON
FIXED ABC

BALANCE TR
FOR 00 MONTHS

NO MONTHS FEE

INTERNET SECURITY
SECURITY

ONLINE FRAUD PRO
GUARANTEE

YOUR BALANCE
PAY YOUR BILL

FEE-FREE REWARDS
PROGRAM

To stop receiving "prescreened" offers of [credit or insurance] from this and other companies, call toll-free, [toll-free number]. See OPT-OUT NOTICE on other side [or other location] for details.

English Language Model Notice: Long Notice

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

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TERMS AND CONDITIONS

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things.

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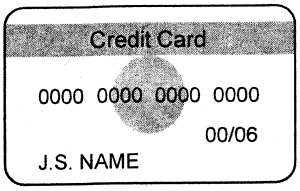
<u>OPT-OUT NOTICE</u>: This "prescreened" offer of [credit or insurance] is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria. If you do not want to receive prescreened offers of [credit or insurance] from this and other companies, call toll-free, [toll-free number]; or write: [consumer reporting agency name and mailing address].

Notice to Some Residents: te a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way.

Spanish Language Model Notice: Short Notice



Here's a Line About Credit

J.S. Name
12345 Friendly Street
City, ST 12345

Dear Ms. Name,

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

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We saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology.

Sincerely,

John W. Doe
President, Credit Card Company

PFOR 00 MON
FIXED ABC

BALANCE TR
FOR 00 MONTHS

NO MONTHS FEE

INTERNET SECURITY
SECURITY

ONLINE FRAUD PRO
GUARANTEE

YOUR BALANCE
PAY YOUR BILL

FEE-FREE REWARDS
PROGRAM

Para no recibir más "ofertas de [crédito o seguro] pre-investigadas" de ésta y otras compañías, llame gratis [toll-free number]. Consulte los detalles en el AVISO DE EXCLUSIÓN VOLUNTARIA al otro lado de esta pagina.

Spanish Language Model Notice: Long Notice

Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a the last century, we saw how technology was changing the way people do things.

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AVISO DE EXCLUSIÓN VOLUNTARIA (*OPT-OUT*): Esta oferta de [crédito o seguro] está basada en información contenida en su informe de crédito que indica que usted cumple con ciertos criterios. Si usted no cumple con nuestros criterios, esta oferta no está garantizada. Si usted no desea recibir ofertas de [crédito o seguro] pre-investigadas de ésta y otras compañías, llame gratis [toll-free number]; o escriba a: [consumer reporting agency name and address].

Notice to Some Residents: te a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century, we saw how technology was changing the way people do things. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way. Back in the last century. So we set out to create a smart kind of credit card. Back in the last century, we saw how technology was changing the way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–22039 Filed 9–30–04; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–129771–04]

RIN 1545–BD49

Guidance Under Section 951 for Determining Pro Rata Share; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to notice of proposed rulemaking that were published in the **Federal Register** on August 6, 2004 (69 FR 47822), providing guidance for determining a United States shareholder's pro rata share of a controlled foreign corporation's (CFC's) subpart F income, previously excluded subpart F income withdrawn from investment in less developed countries, previously excluded subpart F income withdrawn from foreign base company shipping operations, and amounts determined under section.

FOR FURTHER INFORMATION CONTACT: Jonathan A. Sambur at (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 951 (a) of the Internal Revenue Code.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–129771–04), which was the subject of FR Doc. 04–17907, is corrected as follows:

1. On page 47823, column 1, in the preamble under the caption **ADDRESSES**, remove the last sentence.

§ 1.951–1 [Corrected]

2. On page 47826, column 2, § 1.951–1, paragraph (e)(5)(iii), line 11, the language ''distribution of earnings or profits that'' is corrected to read ''distribution of earnings and profits that''.

Cynthia Grigsby,

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

[FR Doc. 04–22137 Filed 9–30–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[CO–033–FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: We are announcing receipt of additional revisions pertaining to a previously proposed amendment to the Colorado regulatory program (hereinafter, the ''Colorado program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The additional revisions were submitted by Colorado July 23, 2003. Colorado proposes revisions to require a weed management plan as part of the permit application, and as part of the cropland revegetation success criteria, to consider crop production for two of the last four years of the liability period, but not consider crop production prior to year nine of the liability period and with respect to annual grain crops for which the cropping cycle may incorporate a summer fallow year, two of the last four cropping years will be considered.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. October 18, 2004.

ADDRESSES: You may submit comments, identified by Docket No. CO–033–FOR, by any of the following methods:

- E-mail: *jffulton@osmre.gov.* Include ''Docket No. CO–033–FOR'' in the subject line of the message;
- Mail: James F. Fulton, Chief, Denver Field Division, OSM, P.O. Box 46667, Denver, CO 80201–6667;
- Hand delivery: James F. Fulton, Chief, Denver Field Division, OSM, 1999 Broadway, Suite 3320, Denver, CO 80202–5733;
- Fax: (303) 844–1545; and
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

INSTRUCTIONS: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

DOCKET: For access to the docket to review copies of the Colorado program, this amendment, and all written comments received in response to this document, you must go to the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Denver Field Division.

In addition, you may review a copy of the amendment during regular business hours by contacting the following individuals at their respective locations:

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, P.O. Box 46667, Denver, CO 80201–6667. (303) 844–1400, extension 1424.

David A. Berry, Coal Program Supervisor, Colorado Division of Minerals and Geology, 1313 Sherman Street Room 215, Denver, Colorado 80203. Telephone: (303) 866–3873.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, telephone: (303) 844–1400, ext. 1424, e-mail address: *jfulton@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Colorado Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Colorado program on December 15, 1980. You can find background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program in the December 15, 1980, **Federal Register** (45 FR 82173). You can also find later actions concerning Colorado's program and program amendments at 30 CFR 906.15, 906.16, and 906.30.

II. Description of Proposed Amendment

By letter dated March 27, 2003, Colorado sent us a proposed

amendment to its program pursuant to SMCRA (State Amendment Tracking System number C0–033–FOR), administrative record number C0–696–1, under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado sent the proposed amendment in response to the letters that we sent it in accordance with 30 CFR 732.17(c) on May 7, 1986, June 9, 1987, and March 22, 1990. The amendment concerns prime farmland, revegetation, hydrology, enforcement, topsoil, historic properties, and bond release requirements. On April 4, 2003, Colorado sent us an addition to its March 27, 2003, program amendment. It amended Rule 4.15.8(3)(a); Revegetation Success Criteria.

In the June 3, 2003, **Federal Register** (68 FR 33032), we announced receipt of the March 27, 2003, proposed amendment and its April 4, 2003, addition, provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. Because no one requested a public hearing or meeting, none was held. The public comment period ended on July 3, 2003. We received comments from one Federal agency.

By letter dated July 23, 2003, Colorado submitted additional revisions to the amendment. These proposed revisions added a requirement for a weed management plan and revised provisions pertaining to revegetation success for cropland. We announced these revisions and provided a shortened comment period in the **Federal Register** dated November 20, 2003 (68 FR 65422).

By letters dated September 1, 2004, and September 4, 2004, the Rocky Mountain Director of Public Employees for Environmental Responsibility (PEER) requested that we reopen the comment period for the proposed amendment submitted by Colorado on July 23, 2003. PEER stated that our notice was incorrect in its explanation of the amendment and that it failed to include the full text of the amendment as required by 30 CFR 732.17(h) for shortened comment periods. With this notice, we are publishing the full text of Colorado's July 23, 2003, submission.

In its July 23, 2003, submittal, Colorado proposes revisions to rule Rule 4.15.1, Weed Management Plan; Rule 4.15.9, Revegetation Success Criteria: Cropland; and Rule 1.04(78), Definition of Noxious Weeds. The full text of the proposed revision is as follows, with the bracketed language to be removed and the italicized language to be added:

Amend Rule 4.15.1 by adding (5) as follows:

(5) Each operator shall submit a weed management plan that will become part of the permit requirements. Species to be considered shall be noxious weeds as set forth in the permit. The plan shall also address invasion of other weed species that seriously threaten the continued development of desired vegetation. Weed control methods shall also be used whenever the inhabitation of the disturbed area by weeds threatens further spread of weeds to nearby areas.

Amend Rule 1.04(78) as follows:

''Noxious [plants] *weeds*'' means species that have been included on official State or county lists of noxious [plants] *weeds.*

Amend Rule 4.15.9 as follows:

4.15.9 Revegetation Success Criteria: Cropland. For areas to be used as cropland, success of revegetation shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other approved standard(s). Crop production from the mined area shall not be less than that of the approved reference area or standard for [the last] two *of the last four* years of the [extended] liability period established in 3.02.3. *Crop production shall not be considered prior to year nine of the liability period. With respect to annual grain crops for which the cropping cycle may incorporate a summer fallow year, two of the last four cropping years will be considered.* This liability period shall commence on the date of initial planting of the crop being grown. Production shall be considered equal if it is not less than 90% of the production as determined from the reference area or approved standard with 90% statistical confidence.

III. Public Comment Procedures

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Denver Field Division.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. CO–033–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at (303) 844–1400, ext. 1441.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and

reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of $100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 15, 2004.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 04–22017 Filed 9–30–04; 8:45 am]

BILLING CODE 4310–05–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1270

RIN 3095–AB40

Presidential Records Act Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: In response to a petition for rulemaking, NARA proposes to amend our rules concerning Presidential records to lengthen the time from 10 working days to 35 calendar days to appeal denial of access. This proposed rule will affect the public.

DATES: Submit comments on or before November 30, 2004.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Please include ''Attn: 3095–AB40'' and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- E-Mail: Send comments to *comments@nara.gov.* If you do not receive a confirmation that we have received your e-mail message, contact Jennifer Davis Heaps at 301–837–1850.
- Fax: Submit comments by facsimile transmission to 301–837–0319.
- Mail: Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- Hand Delivery or Courier: Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at 301–837–1801.

SUPPLEMENTARY INFORMATION: On June 4, 2004, NARA received a petition to extend the timeframe in which a person may appeal the denial of a request for access to Presidential records made under the Presidential Records Act (44 U.S.C. 2201–2207). The petitioners stated that the current timeframe of 10 working days from the date of NARA's

denial letter was not long enough to allow requesters to respond and that this limited timeframe served to discourage people from appealing denial decisions. The petitioners requested that the timeframe be extended to 35 calendar days to match the timeframe NARA allows to appeal denials for access to records made under the provisions of the Freedom of Information Act (FOIA) (*see* 36 CFR 1250.72 (a)) and the Privacy Act (*see* 36 CFR 1202.56 (a)).

To conform to the requirements under the FOIA, the proposed change also requires that *NARA must receive* the written appeal within 35 calendar days of the date of NARA's denial letter, instead of the *requester filing* an appeal no later than 10 working days after receiving NARA's denial. The proposed change is more equitable, as the time in which a requester may receive NARA's denial may fluctuate. We agree with the petitioners that the change from 10 working days to 35 calendar days, corresponding with the length of time to make appeals under the FOIA, will be a service to researchers.

We also propose to change the appeal official to the appropriate Presidential library director and to have the director respond to the appeal within 30 working days.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this rule applies to individual researchers. This proposed rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1270

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1270 of title 36, Code of Federal Regulations, as follows:

PART 1270—PRESIDENTIAL RECORDS

1. The authority citation for part 1270 is revised to read as follows:

Authority: 44 U.S.C. 2201–2207.

2. Amend § 1270.42 by revising paragraphs (a), (b), and (d) to read as follows:

Subpart D—Access to Presidential Records

§ 1270.42 Denial of access to public; right to appeal.

(a) Any person denied access to a Presidential record (hereinafter *the requester*) because of a determination that the record or a reasonable segregable portion of the record was (1) properly restricted under 44 U.S.C. 2204(a), and (2) not placed in the public domain by the former President or his agent, may file an administrative appeal with the appropriate Presidential library director at the address cited in part 1253 of this chapter.

(b) All appeals must be received by NARA within 35 calendar days of the date of NARA's denial letter.

* * * * *

(d) Upon receipt of an appeal, the appropriate Presidential library director has 30 working days from the date an appeal is received to consider the appeal and respond in writing to the requester. The director's response must state whether or not the Presidential records requested are to be released and the basis for this determination. The director's decision to withhold release of Presidential records is final and not subject to judicial review.

Dated: September 27, 2004.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04–22051 Filed 9–30–04; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT57

Endangered and Threatened Wildlife and Plants; Notice of Availability of the Draft Economic Analysis on the Proposed Designation of Critical Habitat for the Santa Ana Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis and reopening of the public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis on the proposed designation of critical habitat for the Santa Ana sucker (*Catostomus santaanae*), and the reopening of the public comment period on the proposed rule to designate critical habitat for the Santa Ana sucker. The comment period will provide the public, Federal, State, and local agencies, and Tribes with an opportunity to submit written comments on this proposal and its respective draft economic analysis. Comments previously submitted for this proposed rule need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision.

DATES: The public comment period on the proposed designation and draft economic analysis is now reopened until October 12, 2004. We will accept comments and information until 5 p.m. PST on that date.

ADDRESSES: Written comments and materials may be submitted to us by one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009.

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to (760) 431–9618.

3. You may send comments by electronic mail (e-mail) to *fw1sasu@r1.fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule for the Santa Ana sucker will be available for public inspection, by appointment, during normal business hours at the above address. Any comments received after the closing date may not be considered in the final decisions on this action. You may obtain copies of the proposed critical habitat designation by contacting the Carlsbad Fish and Wildlife Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone (760) 431–9440; facsimile (760) 431–9618).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning our proposed designation of critical habitat for the Santa Ana sucker and our draft economic analysis for the proposed

critical habitat designation. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Santa Ana sucker habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities or families;

(5) Whether the economic analysis adequately addresses the likely effects and resulting costs arising from the California Environmental Quality Act and other State laws as a result of the proposed critical habitat designation;

(6) Whether the economic analysis makes appropriate assumptions is consistent with the Service's listing regulations regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat for the Santa Ana sucker;

(7) The benefits of including or excluding lands covered by a Natural Community Conservation Plan or Habitat Conservation Plan or any other lands covered by an adequate management plan;

(8) Whether the analysis adequately addresses the indirect effects, e.g., property tax losses due to reduced home construction, losses to local business due to reduced construction activity;

(9) Whether the economic analysis appropriately identifies land and water use regulatory controls that could result from the proposed critical habitat designation for this species;

(10) Whether the analysis accurately defines and captures opportunity costs;

(11) Whether the economic analysis correctly assesses the effect on regional costs (e.g., housing costs) associated with land use controls that could arise from the designation of critical habitat for this species;

(12) Whether the designation of critical habitat for the sucker will result in disproportionate economic or other impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(13) Whether the economic analysis is consistent with the Service's listing regulations because this analysis should identify all costs related to the designation of critical habitat for the Santa Ana sucker and this designation was intended to take place at the time this species was listed; and

(14) The draft economic analysis includes an appendix which provides an assessment of the potential benefits that may accrue to homeowners resulting from the amenity associated from living in the vicinity of a protected riparian corridor.

a. Please comment on the appropriateness of including the analysis of amenities as identified in the appendix as a potential benefit associated with critical habitat designation without doing a complete analysis of that class of economic effect (such as stigma effects) in general and the Santa Ana sucker designation in particular.

b. Please comment on the method employed to estimate this effect which relies on the combined results of two studies that measure the premium to homes located near protected or restored urban streams (Colby and Wishart 2002, Streiner and Loomis 1995).

c. Please comment on the appropriateness of the application itself, which applied the benefits to all areas of the designation.

(15) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment, you may submit your comments and materials concerning this rule by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *fw1sasu@r1.fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: Santa Ana Sucker Critical Habitat'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** 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, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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.

Background

On February 26, 2004, we concurrently published in the **Federal Register** a final rule (69 FR 8839) and a proposed rule (69 FR 8911) to designate critical habitat for the Santa Ana sucker. In order to comply with the designation deadline established by the district court, we were unable to open a public comment period, hold a public hearing, or complete an economic analysis of the final rule. Please refer to the final rule (69 FR 8839) for a complete explanation of our reasons for dispensing with the notice and comment procedures generally required under the Administrative Procedure Act. To give the public an opportunity to comment on the critical habitat designation, including the opportunity for a public hearing, and to enable the Service to complete and circulate for public review an economic analysis of critical habitat designation, we published and solicited comment on a proposed rule (69 FR 8911) to designate critical habitat for the Santa Ana sucker on approximately 21,129 acres (ac) (8,550 hectares (ha)) of land in Los Angeles and San Bernardino Counties, California. The original comment period on the proposed rule closed on April 26, 2004.

On August 19, 2004, we published a notice in the **Federal Register** announcing the reopening of a 30-day comment period on the proposed rule and the holding of a public hearing on September 9, 2004, in Pasadena, California (69 FR 51416). The comment period was open until 5 p.m. PST on September 20, 2004.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration economic and any other relevant impacts of specifying any particular area as critical habitat. Based upon the February 26, 2004, proposed rule to designate critical habitat for the Santa Ana sucker, we have prepared a draft economic analysis on the proposed critical habitat designation. Retrospective costs total $4.2 million, with transportation comprising $3.4

million of those costs. The remainder of retrospective costs was split among OHV recreation, flood control agencies, and Federal agencies. Total prospective costs are $30.5 million assuming a three percent discount rate and $21.8 million with a seven percent discount rate. Annual prospective costs are estimated to be $2.0 million. Costs associated with transportation contribute 49 percent of the annual costs and overall prospective costs. Other leading activities include water supply, flood control agencies, and residential and commercial development. The draft economic analysis also includes an appendix which provides an assessment of the potential benefits that may accrue to homeowners resulting from the amenity associated from living in the vicinity of a protected riparian corridor. The method employed to estimate this effect relies on the combined results of two studies that measure the premium to homes located near protected or restored urban streams (Colby and Wishart 2002, Streiner and Loomis 1995). We are now soliciting public comment on the draft economic analysis and appendix until the date specified above in **DATES**. We will also continue to accept comments concerning our proposed designation of critical habitat for the Santa Ana sucker during this period.

References Cited

Colby, Bonnie and Steve Wishart. 2002. Quantifying the Influence of Desert Riparian Areas on Residential Property Values, The Appraisal Journal, July.

Streiner, Carol and John B. Loomis. 1995. Estimating the Benefits of Urban Stream Restoration Using the Hedonic Price Method, Rivers 5(4).

Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 27, 2004.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–22196 Filed 9–29–04; 9:47 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 69, No. 190

Friday, October 1, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–311]

United States Standards for Grades of Kale

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the possible revisions to the United States Standards for Grades of Kale. At a 2003 meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. As a result, AMS has identified that the current standard may need to be modified to allow that percentages are determined by count and not weight. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

DATES: Comments must be received by November 30, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, e-mail *FPB.DocketClerk@usda.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Kale are available either through the address cited above or by accessing the Fresh Products Branch Web site at *http://www.ams.usda.gov/standards/stanfrfv.htm*.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; e-mail *David.Priester@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

At a 2003 meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Kale for a possible revision. These standards were last revised in 1934. As a result, AMS has identified that industry marketing practices indicate the need to modify the current standards to allow the percentages to be determined by count and not weight. However, prior to undertaking detailed work to develop proposed revisions to the standards, AMS is soliciting comments on the possible revision to the standards and the probable impact on distributors, processors, and growers. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

This notice provides for a 60-day comment period for interested parties to comment on changes to the standards. Should AMS conclude that there is a need for the revisions of the standards, the proposed revisions will be published in the **Federal Register** with a request for comments in accordance with 7 CFR Part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: September 28, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–22058 Filed 9–30–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Environmental Impact Statement on Watershed Planning and Implementation of Resource Protection Measures for the Marmaton Watershed Located in Allen, Bourbon, and Crawford Counties, KS

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent (NOI).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Kansas State Office, announces its intention to prepare an environmental impact statement (EIS) to evaluate the impacts of resource protection measures that would be employed under potential alternatives within a watershed plan in the Marmaton Watershed (located in Allen County, Bourbon County and Crawford County, all in Kansas). A plan would be developed to reduce risks to life and property caused by frequent flooding of communities and agricultural lands, improve water quality, and address watershed protection needs. The EIS will analyze the potential environmental and socioeconomic impacts of alternatives in a watershed plan, as identified in the watershed planning/NEPA process, including any structural and non-structural measures that would address resource concerns in the Marmaton Watershed.

The purpose of this notice is to request participation and invite comments from all those individuals and organizations interested in the development of the EIS.

Under a watershed plan, the NRCS would provide financial and technical assistance to sponsoring local organizations, including the Allen County Conservation District, the Bourbon County Conservation District, the Crawford County Conservation District, and the Marmaton Watershed District, for installation of structural and/or non-structural measures to prevent flooding, improve water quality, and protect the watershed throughout the described area. The EIS analysis will incorporate mitigation measures the NRCS would use to minimize, to the greatest extent practicable, any potential adverse environmental or

socioeconomic impacts. Such measures are authorized under the Watershed Protection and Flood Prevention Act of 1954, Public Law 83–566 (P.L.–566).

Public Participation: The NRCS invites full public participation to promote open communication and better decision making. All persons and organizations that have an interest in the Marmaton River and its tributaries with flooding problems and natural resource issues within the Marmaton Watershed as they affect Allen, Crawford, and Bourbon Counties are urged to participate in the NEPA environmental analysis process. Assistance will be provided as necessary to anyone having difficulty in determining how to participate. A public participation plan has been developed and will be followed.

Public comments are welcomed throughout the NEPA process. Opportunities for public participation include: (1) The EIS scoping period when comments on the NRCS proposal will be solicited through various media and at a public meeting to be held in Uniontown, Kansas, November 4, 2004; (2) the 45-day review and comment period for the published Draft EIS; and (3) for 30 days after publication of the Final EIS.

Scoping Process: Public participation is requested throughout the scoping process. The NRCS is soliciting comments from the public indicating what issues and impacts the public believes should be encompassed within the scope of the EIS analysis, voicing any concerns they might have about the identified resource protection measures, and submitting any ideas they might have for addressing risks to life and property in the Marmaton Watershed. Other opportunities for public input include: (1) once the Notice of Availability (NOA) of the Draft EIS is published in the **Federal Register,** comments will be accepted on the Draft EIS for a period of not less than 45 days, and (2) once the Final EIS is published in the **Federal Register,** comments will be accepted for a period of not less than 30 days. The NRCS will provide a written response to each comment provided and will evaluate the issues presented for study and possible inclusion in the EIS. The public participation plan describes responsibilities and outreach opportunities in this process.

Date Scoping Comments are Due: Comments may be submitted by regular mail, telephone, facsimile, or e-mail until 5 p.m. CST, November 19, 2004. Written comments submitted by regular mail should be postmarked by November 19, 2004, to ensure full consideration. (**Note:** scoping period will continue for a period of 45 calendar days after issuance date of this NOI.) Comments postmarked after this date will be considered to the extent practicable.

ADDRESSES: Comments on what the public wishes to be analyzed or addressed within the Draft EIS should be mailed to: Dean Krehbiel, Marmaton Watershed EIS, 760 South Broadway, Salina, Kansas 67401–4604.

Comments may also be submitted by calling (785) 823–4551, by sending a facsimile to (785) 823–4540, or by e-mail to *dean.krehbiel@ks.usda.gov.* Respondents should provide mailing address information and indication of wanting to be included on the EIS mailing list. All individuals on the mailing list will receive a copy of the Draft EIS.

Scoping Meeting: A public scoping meeting will be held November 4, 2004, to provide information on the watershed and planning activities performed to date, to give the opportunity to discuss the issues and alternatives that should be covered in the Draft EIS, and to receive oral and written comments. The meeting will be held from 1 p.m. to 3 p.m. at the Uniontown Community Center, Uniontown, Kansas.

FOR FURTHER INFORMATION CONTACT: An information package providing additional details about the watershed and proposed project is available upon request. Requests should be directed to the same mailing address, telephone number, facsimile number, or e-mail address noted above under **ADDRESSES.** The NRCS and the Marmaton Watershed District plan to publish a newsletter to keep interested parties up to date on the project. Requests to be included on the newsletter mailing list should be made to the same addresses noted above; please include an e-mail address if wanting electronic transmission. Information may also be obtained from the Kansas NRCS Web site at: *http://www.ks.nrcs.usda.gov.*

Responsible Official: Harold L. Klaege, State Conservationist, NRCS, Salina, Kansas, is the responsible official for this action.

Decisions to be Made: The responsible NRCS official will decide whether to approve an alternative action or no action.

SUPPLEMENTARY INFORMATION:

Background: The Marmaton River is a permanent stream within the Marais de Cygnes river basin in eastern Kansas. The Marmaton River flows eastwardly from its origins near Moran, Kansas, through the community of Fort Scott, Kansas, to its confluence with Dry Wood Creek near Deerfield, Missouri. The Marmaton Watershed encompasses 210,001 acres, which includes all of the Marmaton River drainage above the Mill Creek confluence near Fort Scott, Kansas. This drainage area lies within the Cherokee Prairies and the Scarped Osage Plains land resource areas. This area consists of slightly dissected plains interrupted by a series of low ridges formed by east-facing escarpments ranging from 770 feet above mean sea level to 1,110 feet at its headwaters. Between the escarpments are flat to rolling plains as a result of the differential weathering of shale and limestone.

The major water resource problems in the Marmaton Watershed can be summarized as serious flooding, water quality, and water quantity conditions. Total annual rainfall in the watershed averages about 40 inches. Two years in 10 will have less than 31 inches or more than 46 inches. Frequent floods are common, occurring two and one-half to three times per year. Major flood events in October 1986 and in October 1998 each caused damages in excess of $5.5 million. Included in these damages are $2.3 million to agricultural land and buildings, rural roads and bridges, and scour within the boundaries of the Marmaton Watershed District. Outside the district boundaries, urban damages to Fort Scott, Kansas, were in excess of $3.2 million from each flood. Although Fort Scott has been re-zoned to reduce flood damages since the 1998 flood, flooding remains a concern to the citizens of that community. Other concerns identified in planning include deterioration of cropland soil quality, deterioration of grazing land condition and productivity, degradation of riparian woodland and wetland, and nutrient and pesticide management issues.

In 1992, sponsoring local organizations (Allen County Conservation District, Bourbon County Conservation District, Crawford County Conservation District, and the Marmaton Watershed District) requested assistance from the NRCS in development of a Soil and Water Resources Plan for the Marmaton Watershed, with major emphasis on providing flood protection for agriculture, businesses, homes, and roads located along the floodplain. A preliminary ecosystem-based resource plan (preliminary watershed plan) developed in 1999, described existing floodwater damages, additional resource concerns, and two alternatives for addressing these concerns.

In 2004, NRCS representatives met with local sponsors and public officials

to discuss planning efforts to detail a flood protection analysis, watershed protection strategies, and water quality improvements. The resource protection measures within the Draft EIS will include those structures evaluated in the 1999 report that provided substantial flood protection and also met applicable benefit-cost criteria, as well as other non-structural alternatives that will address local environmental, social, and economic needs.

P.L.–566 authorizes the NRCS to provide financial and technical assistance to local sponsors to address local flooding problems and implement watershed protection measures. Under the agency proposal for the Marmaton Watershed, the NRCS would provide financial and technical assistance to the sponsors to install measures that will address resource concerns within the watershed. The sponsors would be responsible for operation and maintenance of those works of improvements.

Need for the Proposal: The proposal is needed to address the problems associated with recurrent flooding, water quality, water quantity, and other natural resources. Recurrent flooding due to periodic intense rainstorm events within the Marmaton Watershed continue to pose a hazard to human safety and cause extensive flood damage to properties along the river.

Purpose of the Proposal: The purpose of the proposal is to assist the local community in taking appropriate measures to assure public safety and protect property in the face of the recurrent flooding problems, improve water quality concerns, and address watershed protection concerns within the watershed.

Preliminary Issues: Among the issues that the NRCS plans to consider in the scope of the EIS analysis are:

- Environmental, economic, and social impacts of the alternatives.
- Environmental issues dealing with water quality that might be affected.
- Environmental integrity of the any works of improvement.
- Costs and benefits of the alternatives.

Preliminary Alternatives: The EIS will analyze the potential environmental and socioeconomic impacts of a range of alternatives, including structural and non-structural measures, for reducing risks to life and property presented by Marmaton River flooding and other watershed protection concerns. This analysis will be summarized in a Draft EIS. The preliminary list of alternatives for the Draft EIS includes: (1) Constructing 48 flood-retarding dams in the watershed; (2) using non-structural flood protection measures to reduce the potential for damage and address resource concerns; (3) using land treatment measures to control flooding, reduce damages, and address resource concerns; and (4) taking ''No Action''—making no improvements for flood protection. The alternatives will be refined and supplemented, as appropriate, based on input by the public and agencies during the public scoping process.

Alternative 1—Evaluate Installation of 48 Flood-Retarding Structures (FRS)

Under this alternative, the NRCS would evaluate the construction of 48 earthen dams on tributaries of the Marmaton River. The FRS would be located throughout the watershed on intermittent streams.

Alternative 2—Employ Non-Structural Flood Protection Measures

Under this alternative, the NRCS would evaluate non-structural measures that would reduce the potential for damage by controlling flooding, protection or removal of affected structures, and addressing watershed protection concerns.

Alternative 3—Employ Land Treatment Measures

Under this alternative, the NRCS will evaluate the effect of land treatment on the watershed to determine what practices and management will be needed to control flooding and address watershed protection concerns.

Alternative 4—''No Action'' Alternative

Under this alternative, the NRCS would provide no financial or technical assistance to sponsoring local organizations for flood protection measures in the Marmaton Watershed. Federal agencies are required to evaluate the impacts of a ''No Action'' alternative in preparing an EIS, even though the alternative would not meet the agency's purpose and need.

Permits or Licenses Required: Construction of flood retarding structures is authorized under P.L.–566 administered by the NRCS. A permit would be required from the U.S. Army Corps of Engineers under the Clean Water Act (CWA), Section 404 for any project that would impede the flow of waters of the United States or that would affect any wetlands. A permit would be required from the State of Kansas, Division of Water Resources, for any dam structures or structural works installed in the flood plain. The State of Kansas, Department of Health and Environment would require a Construction Stormwater Permit and subsequent stormwater pollution prevention plan. A structural project may also require a National Pollution and Discharge Elimination System (NPDES) water quality certification by the State under CWA, Section 401, which could be issued in conjunction with the CWA 404 permit. Approval from the State Historic Preservation Office would be required if any National Register-eligible historic properties would be affected. Consultation with the U.S. Fish and Wildlife Service would be required if the proposal may affect any species listed as threatened or endangered under the Endangered Species Act.

Estimated Dates for Draft EIS and Final EIS: The NRCS expects to file the Draft EIS with the Environmental Protection Agency (EPA) and to have it available for public review and comment during the fall or winter of 2005–2006. At that time, EPA will publish a Notice of Availability (NOA) of the Draft EIS in the **Federal Register**. The public comment period on the Draft EIS will be a minimum of 45 days from the date the EPA publishes the NOA.

The NRCS and the sponsors believe, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the Draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and concerns (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). In addition, environmental objections that could be raised at the Draft EIS stage, but are not raised until after completion of the Final EIS, may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this project participate by the close of the Draft EIS review period, so that substantive comments are made available to the NRCS at a time when the comments can be meaningfully considered in the Final EIS.

To assist the NRCS and the sponsors in identifying and considering issues and concerns on the proposed alternatives, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the Draft EIS. Reviewers may wish to refer to the Council on

Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 153.3 in addressing these points.

After the comment period on the Draft EIS ends, the comments will be analyzed, considered, and responded to by the NRCS in preparing the Final EIS. The Final EIS is scheduled for completion by the spring of 2006. The responsible officials will consider the comments, responses, environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies in making a decision regarding this proposed action. The responsible officials will document the decisions and reasons for the decisions in a Record of Decision. That decision will be subject to appeal in accordance with 36 CFR part 215.

Dated: September 24, 2004.

Harold L. Klaege,

State Conservationist.

[FR Doc. 04–22029 Filed 9–30–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Cane Creek Watershed, Lauderdale County, TN

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of availability of record of decision.

SUMMARY: James W. Ford, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Tennessee, is hereby providing notification that a record of decision to proceed with the installation of the Cane Creek Watershed Remedial project is available. Single copies of this record of decision may be obtained from James W. Ford at the address shown below.

FOR FURTHER INFORMATION CONTACT: James W. Ford, State Conservationist, Natural Resources Conservation Service, 675 U. S. Courthouse, 801 Broadway, Nashville, Tennessee 37203, telephone (615) 277–2531.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: September 23, 2004.

James W. Ford,

State Conservationist.

[FR Doc. 04–22030 Filed 9–30–04; 8:45 am]

BILLING CODE 3410–16–P

ARCTIC RESEARCH COMMISSION

Notice of Meeting

Notice is hereby given that the U.S. Arctic Research Commission will hold its 73rd Meeting in Durham, NH, on October 5–8, 2004. The Business Session open to the public will convene at 9 a.m. Tuesday, October 5; the Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 72nd Meeting.

(3)Reports from Congressional Liaisons.

(4)Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will reconvene at 9 a.m. Wednesday, October 6, 2004. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

FOR FURTHER INFORMATION CONTACT: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, (703) 525–0111 or TDD (703) 306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 04–22037 Filed 9–30–04; 8:45 am]

BILLING CODE 7555–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: October 31, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Laser Labels

7530–01–289–8190—White label size—1″ × 4″

7530–01–289–8191—White label size—1″ × 2⅝″

7530–01–302–5504—White label size—1⅓″ × 4″

7530–01–336–0540—White label size—2″ × 4″

7530–01–349–4463—White label size—8½″ × 11″

7530–01–349–4464—White label size—3⅓″ × 4″

NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–22090 Filed 9–30–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 31, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 14, and August 6, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 32975, and 47863) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

The following comments pertain to Tabs, Index.

Comments were received from the current contractor, from one of its subcontractors which is the actual manufacturer of the index tabs, from a trade association representing these companies, and from a Member of Congress. All of these comments addressed the impact of this Procurement List addition on the subcontractor.

Sales of these index tabs to the current contractor account for nearly the entire production of the index tabs by the subcontractor. If these sales are lost, the subcontractor claims it would be forced to cease production of the index tabs and terminate the employees producing them. The subcontractor would also lose a portion of its total sales. The commenters noted that other producers of index tabs are large businesses that have already impacted the subcontractor's sales and its ability to succeed in the office products market as a domestic producer.

The contractor to which the index tabs manufacturer sells the tabs is not limited to re-selling them to the Federal Government. Accordingly, the Committee is not convinced that this addition to the Procurement List will destroy the manufacturer's market and force a cessation of production of the index tabs. However, even if a cessation were to occur, the percentage of sales the manufacturer would lose does not rise to the level which the Committee normally considers to be a severe adverse impact on a contractor. In addition, addition of the index tabs to the Procurement List will create jobs for workers with severe disabilities, a group which has an unemployment rate far above that of the workers who may be displaced. Therefore, the Committee believes the addition of these index tabs to the Procurement List is justified, as it will not have a severe adverse impact on either the current contractor or the subcontractor, and it will create jobs for people with severe disabilities who would be less likely to find other employment than the subcontractor's workers.

The following material pertains to all of the items being added to the Procurement List.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

Product/NSN: Tabs, Index

7530–01–368–3489 (Assorted Colors—Tabs 1 through 10)

7530–01–368–3490 (Assorted Colors—Tabs January through December)

7530–01–368–3491 (Clear—Tabs January through December)

7530–01–368–3492 (Assorted Colors—Tabs A through Z)

7530–01–368–3493 (Assorted Colors—Index Sheets 1 through 31)

NPA: South Texas Lighthouse for the Blind, Corpus Christi, Texas.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Classified Technical Order Distribution, Tinker Air Force Base, Building 3, Door 57, Tinker AFB, Oklahoma.

NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma.

Contract Activity: Directorate of Contracting (OC–ALC/PKOSF), Tinker AFB, Oklahoma.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–22091 Filed 9–30–04; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23–2004]

Foreign-Trade Zone 176: Application for Expansion/Reorganization, Rockford, IL; Amendment of Application

Notice is hereby given that the application of the Greater Rockford Airport Authority, grantee of FTZ 176, for authority to reorganize and expand FTZ 176 in the Rockford, Illinois, area (Doc. 23–2004, 69 FR 30871, 6/1/04), has been amended to include an additional site (*Proposed Site 6*) at the Rolling Hills Industrial Park (74 acres), located in Woodstock, Illinois. The public comment period is being extended to October 22, 2004, to allow interested parties additional time in which to comment. Rebuttal comments may be submitted until November 5, 2004.

Submissions (original and 3 copies) shall be addressed to the Board's

Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. *Submissions via U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

Dated: September 24, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–22134 Filed 9–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1355]

Expansion of Foreign-Trade Zone 170; Clark County, IN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Indiana Port Commission, grantee of Foreign-Trade Zone 170, submitted an application to the Board for authority to expand FTZ 170-Site 1 to include the entire 993-acre Clark Maritime Center in Jeffersonville, Indiana, within the Louisville Customs port of entry (FTZ Docket 62–2003; filed 11/10/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 65872, 11/24/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 170–Site 1 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 24th day of September 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 04–22135 Filed 9–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1356]

Grant of Authority for Subzone Status Eubank Manufacturing Enterprises, Inc.; Longview, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, Gregg County, Texas, grantee of Foreign-Trade Zone 234, has made application for authority to establish special-purpose subzone status at the air conditioning and heating equipment manufacturing plant of Eubank Manufacturing Enterprises, Inc., located in Longview, Texas (FTZ Docket 36–2003, filed 7–21–2003; application amended 6–29–2004 to remove products under HTSUS Heading 7019 from the scope of authority);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 44282, 7–28–2003); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the air conditioning and heating equipment manufacturing plant of Eubank Manufacturing Enterprises, Inc., located in Longview, Texas (Subzone 234A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 24th day of September 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 04–22136 Filed 9–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket Nos. 03–BIS–12 and 03–BIS–11]

In the Matters of: Xinjian Yi and Yu Yi, Respondents; Decision and Order

On November 5, 2003, the Bureau of Industry and Security ("BIS") issued separate charging letters against Xinjian Yi and Yu Yi (collectively known as "Respondents"), alleging that the Respondents had each committed three violations of the Export Administration Regulations (the "Regulations"),[1] which were issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the "Act"),[2]

BIS charged that Xinjian Yi: (i) In or about June 1998 through in or about July 1998, conspired with others to export from the United States to the People's Republic of China ("PRC") thermal imaging cameras, which were classified under export control classification number ("ECCN") 6A003 and controlled for national security reasons, without a BIS export license in violation of Section 764.2(d) of the Regulations; (ii) in or about July 1998, exported the national security controlled thermal

[1] The alleged violations occurred from 1998 through 1999. The Regulations governing the violations at issue are found in the 1998 and 1999 versions of the Code of Federal Regulations (15 CFR parts 730–774 (1998–1999)). The 2004 Regulations establish the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. 106–508, and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 FR 48763, August 10, 2004), continues the Regulations in effect under IEEPA.

imaging cameras to the PRC without the required license in violation of Section 764.2(a) of the Regulations; and (iii) in or about July 1999, made a false statement to an Office of Export Enforcement (''OEE'') Special Agent about the thermal imaging cameras during the course of the OEE investigation, in violation of Section 764.2(g) of the Regulations.

BIS charged that Yu Yi: (i) In or about June 1998 through in or about July 1998, conspired with others to export from the United States to the PRC thermal imaging cameras, which were classified under ECCN 6A003 and controlled for national security reasons, without a BIS export license in violation of § 764.2(d) of the Regulations; (ii) aided and abetted the unlicensed export of the national security controlled thermal imaging cameras to the PRC in violation of § 764.2(b) of the Regulations; and (iii) in or about April 1999, made a false statement to an OEE Special Agent about the thermal imaging cameras in the course of the OEE investigation, in violation of § 764.2(g) of the Regulations.

These cases were consolidated pursuant to a motion filed by the parties.

On March 12, 2004, BIS filed a Motion for Summary Decision on two of the three charges filed against each Respondent.[3] Respondents opposed the Motion. On April 28, 2004, the Administrative Law Judge (''ALJ'') granted BIS's Motion for Summary Decision, holding that Xinjian Yi and Yu Yi had each violated § 764.2(d) of the Regulations by conspiring to export thermal imaging cameras to the PRC without the required license. He also found that Xinjian Yi had violated § 764.2(a) of the Regulations by making the unlicensed export of the thermal imaging cameras, and that Yu Yi had violated § 764.2(b) by aiding and abetting the unlicensed export to the PRC. Specifically, the ALJ held that BIS ''met it's [sic] burden by the submission of reliable, probative and relevant evidence * * * in that no genuine issue of material fact was present and [BIS] was entitled to judgment as a matter of law.'' [4] ALJ's Recommended Decision and Order at 8.

In June 2004, the parties filed their briefs for the proposed civil penalties. On August 25, 2004, the ALJ issued his Recommended Decision and Order, recommending that each Respondent be fined $22,000 and that each Respondent's export privileges under the Regulations be denied for 10 years, as proposed by BIS. Specifically, the ALJ found that the ''record does not support the Respondent's [sic] arguments to allow mitigation of the proposed civil penalty assessments.'' ALJ's Recommended Decision and Order at 11.

Pursuant to § 766.22 of the Regulations, the ALJ's Recommended Decision and Order has been referred to me for final action. In the Respondents' responses to the ALJ's Recommended Decision and Order, the Respondents do not challenge the ALJ's factual and legal conclusions with respect to each of the charges. Rather, the Respondents argue that the ALJ's civil penalty assessment is unjustified and should be mitigated.

Based upon my review of the entire record, I find that the evidence supports the ALJ's findings of fact and conclusions of law regarding each of the above-referenced charges. I also find that the penalties recommended by the ALJ are appropriate given the sensitivity of the cameras involved, the country of ultimate destination, the concerted actions of the Respondents, the inconsistent and incomplete information provided by the Respondents, and the absence of strong or persuasive mitigating factors. The Repondent's concerted actions to export national security-controlled items to the PRC without the required export license from BIS is a significant aggravating factor. BIS has determined that this type of transaction is detrimental to U.S. national security interests, and has, in fact, denied a license for the export of similar items to the same PRC end-user at issue. That significant aggravating factor combined with inconsistent statements made by the Respondents during the course of the investigation and the incomplete financial information provided cannot be overcome by the mitigating factors alleged by the Respondents.

It is hereby ordered,

First, that a civil penalty of $22,000 is assessed against each Xinjian Yi and Yu Yi, which shall be paid to the Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owned under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Xinjian Yi and Yu Yi will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as further described in the attached Notice.

Third, that, for a period of 10 years from the date on which this order takes effect, Xinjian Yi of Wuhan, People's Republic of China, and Yu Yi of Wuhan, People's Republic of China, their successors or assigns and, when acting for or on behalf of them, their officers, representatives, agents, or employees (individually referred to as ''a Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession, or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is

[3] BIS did not move for summary decision as to the false statement charge against each Respondent.

[4] After the issuance of the ALJ's Order granting BIS's Summary Decision Motion, BIS withdrew the remaining false statement charges against each Respondent.

intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed, or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, ''servicing'' means installation, maintenance, repair, modification, or testing.

Fifth, that, after notice and opportunity for comment as provided in Seciton 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Sixth, that this Order shall be served on the Denied Persons and on BIS and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section with the heading ''Recommended Sanction'' and the export licensing information [5] on pages 7 and 10, shall be published in the **Federal Register**.

This Order, which constitutes the final ageancy action in this matter, is effective upon pulication in the **Federal Register**.

Dated: September 27, 2004.

Kenneth I. Juster,

Under Secretary of Commerce for Industry and Security.

Instructions for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Bureau of Industry and Security, Export Enforcement Team, Room H–6883, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Attn: Sharon Gardner.

Notice

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), and the Federal Claims Collection Standards (31 CFR parts 900–904 (2002)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. *See* 31 U.S.C.A section 3717 and 31 CFR 901.9.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. *See* 31 U.S.C.A. section 3717 and 31 CFR 901.9.

The foregoing constitutes the initial written notice and demand to respondent in accordance with § 901.2(b) of the Federal Claims Collection Standards (31 CFR 901.2(b)).

Recommended Decision and Order and Order Granting Agency's Recommendation for Imposition of Civil Penalty Assessment

On November 5, 2003, the Bureau of Industry and Security (BIS or Agency) filed formal Complaints against Xinjian Yi and Yu Yi charging each with three (3) separate violations of the Export Administration Regulations (EAR) (15 CFR parts 730–74) [1] issued pursuant to the Export Administration Act of 1979 (Act), as amended (50 U.S.C. 2401–420 (1991 and Supp. 2001)).[2] Upon motion by the parties, both cases were consolidated into a single proceeding. On March 12, 2004 BIS filed a Motion for Summary Decision regarding the first and second charges filed against both Respondents. By Order issued on April 28, 2004, the Undersigned Administrative Law Judge granted the Agency's Motion for Summary Decision (Summary Decision Order). In so doing, it was held that the Agency met its burden to prove the respective charges that Xinjian Yi: (1) Conspired to violate the Export Administration Regulations and (2) unlawfully exported thermal imaging cameras to the People's Republic of China (PRC) and that Yu Yi: (1) Conspired to violate the Export Administration Regulations and (2) aided and abetted the unauthorized export of thermal imaging cameras to the People's Republic of China. At that time, a hearing was set for May 18, 2004, to hear the final remaining charges.

On or about May 10, 2004, the Agency notified this office of its intent to withdraw the remaining third charge filed against each Respondent. The parties requested to cancel the scheduled hearing and sought to file briefs regarding final sanctions. On May 19, 2004, an Order was issued to cancel the scheduled hearing and to provide the parties an opportunity to file briefs on the issue of sanctions.

On June 24, 2004, Respondents Xinjian Yi and Yu Yi filed their Brief on Proposed Civil Penalty (Respondent's Brief) with nine (9) attached exhibits. Respondent's Brief argued for the mitigation of any civil monetary penalty and submitted that the appropriate penalty should be the denial of Respondent's export privileges for a reasonable period of time (one year period of time for each charge). On June 29, 2004, the Agency filed its Recommendation for Imposition of Administrative Penalties Against Xinjian Yi and Yu Yi (Agency's Brief) with six (6) exhibits. The Agency seeks the maximum civil penalty assessment of $22,000.00 and a ten (10) year period of time for denial of export privileges for each Respondent.

As a result of the Agency's decision to withdraw the remaining charges, the issuance of the April 28, 2004, Summary Decision Order has effectively decided the legal issues in this matter. However, it should be noted that no credibility determinations have been made regarding the parties and no

[5] The export licensing information on pages 7 and 10 of the ALJ Recommended Decision it protected by the confidentiality provisions of section 12(c) of the Act.

[1] The regulations are currently codified in the Code of Federal Regulations (CFR) at 15 CFR parts 730–774 (2004). The regulations governing the violations at issue are found in the 1998 version of the CFR. The 1998 regulations and the degree to which they pertain to this matter are substantially the same as the 2004 version.

[2] From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which has been extended by successive Presidential Notices, continued the Regulations in effect under the International Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. V. 1999)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since that time, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001, as extended by subsequent Notices (the last being found at 68 FR 47833 (August 7, 2003)), has continued the regulations in effect under IEEPA.

witness testimony has been received. I have carefully reviewed the record in its entirety and specifically, the parties' briefs and exhibits concerning the award of sanctions. I find that the Agency has sustained its burden for the award of sanctions as it proposed. Respondents' arguments are well pled but fall short of providing the necessary legal documentation to overcome or mitigate the Agency's proposed sanctions. As such, the Agency is *hereby* awarded the full civil penalty assessment of $22,000.00 and a ten (10) year period of time for denial of export privileges as filed against each Respondent. The civil penalty assessment is based on the following.

Charging Letter

The final charges against the Respondents are as follows:

Xinjian Yi

Charge 1: Conspiracy To Violate the Export Administration Regulations—15 CFR 764.2(d).

Beginning on or about June 1998 and continuing through and in or about July 1998, Xinjian Yi conspired and acted in concert with others, known and unknown, to violate the Regulations. The purpose of the conspiracy was to export thermal imaging cameras from the United States to the People's Republic of China without a BIS export license. The thermal imaging cameras were items subject to the Regulations and covered by export control classification number (''ECCN'') 6A003.b. As set forth in § 742.2 of the Regulations, a BIS export license was required before the thermal imaging cameras could be exported to the People's Republic of China. To accomplish the conspiracy, the conspirators, including Xinjian Yi, participated in a scheme to have a co-conspirator purchase the cameras from a U.S. distributor, have the U.S. distributor ship the cameras to a destination in the United States, and then have a co-conspirator carry the cameras by hand to the People's Republic of China without a BIS export license. In doing so, Xinjian Yi committed one violation of § 764.2(d) of the Regulations.

Charge 2: Exporting Thermal Imaging Cameras to the People's Republic of China Without the Required BIS Export License—15 CFR § 764.2(a).

In connection with the conspiracy referenced in Charge 1, in or about July 1998, Xinjian Yi exported or caused the export of the three thermal imaging cameras, items covered by ECCN 6A003.b of the Regulations, from the United States to the People's Republic of China without a license from BIS as required by § 742.4 of the Regulations. In doing so, Xinjian Yi committed one violation of § 764.2(b) of the Regulations.

Yu Yi

Charge 1: Conspiracy To Violate the Export Administration Regulations—15 CFR § 764.2(d).

Beginning in or about June 1998 and continuing through and in or about July 1998, Yu Yi conspired and acted in concert with others, known and unknown, to violate the Regulations. The purpose of the conspiracy was to export thermal imaging cameras from the United States to the People's Republic of China without a BIS export license. The thermal imaging cameras were items subject to the Regulations and covered by export control classification number (''ECCN'') 6A003.b. As set forth in § 742.2 of the Regulations, a BIS export license was required before the thermal imaging cameras could be exported to the People's Republic of China. To accomplish the conspiracy, the conspirators, including Yu Yi, participated in a scheme to have a co-conspirator purchase the cameras from a U.S. distributor, have the U.S. distributor ship the cameras to a destination in the United States, and then have a co-conspirator carry the cameras by hand to the People's Republic of China without a BIS export license. In doing so, Yu Yi committed one violation of § 764.2(d) of the Regulations.

Charge 2: Aiding and Abetting the Unauthorized Export of Thermal Imaging Cameras to the People's Republic of China—15 CFR § 764.2(b).

In connection with the conspiracy referenced in Charge 1, in or about July 1998, Yu Yi aided and abetted the unauthorized export of the three thermal imaging cameras, items covered by ECCN 6A003.b of the Regulations, from the United States to the People's Republic of China without a license from BIS as required by § 742.4 of the Regulations. In doing so, Yu Yi committed one violation of § 764.2(b) of the Regulations.

Finding of Facts

The findings of facts, unless otherwise noted, were previously determined by the issuance of the April 28, 2004 Summary Decision Order. They are essentially as follows: [3]

1. Xinjian Yi is a chinese citizen who lives in Wuhan, People's Republic of China (''PRC'').

2. At the times relevant hereto, Mr. Yi was a professor in the Department of Opto-electronic Engineering at Huazhong University of Science and Technology in Wuhan, PRC.

3. Yu Yi is the daughter of Xinjian Yi. *See* the July 21, 1999 letter from Yu Yi, which is attached hereto as Exhibit E.

4. At the times relevant hereto, Yu Yi was employed in Dallas, Texas. Ex.E.

5. In 1998, Xinjian Yi contacted Yu Yi and requested her assistance in purchasing thermal imaging cameras (''cameras'') from Accurate Locators, Inc., a U.S. company. Exs. D and E.

6. Pursuant to her father's request, Yu Yi contacted Accurate Locators and purchased one thermal imaging camera. Exs. D and E.

7. Yu Yi told Accurate Locators to send the camera to her sister, Yong Yi, who lived in Boston, Massachusetts. Exs. D and E.

8. Yu Yi wired payment for the camera to Accurate Locators. Ex.E.

9. The funds used by Yu Yi to pay for the camera were transferred to her from the PRC. Ex. E.

10. Accurate Locators shipped the camera to Yong Yi's address in Boston. Exs. D and E.

11. Xinjian Yi traveled from the PRC to Boston on or about June 1998 and stayed with his daughter, Yong Yi. Exs. B and E.

12. After arriving in Boston, Xinjian Yi took possession of the camera that had been shipped to his daughter's house in Boston. Exs. B and E.

13. Xinjian Yi then asked Yu Yi to buy two more cameras from Accurate Locators. Ex. E.

14. Pursuant to her father's request, Yu Yi purchased two additional thermal imaging cameras for him from Accurate Locators. Ex. E.

15. Yu Yi told Accurate Locators to send the two cameras using funds that had been wired to her from the PRC. Ex. E.

16. Yu Yi wired the company payment for the two cameras using funds that had been wired to her from the PRC. Ex. E.

17. Xinjian Yi received all three cameras and on or about July 1998 traveled back to the PRC with the three cameras. Ex. B.

18. Yu Yi believed the cameras were for use by Xinjian Yi for some research he was conducting at the University in the PRC. Ex. E.

19. The cameras were items subject to the regulations and classified under Export Control Classification Number 6A003.b. A copy of the licensing determinations is attached hereto as Ex. F.

20. A license from BIS was required for the export of the cameras from the United States to the PRC. Ex. F.

21. No License from BIS was obtained for the export of the cameras from the United States to PRC. Ex. B.

In addition to the above, the following findings of fact have been determined based on the parties' recent filings.

22. Yu Yi now resides in the PRC. Respondent's Brief at 5.

23. The thermal imaging cameras in question remain in the PRC. Agency's Brief, Ex. 1.

24. [Redacted. See footnote 5.] was denied an export license for the

[3] Unless otherwise noted the following designations are used: (1) Exhibits referenced are those attached with the Agency's Motion for Summary Decision, (2) any reference made to Respondents' exhibits (Opposition Motion to BIS's Motion for Summary Decision) will be designated as R–1, R–2, etc.

purchase of a [Redacted.] thermal imaging camera in 2000 (subsequent to the unlawful export in this matter) based on the determination by the Department of Commerce that ''this export would be detrimental to U.S. national security interests.'' Agency's Brief, Ex. 2.

25. Yu Yi's March 31, 1999 United States bank statement contained a total amount of $38,570.89 U.S. dollars. Agency's Brief, Ex. 6. A deposit certification in the amount of $5,040.75 U.S. dollars was made by Yu Yi to the Bank of China on May 20, 2003. Respondent's Brief, Ex. 4.

Conclusions of Law

1. Xinjian Yi and Yu Yi conspired to violate the Export Administration Regulation found under 15 CFR 764.2(d), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–420 (1991 & Supp. 2001)). They participated in a scheme to export thermal imaging cameras which are subject to the regulations and covered by an export control classification number (ECCN) requiring a BIS export license for export to the People's Republic of China.

2. Xinjian Yi violated the Export Administration Regulation found under 15 CFR 764.2(a), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–420 (1991 & Supp. 2001)) by exporting thermal imaging cameras to the People's Republic of China without having an export license as required by § 764.2(a).

3. Yu Yi violated the Export Administration Regulations found under 15 CFR 764.2(b), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–420 (1991 & Supp. 2001)) by aiding and abetting Xinjian Yi with the unauthorized export of thermal imaging cameras to the People's Republic of China.

Discussion

As held by the April 28, 2004, Summary Decision Order, it was determined that the Agency met it's burden by the submission of reliable, probative, and relevant evidence with regard to the respective two (2) charges filed against Respondents in that no genuine issue of material fact was present and the Agency was entitled to judgment as a matter of law. Following the Agency's subsequent withdrawal of the respective final third charge and the filing of the parties' briefs concerning the award of sanctions, this matter is now ripe for issuance of the Recommended Decision and Order.

Respondents argue and submit exhibits to support the view that they acted without knowledge and intent which inadvertently led to violations of the EAR. Respondents contend that the purchase of the thermal imaging cameras was based on the ability to get similar cameras at a cheaper price in the United States. The thermal imaging cameras were to be used for a university research project to develop a system for detecting and analyzing overheating problems in power distribution lines. For this reason Xinjian Yi contacted his daughter, Yu Yi, who at that time resided in the United States, to assist him with the purchase and delivery of the thermal imaging cameras from the United States to the People's Republic of China (PRC). Yu Yi's involvement is simply argued to be that of a dutiful daughter who sought not benefit, other than the gratitude of her father.

The Agency contends that Respondents' lack credibility and noted, a ''pattern of untrue statements'' allegedly made during the investigation of this matter. While no determination is made regarding Respondents' credibility, the Report of Investigative Activity (Respondent Brief, Ex. 3) indicated that Yu Yi was ''combative and evasive.'' More importantly, however, Respondents have failed to provide support for their arguments, including, but not limited to, whether or not the university research project was ever conducted or actually contemplated. At this point, the record reveals no documentary evidence, and Respondents have not provided, other than arguments, that Respondents' actions were simply innocent and inadvertent.

Respondents further argue that the ultimate destination (the PRC) for the thermal imaging cameras does not raise any terrorism concerns because the PRC is not listed as a state sponsor of terrorism by the United States. Respondents support their claim, in part, by submitting documentation to show that thermal imaging cameras, arguably of similar quality to those at issue, are widely available in the PRC. Respondents contend that even if requested, an export license would likely have been granted and that no United States national security interest would have been challenged.

The Agency disagrees and submits documentation that shows [Redacted. See footnote 5.] made a request in November 1999 for an export license for a [Redacted.] thermal imaging camera [Redacted.] This request was rejected by the Department of Commerce as ''detrimental to U.S. national security interests.'' While Respondents have submitted numerous documents that show the apparent availability of similar thermal imaging cameras in the PRC, the fact remains that the United States Department of Commerce and the Bureau of Industry and Security have classified the thermal imaging cameras in question under an ECCN requiring an export license determination and have denied such request as ''detrimental to U.S. national security interests.'' [Redacted.]

Finally, Respondents contend that the inadvertent violation of the EAR was simply the result of inexperience by novice persons who were unaware of export laws and regulations. Respondents do not have any prior history of export violations and argue that they never attempted to hide or conceal their identities or actions. Respondents' further argue an inability to pay stating that Xinjian Yi is now retired and living off his pension and Yu Yi is unemployed and raising a family. Based on all of the above, Respondents seek to totally mitigate or in the alternative, suspend or defer the monetary civil penalty assessment while seeking an export period of denial for one (1) year, (citing *In the Matter of: Basem A. Alhalabi,* 03–BIS–03, June 24, 2003 (settlement agreement denying Respondent's export privileges for a one (1) year period of time for the export of a thermal imaging camera to Syria)).

Conclusion

Responsents' filings have been well written and argued throughout this proceeding. However, Respondents fail to provide in the record the necessary legal documentation to support mitigation of the proposed civil penalty assessments. Simply put, the record does not support the Respondent's arguments to allow mitigation of the proposed civil penalty assessments. The record indicates that Yu Yi was not totally cooperative during the investigation, that the financial documentation submitted is incomplete and Yu Yi's bank statements and deposit documentation raises other questions rather than provide answers. The record also lacks any affidavits or sworn statements, including documentation of Xinjian Yi's proposed research. With regard to the cited settlement agreement for *Alhalabi,* no weight is given to the sanction for this matter. *Wherefore,* Respondents' supporting documentation is not sufficient to overcome the Agency's proposal to individually assess a civil penalty assessment of $22,000.00 and a ten (10) year period of time for denial of export privileges.

[Section on ''Recommended Sanction'' redacted. See footnote 5.]

Done and dated this 25th day of August, 2004, at New York, New York.

Walter J. Brudzinski,

Administrative Law Judge.

[FR Doc. 04–22057 Filed 9–30–04; 8:45 am]

BILLING CODE 3510–33–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.

SUPPLEMENTARY INFORMATION:

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 2004, 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	10/1/03–9/30/04
Canada:	
Carbon and Certain Alloy Steel Wire Rod, A–122–840	10/1/03–9/30/04
Hard Red Spring Wheat, A–122–847	5/8/03–9/30/04
Indonesia: Carbon and Certain Alloy Steel Wire Rod, A–560–815	10/1/03–9/30/04
Italy: Pressure Sensitive Tape, A–475–059	10/1/03–9/30/04
Mexico: Carbon and Certain Alloy Steel Wire Rod, A–201–830	10/1/03–9/30/04
Moldova: Carbon and Certain Alloy Steel Wire Rod, A–841–805	10/1/03–9/30/04
Republic of Korea: Polyvinyl Alcohol, A–580–850	3/20/03–9/30/04
The People's Republic of China:	
Barium Carbonate, A–570–880	3/17/03–9/30/04
Barium Chloride, A–570–007	10/1/03–9/30/04
Certain Cut-to-Length Carbon Steel, A–570–849	11/3/03–9/30/04
Cotton Shop Towels, A–570–003	10/1/03–9/30/04
Helical Spring Lock Washers, A–570–822	10/1/03–9/30/04
Polyvinyl Alcohol, A–570–879	3/20/03–9/30/04
Trinidad and Tobago: Carbon and Certain Alloy Steel Wire Rod, A–274–804	10/1/03–9/30/04
Ukraine: Carbon and Certain Alloy Steel Wire Rod, A–823–812	10/1/03–9/30/04
Countervailing Duty Proceedings	
Brazil: Carbon and Certain Alloy Steel Wire Rod, C–351–833	1/1/03–12/31/03
Canada: Hard Red Spring Wheat, C–122–848	3/10/03–12/31/03
Iran: Roasted In-Shell Pistachios, C–507–601	1/1/03–12/31/03
Suspension Agreements	
Russia:	
Certain Cut-to-Length Carbon Steel, A–821–808	10/1/03–9/30/04
Uranium, A–821–802	10/1/03–9/30/04

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 2004. If the Department does not receive, by the last day of October 2004, 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 24, 2004.

Holly A. Kuga,

Senior Office Director, Office 4 for Import Administration.

[FR Doc. 04–22099 Filed 9–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Five-Year (''Sunset'') Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of certain antidumping duty orders. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers these same orders and suspended investigations.

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq., Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce at (202) 482–4340, or Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the second sunset reviews of the following antidumping duty orders:

DOC *case No.*	ITC *case No.*	*Country*	*Product*
A–588–811	731–TA–432	Japan	Drafting Machines.
C–351–504	701–TA–249	Brazil	Heavy Iron Construction Castings.
A–351–503	731–TA–262	Brazil	Iron Construction Castings.
A–122–503	731–TA–263	Canada	Iron Construction Castings.
A–570–502	731–TA–265	People's Republic of China	Iron Construction Castings.
A–570–001	731–TA–125	People's Republic of China	Potassium Permanganate.
A–822–801	731–TA–340–B	Belarus	Solid Urea.
A–447–801	731–TA–340–C	Estonia	Solid Urea.
A–451–801	731–TA–340–D	Lithuania	Solid Urea.
A–485–801	731–TA–339	Romania	Solid Urea.
A–821–801	731–TA–340–E	Russia	Solid Urea.
A–842–801	731–TA–340–F	Tajikistan	Solid Urea.
A–843–801	731–TA–340–G	Turkmenistan	Solid Urea.
A–823–801	731–TA–340–H	Ukraine	Solid Urea.
A–844–801	731–TA–340–I	Uzbekistan	Solid Urea.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Department's regulations regarding sunset reviews (19 CFR 351.218) and *Sunset Policy Bulletin,* the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet web site at the following address: ''*http://ia.ita.doc.gov/sunset/.*''

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset web site for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset web site based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business

proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Dated: September 17, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–22129 Filed 9–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–602]

Aspirin from Turkey: Revocation of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Revocation of the Antidumping Duty Order on Aspirin from Turkey.

SUMMARY: On July 1, 2004, the Department of Commerce (''the Department'') initiated the second sunset review of the antidumping duty order on aspirin from Turkey (69 FR 39905). Because the domestic interested parties did not participate in this sunset review, the Department is revoking this antidumping duty order.

EFFECTIVE DATE: August 20, 2004

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq., Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4340.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

The Department's procedures for the conduct of sunset reviews are set forth in Section 751(c) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.218. Guidance on methodological and analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3 *Policies regarding the Conduct of Five–Year Sunset Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

For purposes of this sunset review, the product covered by this order is acetylsalicylic acid (aspirin) containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the Handbook of Nonprescription Drugs, eighth edition, American Pharmaceutical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is currently classified under the Harmonized Tariff Schedule of the United States (''HTS'') subheading 2918.22.10. The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

Background

On August 25, 1987, the Department issued an antidumping duty order on aspirin from Turkey (52 FR 32030). On August 20, 1999, the Department published its notice of continuation of the antidumping duty order, following a sunset review. *See Continuation of Antidumping Duty Order: Aspirin from Turkey*, 64 FR 45508 (August 20, 1999). Pursuant to section 751(c) of the Act and 19 CFR part 351, the Department initiated the second sunset review of this order by publishing the notice of the initiation in the **Federal Register** (*See Initiation Notice*, 69 FR 39905 (July 1, 2004)). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of a sunset review of this order.

We received no response from the domestic industry by the deadline dates (*see* 19 CFR 351.218(d)(1)(i)). As a result, the Department determined that no domestic party intends to participate in the sunset review, and on July 20, 2004, we notified the International Trade Commission, in writing, that we intended to issue a final determination revoking this antidumping duty order. *See* 19 CFR 351.218(d)(1)(iii)(B).

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the order. Because no domestic interested party filed a notice of intent or substantive response, the Department finds that no domestic interested party is participating in this review, and we are revoking this antidumping duty order effective August 20, 2004, the fifth anniversary of the date of the determination to continue the order, consistent with 19 CFR 351.222(i)(2)(i) and section 751(c)(6)(A)(iii) of the Act.

Effective Date of Revocation

Pursuant to sections 751(c)(3)(A) and 751(c)(6)(A)(iii) of the Act, and 19 CFR 351.222(i)(2)(i), the Department will instruct the U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after August 20, 2004. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five–year (''sunset'') review and notice are in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: September 24, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2459 Filed 9–30–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Notice of Final Results of Antidumping Duty Changed Circumstances Review: Fresh Garlic From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of antidumping duty changed circumstances review.

SUMMARY: The Department of Commerce (the Department) has determined that Heze Ever-Best International Trade Co., Ltd. (Heze Ever-Best), is the successor-in-interest to Shandong Heze International Trade and Developing Company (Shandong Heze) and, as such, entries of its merchandise are entitled to Shandong Heze's cash-deposit rate.

EFFECTIVE DATE: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Sochieta Moth or Brian Ledgerwood at (202) 482–0168 or (202) 482–3836, respectively; China/NME Enforcement Group, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 2004, Shandong Heze requested that the Department initiate a changed-circumstances review pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 to confirm that Heze Ever-Best is the successor-in-interest to Shandong Heze for purposes of determining antidumping duty liabilities. On July 28, 2004, the Department requested additional information from Heze Ever-Best concerning the circumstances of the name change. On August 4, 2004, Heze Ever-Best responded to our request for information. On August 25, 2004, the Department published a joint initiation and preliminary results of review pursuant to 19 CFR 351.221(c)(3)(ii) and preliminarily determined that Heze Ever-Best is the successor-in-interest to Shandong Heze for purposes of determining antidumping duty liability in this proceeding. *See Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Fresh Garlic from the People's Republic of China,* 69 FR 52229 (August 25, 2004) (*Initiation Notice and Preliminary Results*). The Department did not receive any comments regarding its preliminary results of review.

Scope of the Review

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

In order to be excluded from antidumping duties, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use, or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed, must be accompanied by declarations to the United States.

Final Results of Changed Circumstances Review

Pursuant to 751(b)(1) of the Act and 19 CFR 351.216(e), we find we find that Heze Ever-Best is the successor-in-interest to Shandong Heze and, as such, entries of its merchandise are entitled to Shandong Heze's cash-deposit rate. For a complete discussion of the basis of this decision, *see Initiation Notice and Preliminary Results.* Because we received no comments, we have adopted the same position in these final results.

Effective as of the date of these final results, we will instruct U.S. Customs and Border Protection to assign Heze Ever-Best the same 43.3% antidumping duty cash-deposit rate applicable to Shandong Heze. The cash-deposit determination from this changed-circumstances review will apply to all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed-circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy: Final Results of Antidumping Duty Changed Circumstances Review,* 68 FR 25327 (May 12, 2003).

This notice serves as a final reminder to parties to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(5). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216(e) and 19 CFR 351.221(c)(3)(i).

Dated: September 24, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2460 Filed 9–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Notice of Extension of Preliminary Results of New Shipper Antidumping Duty Reviews: Honey from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting new shipper antidumping duty reviews of honey from the People's Republic of China (PRC) in response to requests by respondents Anhui Honghui Foodstuff (Group) Co., Ltd. (Anhui Honghui), Eurasia Bee's Products Co., Ltd. (Eurasia), Inner Mongolia Youth Trade Development Co., Ltd. (Inner Mongolia Youth), and Jiangsu Kanghong Natural Healthfoods Co., Ltd. (Jiangsu Kanghong). These reviews cover shipments to the United States for the period December 1, 2002, to November 30, 2003, by these four respondents. For the reasons discussed below, we are extending the preliminary results of these new shipper reviews by an additional 53 days, to no later than November 19, 2004.

EFFECTIVE DATE: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Anya Naschak at (202) 482–6375 or Kristina Boughton at (202) 482–8173; AC/CVD Enforcement Office 9, NME/China Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Background

The Department received timely requests from Anhui Honghui, Eurasia, Foodworld International Club Limited (Foodworld), Inner Mongolia Youth, Jiangsu Kanghong, and Shanghai Shinomiel International Trade Corporation (Shanghai Shinomiel), in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on honey from the PRC, which has a December annual anniversary month and a June semiannual anniversary month. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On January 30, 2004, the Department found that the requests for review with respect to Anhui Honghui, Eurasia, Inner Mongolia Youth, and Jiangsu Kanghong met all the regulatory requirements set forth in 19 CFR 351.214(b) and initiated these new shipper antidumping duty reviews covering the period December 1, 2002, through November 30, 2003. The Department did not initiate new shipper reviews for the remaining two companies (i.e., Foodworld and Shanghai Shinomiel). *See Honey From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 69 FR 5835 (February 6, 2004). In June and July 2004, the Department conducted verifications of the four companies under review in these proceedings. On June 1, 2004, the Department published an extension notice for the preliminary results of these new shipper antidumping duty reviews. *See Honey From the People's Republic of China: Notice of Extension of Preliminary Results of New Shipper Antidumping Duty Reviews*, 69 FR 30881. The preliminary results are currently due no later than September 27, 2004.

Extension of Time Limits for Preliminary Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated (19 CFR 351.214 (i)(2)). The Department has determined that this case is extraordinarily complicated, and the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. The Department needs additional time because of the continuing complexity of some of the issues. In particular, the Department needs additional time to research and analyze the appropriate surrogate value for raw honey. Given the issues in this case, the Department finds that this case is extraordinarily complicated, and cannot be completed within the statutory time limit.

Accordingly, the Department is extending the time limit for the completion of the preliminary results by an additional 53 days, to November 19, 2004, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2). The final results will, in turn, be due 90 days after the date of issuance of the preliminary results, unless extended.

Dated: September 24, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2458 Filed 9–30–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092804A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notification of a proposal for an Exempted Fishing Permit (EFP) to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to issue an EFP that would allow two vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the NE multispecies Georges Bank (GB) regulated mesh area minimum mesh size and gear requirements, the NE multispecies closed area restrictions, and the NE multispecies minimum fish size requirements. The applicant proposes to conduct a study of an experimental haddock separator trawl, a bycatch reduction device, in order to examine the effectiveness of this type of gear at reducing the catch of Atlantic cod, and other similarly behaving groundfish, when directing on haddock. The EFP

would allow these exemptions for two commercial vessels for 54 sea sampling days. All experimental work would be monitored by University of Massachusetts, Dartmouth, School for Marine Science and Technology (SMAST) personnel. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before October 18, 2004.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA667@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on SMAST EFP Proposal for Haddock Separator Trawl Study (DA–667).'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on SMAST EFP Proposal for Haddock Separator Trawl Study (DA–667).'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, phone: 978–281–9326, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted by SMAST on August 23, 2004. The EFP would exempt two federally permitted commercial fishing vessels from the following requirements in the NE Multispecies FMP: NE multispecies GB regulated mesh area minimum mesh size and gear requirements specified at § 648.80(a)(4) to allow them to use a codend modified with a horizontal net panel (the experimental haddock separator panel) and a small mesh cover for quantifying catch composition; the NE multispecies closed area restrictions specified at § 648.81(a) to allow them temporary access to Closed Area I for the purposes of conducting this study; and the NE multispecies minimum fish size requirements specified at § 648.83(a) to allow them to temporarily retain sub-legal sized fish for measurement.

The goal of this study is to assess the selectivity of a bycatch reduction device in the NE groundfish fishery. Three factors would be examined in this study: (1) Net selectivity—examination of catch composition of the experimental and control nets; (2) trawl duration—tow duration would be modified to test catch rates based on tow durations of one hour, two hours, and three hours; and (3) seasonal variation—the study would be conducted during fall, winter, and spring, to determine if there are any seasonal differences in catch or fish behavior. The specific trawl design to be tested is referred to as a haddock separator trawl. The separation panel and 2–inch (5.08–cm) mesh cover would be sewn into the extension and codend of a conventional trawl net designed with 6.0–inch (15.24–cm) mesh in the fishing circle and 6.5–inch (16.5–cm) mesh in the codend. The codend would be further modified to create an upper and lower codend.

The study would begin in October and continue through July 31, 2005. During the study, the vessels would perform side-by-side tows. The number of tows would average approximately 8.3 per day. There would be 18 sea sampling days per season, over three seasons (fall, winter, and spring), for a total of 54 sea sampling days (not including steaming time). There would be 150 side-by-side tows per season, for a total of 450 tows per vessel. The tow durations would be one, two, and three hours, with 50 side-by-side tows of each duration per season. The vessels would fish in GB Closed Area I and the offshore fishing grounds represented by 30–minute squares 79, 80, 81, 96, 97, 98, 111, 112, and 113. All fish retained by the upper and lower codends would be counted, weighed, and measured. All legal catch would be landed and sold, consistent with the current daily and trip possession and landing limits. Current regulations restrict vessels fishing on GB to landing no more than 1,000 lb (454 kg) of cod per DAS, up to a maximum of 10,000 lb (4,536 kg) per trip, and no more than 3,000 lb (1,361 kg) of haddock per DAS, up to a maximum of 30,000 lb (13,608 kg) per trip from May 1 to September 30, and no more than 5,000 lb (2,268 kg), up to a maximum of 50,000 lb (22,680 kg) per trip from October 1 to April 30. Undersized fish would be returned to the sea as quickly as possible after measurement. The participating vessels would be required to report all landings in their Vessel Trip Reports.

The target fishery is the groundfish mixed-species fishery. The target species are haddock and cod. The applicant estimates the total amount of the main species that would be expected to be caught under this EFP are: 426,000 lb (193,230 kg) of haddock; 75,240 lb (34,128 kg) of Atlantic cod; and 11,340 lb (5,144 kg) of American plaice. Other commercially important fish commonly found in the groundfish mixed-species fishery are expected to be caught incidentally. The incidental catch is expected to be comprised of skates, monkfish, witch flounder, winter flounder, spiny dogfish, and pollock.

The applicant is preparing an Environmental Assessment (EA) that will analyze the impacts of the proposed experimental fishery on the human environment. This EA will examine whether the proposed activities are consistent with the goals and objectives of the FMP, whether they would be detrimental to the well-being of any stocks of fish harvested, and whether they would have any significant environmental impacts. The EA will also examine whether the proposed experimental fishery would be detrimental to essential fish habitat, marine mammals, or protected species.

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

Dated: September 28, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2462 Filed 9–30–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

September 28, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854);

Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for the undoing of special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 69 FR 4926, published on February 2, 2004). Also see 68 FR 59926, published on October 20, 2003.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 28, 2004.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 2003, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on January 1, 2004 and extends through December 31, 2004.

Effective on October 1, 2004, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
334/634	1,456,058 dozen.
335	578,136 dozen.
345/845	395,523 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2003.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E4–2461 Filed 9–30–04; 8:45 a.m.

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Nationwide TRICARE Demonstration Project

AGENCY: Office of the Secretary of Defense for Health Affairs/TRICARE Management Activity, DoD.

ACTION: Notice extending deadline for demonstration project.

SUMMARY: On Monday, November 5, 2001, the Department of Defense (DoD) published a notice of a nationwide TRICARE demonstration project (66 FR 55928–55930). On Wednesday, November 12, 2003, the DoD published a notice (68 FR 64087) to extend through October 31, 2004, the demonstration project scheduled to end on November 1, 2003. This notice is to advise interested parties of the continuation of the demonstration project in which the DoD Military Health System addresses unreasonable impediments to the continuity of health care encountered by certain family members of Reservists and National Guardsmen called to active duty in support of a federal/contingency operation. The demonstration previously scheduled to end on October 31, 2004, is now extended through October 31, 2005.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity, TRICARE Operations Directorate at (703) 681–0039.

SUPPLEMENTARY INFORMATION: The continued deployment of about 160,000 troops in support of Noble Eagle/Operation Enduring Freedom and Operation Iraqi Freedom in FY 2004 and FY 2005 warrants the continuation of the demonstration to support the health care needs and morale of family members of activated Reservists and Guardsmen. The impact if the demonstration is not extended includes higher out-of-pocket costs and potential inability to continue to use the same provider for ongoing care. There are three separate components to the demonstration. First, those who participate in TRICARE Standard will not be responsible for paying the TRICARE Standard deductible. By law, the TRICARE Standard deductible for active duty family members in $150 per individual, $300 per family ($50/$150 for E4s and below). The second component extends TRICARE payments up to 115 percent of the TRICARE maximum allowable charge, less the applicable patient copayment, for care received from a provider that does not participate (accept assignment) under TRICARE to the extent necessary to ensure timely access to care and clinically appropriate continuity of care. The third component is waiver of the non-availability statement requirement for non-emergency inpatient care. Information and experience gained as part of this demonstration project will provide the foundation for longer-term solutions in the event of future national emergencies. This demonstration project is being conducted under the authority of 10 U.S.C. 1092.

Dated: September 28, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–22167 Filed 9–30–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is proposing to amend the Preamble to its Compilation of Privacy Act systems of records notices. The entries being amended are **FOR FURTHER ASSISTANCE:** and **POINT OF CONTACT:**.

DATES: This proposed action will be effective without further notice on November 1, 2004 unless comments are received which result in contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6504.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific change to the Preamble is set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Within the Preamble to the Department of the Army's Compilation of Privacy Act systems of records notices, revised the following entries to read as follows:

FOR FURTHER ASSISTANCE:

Any questions should be addressed to the Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

POINT OF CONTACT:

Ms. Janice Thornton at (703) 428–6504/DSN 328–6504.

[FR Doc. 04–21323 Filed 9–30–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 1, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 27, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Pre-Elementary Education Longitudinal Study (PEELS).

Frequency: Varies.

Affected Public: Individuals or household; Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 6,640.

Burden Hours: 4,486.

Abstract: PEELS will provide the first national picture of experiences and outcomes of three to five year old children in early childhood special education. The study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization with data from parents, service providers, and teachers.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2590. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–2447 Filed 9–30–04; 8:45 am]

BILLING CODE 4000—1–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–878–000]

Equus Power I, L.P.; Notice of Issuance of Order

September 24, 2004.

Equus I, L.P. (Equus) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of energy, capacity, and ancillary services at market-based rates. Equus also requested waiver of various Commission regulations. In particular, Equus requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Equus.

On July 16, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Equus should file a motion to intervene or protest 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, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is October 4, 2004.

Absent a request to be heard in opposition by the deadline above, Equus is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Equus, compatible with the public interest, and

is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Equus' issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2454 Filed 9–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–622–002]

National Fuel Gas Supply Corporation; Notice of Corrections to Non-Conforming Service Agreements

September 27, 2004.

On September 7, 2004, National Fuel Gas Supply Corporation filed to correct omissions from the red-lined version of non-conforming Service Agreement No. F10681 between it and EOG Resources, Inc., submitted on February 25, 2004, in Docket No. RP03–622–002 and accepted by Director Letter Order dated March 23, 2004.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2451 Filed 9–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1785–000]

Thermo Cogeneration Partnership, L.P.; Notice of Issuance of Order

September 24, 2004.

Thermo Cogeneration Partnership, L.P. (Thermo Cogeneration) filed an application to make wholesale sales of electric energy and capacity at market-based rates. Thermo Cogeneration also requested waiver of various Commission regulations. In particular, Thermo Cogeneration requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Thermo Cogeneration.

On July 5, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Rates-West, granted the request for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Thermo Cogeneration should file a motion to intervene or protest 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, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is October 4, 2004.

Absent a request to be heard in opposition by the deadline above, Thermo Cogeneration is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Thermo Cogeneration, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Thermo Cogeneration's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2455 Filed 9–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1101–005, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Filings

September 24, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PJM Interconnection, L.L.C.

[Docket No. ER03–1101–005]

Take notice that on September 22, 2004, PJM Interconnection, L.L.C. (PJM) filed the second of four six-month reports concerning the effects of PJM's credit policy for virtual bidders, as

required by the Commission's September 22, 2003 order in *PJM Interconnection, L.L.C.,* 104 FERC ¶ 61,309 (2003).

PJM states that copies of this filing have been served on all persons listed on the official service list compiled by the Secretary in this proceeding.

Comment Date: 5 p.m. Eastern Time on October 13, 2004.

2. Alabama Power Company

[Docket No. ER04–1002–001]

Take notice that, on September 22, 2004, Alabama Power Company (Alabama Power) submitted a compliance filing pursuant to *Alabama Power Company,* 108 FERC ¶ 61,222 (2004), issued September 7, 2004 in Docket Nos. ER04–664–000 and ER04–1002–000. Alabama Power states that this filing serves to make a Commission approved specification sheet compliant with Order No. 614.

Alabama Power states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on October 13, 2004.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–1165–001]

Take notice that on September 22, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing, pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, additional revisions to section 2.2 of the Midwest ISO Open Access Transmission Tariff (the Midwest ISO OATT) to correct typographical errors in the original filing made on August 31, 2004.

Midwest ISO states that the filing has been served electronically upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions in the region. In addition, Midwest ISO states that the filing has been posted electronically on the Midwest ISO's Web sites at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter.

Comment Date: 5 p.m. Eastern Time on October 8, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2456 Filed 9–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC04–105–000, et al.]

Access Energy Cooperative, et al.; Electric Rate and Corporate Filings

September 23, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Access Energy Cooperative

[Docket No. AC04–105–000]

Between June 21, 2004 and September 2, 2004, the above-referenced electric cooperatives filed motions that requested a waiver or exemption from the requirements of Order No. 646. 106 FERC ¶ 61,113 (2003). Interested parties may file a petition to intervene in each individual docket.

Comment Date: 5 p.m. eastern standard time on October 7, 2004.

2. Llano Estacado Wind, LP

[Docket No. EG04–102–000]

Take notice that on September 20, 2004, Llano Estacado Wind, LP (Applicant) filed with the Commission an application for redetermination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's regulations. Applicant states that it is a limited partnership organized under the laws of the State of Texas that is engaged directly and exclusively in owning and operating an 80 MW wind-powered electric generating facility located near White Deer, Texas (Facility) and in selling electric energy at wholesale from the Facility.

Comment Date: 5 p.m. eastern standard time on October 12, 2004.

3. Michigan Electric Transmission Company, LLC

[Docket Nos. ER01–2126–009 and ER01–2375–008]

Take notice that on September 22, 2004, Michigan Electric Transmission Company, LLC (METC) submitted a compliance filing pursuant to the Commission's order issued August 23, 2004 in Docket Nos. ER01–2126–005, *et al.,* 108 FERC ¶ 61,205.

METC states that it has served a copy of its filing on both Renaissance Power, LLC and New Covert Generating Company, LLC.

Comment Date: 5 p.m. eastern standard time on October 13, 2004.

4. Credit Suisse First Boston International

[Docket No. ER01–2656–002]

Take notice that on September 20, 2004, Credit Suisse First Boston International (CSFBI) tendered for filing a triennial market power analysis pursuant to the Commission's orders granting CSFBI market-based rate authority. CSFBI also submitted for Commission acceptance a revised market-based rate tariff that incorporates the Commission's new market behavior rules adopted in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003) and includes provisions to allow CSFBI to engage in sales of ancillary services at market-based rates under terms and conditions consistent with those approved by the Commission. CSFBI states that the filing also revises CSFBI's market-based rate tariff to comply with the Commission's tariff formatting rules established in Order No. 614.

CSFBI states that a copy of this filing was served on the New York State Public Service Commission, Pennsylvania Public Utility Commission, the Connecticut Department of Public Utility Control, the New Jersey Board of Public Utilities, the Massachusetts Department of Telecommunications and Energy and the Maine Public Utilities Commission.

Comment Date: 5 p.m. eastern standard time on October 12, 2004.

5. California Electric Marketing, LLC

[Docket No. ER01–2690–002]

Take notice that on September 21, 2004, California Electric Marketing, LLC, (CalEM), submitted for filing its triennial updated market analysis and revisions to its FERC Rate Schedule No. 1 to incorporate the Market Behavior Rules set forth in the Commission's orders issued November 17, 2003 and May 19, 2004 in Docket Nos. EL01–118–000, EL01–118–001, and EL01–118–003, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003), order on reh'g, 107 FERC ¶ 61,175 (2004). CalEM requests an effective date of September 22, 2004.

Comment Date: 5 p.m. eastern standard time on October 12, 2004 .

6. FortisOntario, Inc., FortisUS Energy Corporation

[Docket No. ER03–775–002, Docket No. ER00–136–001]

Take notice that on September 20, 2004, FortisOntario, Inc. (FortisOntario) and FortisUS Energy Corporation (FortisUS), submitted their updated market power analysis. FortisUS Energy Corporation also filed amendments to its market-based rate tariff to incorporate the Commission's Market Behavior Rules, to comply with the Commission's Order No. 614, and to adjust for certain recent changes in the New York Independent System Operator and ISO New England Inc. markets.

FortisOntario states that copies of the filing were served upon FortisOntario, Inc. and FortisUS Energy Corporation's jurisdictional customers.

Comment Date: 5 p.m. eastern standard time on October 12, 2004.

7. Southern California Edison Company

[Docket No. ER04–1235–000]

Take notice that on September 21, 2004, Southern California Edison Company (SCE) submitted for filing a Service Agreement for Wholesale Distribution Service (WDAT Service Agreement), Service Agreement No. 125 under the Wholesale Distribution Access Tariff, FERC Electric Tariff, First Revised Volume No. 5, between SCE and the City of Corona, California (Corona). SCE states that the purpose of the WDAT Service Agreement is to specify the terms and conditions under which SCE will provide Wholesale Distribution Service from the California Independent System Operator Controlled Grid at SCE's Mira Loma Substation to a SCE-Corona 12 kV interconnection serving a new development known as Corona Dos Lagos.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California and Corona.

Comment Date: 5 p.m. eastern standard time on October 12, 2004.

8. Southern Company Services, Inc.

[Docket No. ER04–1236–000]

Take notice that on September 21, 2004, Southern Company Services, Inc., (SCS) acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Operating Companies), submitted for filing replacement tariff sheets concerning the accrual of post-retirement benefits other than pensions as set forth in Statement of Financial Accounting Standard No. 106 by the Financial Accounting Standards Board in agreements and tariffs of the Operating Companies (jointly and individually).

Comment Date: 5 p.m. eastern standard time on October 12, 2004.

9. LSP Energy Limited Partnership

[Docket No. ER98–2259–004]

Take notice that on September 21, 2004, LSP Energy Limited Partnership (LSP Energy) filed with the Commission a notice of change in status in connection with the sale by Granite II Holding, LLC to CEP Batesville Acquisition, LLC of all of the issued and outstanding membership interests in LSP Batesville Holding, LLC.

Comment Date: 5 p.m. eastern standard time on October 12, 2004.

10. MDU Resources Group, Inc.

[Docket No. ES04–50–000]

Take notice that on September 17, 2004, MDU Resources Group, Inc. (MDU Resources) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue a combination of securities not to exceed $750 million in the aggregate and not to exceed the following amounts:

(1) $750,000,000 worth of common stock;

(2) $112,500,000 worth of preferred stock;

(3) $262,500,000 worth of new mortgage bonds, new senior notes, other secured debt securities, subordinated and unsubordinated unsecured debentures, debt securities, notes, or other evidences of indebtedness and/or guarantees from time to time;

(4) $262,500,000 worth of other stock purchase contracts, stock purchase units, and/or warrants; and

(5) $262,500,000 worth of other securities, including, without limitation, hybrid securities and any related guarantees.

MDU Resources also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: 5 p.m. eastern standard time on October 7, 2004.

11. Wells Rural Electric Company

[Docket No. ES04–51–000]

Take notice that on September 17, 2004, Wells Rural Electric Company (Wells) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt in the form of a perpetual line of credit from the National Rural Utilities Cooperative Finance Corporation (CFC) in an amount not to exceed $3,500,000.

Wells also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: 5 p.m. eastern standard time on October 13, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2457 Filed 9–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–000, et al.; Docket No. EL00–98–000, et al.; Docket No. ER03–746–000, et al.]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services, Into Markets Operated by the California, Independent System Operator, and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; California Independent System Operator Corporation; Notice of Technical Conference

September 27, 2004.

The Federal Energy Regulatory Commission staff is convening a technical conference to discuss with the California Independent System Operator Corporation (CAISO) and market participants and facilitate a better understanding of several aspects of the CAISO's proposed methodology for allocating the fuel cost allowance. In *San Diego Gas & Electric Co.* v. *Sellers of Energy & Ancillary Serv., et al.*, 107 FERC 61,166 (2004), the Commission directed the CAISO to develop a methodology to allocate recovery of the fuel allowance. The CAISO's compliance filing, and the numerous protests and comments submitted in response thereto, raise new issues, including: the netting of sales and purchases, the mechanics of the implementation of the fuel cost allowance offset, and the consistency of the CAISO's proposed methodology for allocating fuel cost allowance with the intent of the refund proceeding. Participants are requested to restrict their contributions to this conference to the issues related to the process and mechanics of allocating recovery of the fuel cost allowance within the framework of the refund proceeding. A separate notice will be issued by the Commission to announce the final agenda of the staff technical conference.

The staff technical conference will be held on October 7, 2004, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC beginning at 9 a.m. (e.s.t.) in a room to be announced at a later date.

The conference is open for the public to attend, and registration is not required. For more information about the conference, please contact: Olga Kolotushkina, Office of General Counsel, Federal Energy Regulatory Commission at (202) 502–6024 or *shawn.bennett@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2453 Filed 9–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–699–000, ER03–1272–002, and ER03–1272–003]

Entergy Services, Inc.; Notice of Technical Conference

September 27, 2004.

Notice is hereby provided that the Commission will convene a technical conference, to be held on Friday, October 8, 2004 in Jackson, Mississippi. The conference will be held from 9:30 a.m. to 4 p.m. (Central Time) at the Mississippi Department of Education building, 359 N. West Street, Jackson, Mississippi. Members of the Federal Energy Regulatory Commission are expected to participate, along with Entergy's state and local utility regulators.

The purpose of the conference is to discuss Entergy's Wholesale Procurement Process (WPP) and Independent Coordinator of Transmission (ICT) proposals in Docket No. ER04–699, including issues raised at the technical conference held on July 30 and 31, 2004 in New Orleans, Louisiana. Parties may also discuss Entergy's filings, in Docket Nos. ER03–1272–002 and ER03–1272–003, in compliance with Commission orders approving the implementation of the Available Flowgate Capability (AFC) methodology to allocate transmission service.[1]

The Commission will provide further information on the conference, including an agenda, in a subsequent notice. Parties will have the opportunity to file supplemental comments following the conclusion of the conference.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the commission's e-Library (FERRIS) seven calendar days after FERC receives the transcript.

All interested persons may attend. For additional information, please contact Anna Cochrane at (202) 502–6357; *anna.cochrane@ferc.gov* or Sarah McKinley at (202) 502–8004; *sarah.mckinley@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2452 Filed 9–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project—Post-2008 Resource Pool

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed procedures and call for applications.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), is seeking comments on proposed procedures and calling for applications from preference entities interested in an allocation of Federal power from the Parker-Davis Project. Western's Energy Planning and Management Program (Program) provides for establishing project-specific resource pools and allocating power from these pools to preference contractors. Under the Program, Western is proposing allocation criteria for comment, and is also seeking applications from entities interested in a Federal power resource pool allocation of the long-term marketable resource of the Parker-Davis Project (P-DP) that will become available October 1, 2008. Preference entities applying for an allocation of power must submit formal applications as outlined below.

[1] *Entergy Services, Inc.,* 106 FERC ¶ 61,115 (2004) and Entergy Services Inc., 108 FERC ¶ 61,046 (2004).

DATES: Entities interested in commenting on proposed procedures must submit written comments to Western's Desert Southwest Regional Office at the address below. Entities applying for an allocation of Western power must submit an application to the address below. Western will accept written comments and/or applications received on or before December 30, 2004. Western reserves the right to not consider any comments and/or applications received after this date. Western will hold public information forums and public comment forums on the proposed procedures and applications.

The public information forum dates are:

1. October 25, 2004, 1 p.m., Las Vegas, NV.
2. October 26, 2004, 1 p.m., Phoenix, AZ.
3. October 27, 2004, 1 p.m., Ontario, CA.

Following the public information forums, Western will hold three public comment forums. The dates for these forums are as follows:

1. November 30, 2004, 1 p.m., Las Vegas, NV.
2. December 1, 2004, 1 p.m., Phoenix, AZ.
3. December 2, 2004, 1 p.m., Ontario, CA.

ADDRESSES: Submit applications for an allocation of Western power and written comments regarding these proposed procedures to Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457. You may also fax applications or comments to Western at (602) 352–2490 or e-mail them to *post2008pdp@wapa.gov.* Application forms are available upon request or may be accessed at *http://www.wapa.gov/dsw/pwrmkt/FRN.* Applicants are encouraged to use the application form provided at the above Web site.

The public information and comment forum locations are:

1. Las Vegas—Las Vegas Tropicana, 3801 Las Vegas Boulevard South, Las Vegas, NV.
2. Phoenix—Western Area Power Administration, Desert Southwest Regional Office, 615 South 43rd Ave, Phoenix, AZ.
3. Ontario—Hilton Ontario Airport, 700 N. Haven Avenue, Ontario, CA.

FOR FURTHER INFORMATION CONTACT: Roy Tinsley, Project Manager, Desert Southwest Region, Western Area Power Administration, 615 South 43rd Ave, Phoenix, AZ 85005, telephone (602) 352–2788, e-mail *post2008pdp@wapa.gov.*

The current Parker-Davis Project (P–DP) marketing plan and related information are available online at *http://www.wapa.gov/dsw/pwrmkt.* Western will also post all public comments from this process on this Web site after the close of the comment period.

SUPPLEMENTARY INFORMATION: On October 20, 1995, Western published the Final Program Rule for the Program, which became effective on November 20, 1995 (60 FR 54151, October 20, 1995). Subpart C–Power Marketing Initiative of the Program, Final Rule, 10 CFR part 905, provides for project-specific resource pools and allocations of power from these pools to eligible preference contractors. Western published its decision to apply the Program Power Marketing Initiative (PMI) to the P–DP on May 5, 2003 (68 FR 23709). This decision created a resource pool of approximately 17 megawatts (MW) of summer season capacity and 13 MW of winter season capacity based on estimates of current P–DP hydroelectric resource availability, for allocation to eligible preference contractors for 20 years beginning October 1, 2008. Traditionally, Western has marketed allocations of firm power to eligible preference contractors to encourage the most widespread use, following Federal Reclamation Law. Western will make allocations to preference contractors under the current P–DP Marketing Plan (49 FR 50582, 52 FR 7014, 52 FR 28333) and the Program. Western intends to carry forward the key principles and criteria of the Marketing Plan and the Program, except as modified in this notice.

Proposed Post—2008 Resource Pool Allocation Procedures

These proposed procedures for the P–DP resource pool address (1) eligibility criteria; (2) how Western plans to allocate the resource pool to eligible applicants; and (3) the terms and conditions under which Western will sell the allocated power.

I. Amount of Pool Resources

As of October 1, 2008, Western proposes to allocate, as long-term firm power to eligible preference contractors, approximately 17 MW of summer season capacity and 13 MW of winter season capacity, based on estimates of current P–DP hydroelectric resource availability. Firm power means capacity and associated energy allocated by Western and subject to the terms and conditions specified in the Western P–DP electric service contract. The associated energy will equal 3,441 kilowatt hours per kilowatt (kWh/kW) in summer and 1,703 kWh/kW in winter, based on current marketing plan criteria. This new resource pool includes 0.869 MW of summer withdrawable capacity and 0.619 MW of winter withdrawable capacity. Withdrawable power is power reserved for United States priority use, but not presently needed. Priority use power is capacity and energy required for the development and operation of Bureau of Reclamation (Reclamation) projects as required by legislation and irrigation pumping on certain Indian lands. When priority-use power is requested, Western will substantiate that the power to be withdrawn will be used for the purposes specified in the Conformed Criteria (49 FR 50586) and then, upon a 2-year written advance notice, Western may withdraw the necessary amount of power on a *pro-rata* basis (52 FR 28336).

II. General Eligibility Criteria

Western proposes to apply the following general eligibility criteria to applicants seeking a firm power allocation under the proposed Post-2008 Resource Pool Allocation Procedures:

A. Qualified applicants must be preference entities as defined by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. First consideration will be given to qualified applicants in the P–DP marketing area who do not have a contract with Western for Federal power resources or are not a member of a parent entity that has a contract with Western for Federal power resources.

C. Qualified applicants, except Native American tribes, must be ready, willing, and able to receive and distribute or use power from Western. Ready, willing, and able means that the potential customer has the facilities needed for the receipt of power or has made the necessary arrangements for transmission and/or distribution service; and the potential customer's power supply contracts with third parties permit the delivery of Western's power (60 FR 54173). End users must have the necessary arrangements for transmission and/or distribution service in place by April 1, 2008.

D. Qualified applicants that desire to purchase power from Western for resale to consumers, including cooperatives, municipalities, public utility districts, and public power districts must have utility status by October 1, 2005; and must have the necessary arrangements for transmission and/or distribution service in place by April 1, 2008. Native American tribes are not subject to this

requirement. Utility status means the applicant has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis for resale to retail customers.

E. Qualified Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975, 25 U.S.C. 450b, as amended.

III. General Allocation Criteria

Western proposes to apply the following general allocation criteria to applicants seeking an allocation of firm power under the proposed Post-2008 Resource Pool Allocation Procedures.

A. Allocations of firm power will be made in amounts as determined solely by Western in exercise of its discretion under Federal Reclamation Law.

B. An allottee may begin service to purchase firm power only upon the execution of an electric service contract between Western and the allottee, and satisfaction of all conditions in that contract.

C. Firm power will be allocated under these procedures to qualified applicants following preference provisions of section 9(c) of the Reclamation Project Act of 1939, in the following order of priority:

1. Preference entities in the P–DP marketing area that do not have a contract with Western for Federal power resources or are not a member of a parent entity that has a contract with Western for Federal power resources.

2. Preference entities in the P–DP marketing area that have a contract with Western for Federal power resources or are a member of a parent entity that has a contract with Western for Federal power resources.

3. Preference entities in adjacent Federal marketing areas that do not have a contract with Western for Federal power resources or are not a member of a parent entity that has a contract with Western for Federal power resources.

D. The P–DP marketing area includes:

- All of the drainage area considered tributary to the Colorado River below a point 1 mile downstream from the mouth of the Paria River (Lee's Ferry).
- The State of Arizona, excluding that portion lying in the Upper Colorado River Basin, except for that portion of the Upper Colorado River Basin in which the Navajo Generating Station is located. The Navajo Generating Station is included in the power marketing area as a resource only.
- That portion of the State of New Mexico lying in the Lower Colorado River Basin and the independent Quemada Basin lying north of the San Francisco River drainage area.
- Those portions of the State of California lying in the Lower Colorado River Basin and in drainage basins of all streams draining into the Pacific Ocean south of Calleguas Creek.
- Those parts of the States of California and Nevada in the Lahontan Basin including and lying south of the drainages of Mono Lake, Adobe Meadows, Owens Lake, Amargosa River, Dry Lakes, and all closed independent basins or other areas in southern Arizona not tributary to the Colorado River.

For a map of the P–DP marketing area, visit Western's Web site at *http://www.wapa.gov/dsw/pwrmkt.*

E. Western will base allocations made to qualified applicants on the actual loads experienced in calendar year 2003 and will apply current marketing plan criteria and Program criteria to these loads, except as stated in this notice.

F. Western will base allocations made to Native American tribes on the actual load experienced in calendar year 2003. Western has the right to use estimated load values should actual load data not be available. Western will review and adjust, where necessary, inaccurate estimates received during the allocation process.

G. New contractors must execute electric service contracts within 6 months of receiving a contract offer from Western, unless Western agrees otherwise in writing.

H. The resource pool will be dissolved subsequent to the closing date for executing firm power contracts. Firm power not under contract by the closing date will be used as determined by Western.

I. The minimum allocation shall be 1,000 kW.

J. If unanticipated obstacles to the delivery of hydropower benefits to Native American tribes arise, Western retains the right to provide the economic benefits of its resources directly to the tribes.

IV. General Contract Principles

Western proposes to apply the following general contract principles to all applicants receiving an allocation of firm power under the proposed Post-2008 Resource Pool Allocation Procedures.

A. Western reserves the right to reduce the withdrawable portion of a contractor's contract rate of delivery, upon 2 years' notice of a request by Reclamation for additional energy needed to serve project pumping requirements.

B. Western, at its discretion and sole determination, reserves the right to adjust the contract rate of delivery on 5 years' written notice in response to changes in hydrology and river operations. Such adjustments will only take place after Western conducts a public process.

C. Each contractor is ultimately responsible for arranging third-party delivery. Western may assist new contractors in obtaining third-party transmission arrangements for delivery of firm power allocated under these contracts.

D. No contractor shall sell for profit any of the capacity and energy allocated to it to any customer of the contractor for resale by that customer (49 FR 50585).

E. Contracts entered into under the Post-2008 Resource Pool Allocation Procedures will provide for Western to furnish firm electric service effective from October 1, 2008, through September 30, 2028.

F. Contractors will be required to pay in advance for their firm electric service.

G. To the extent existing contractors' allocations are reduced to create the resource pool, new contractors will be required to reimburse existing contractors for undepreciated replacement advances.

H. Contracts entered into as a result of the proposed procedures will incorporate Western's standard provisions for power sales contracts, integrated resource planning, and the general power contract provisions.

V. Applications for Firm Power

This notice formally requests applications from qualified entities wishing to purchase power from the Desert Southwest Region. Western is requesting Applicant Profile Data (APD) to provide a uniform basis for evaluating applications. To be considered, qualified entities must submit an application to the Desert Southwest Region as requested below. To ensure full consideration for all applicants, Western will not consider applications submitted before publication of this notice or after the deadline specified in the **DATES** section. Application forms are available upon request or may be accessed at *http://www.wapa.gov/dsw/pwrmkt/FRN.* Western encourages applicants to use the application form provided at the above Web site.

A. Applicant Profile Data Application

The content and format of the APD are outlined below. Applicants should submit requested information in the sequence listed. Applicants must provide all requested information, or the

most reasonable available estimate, or should indicate ''not applicable'' if they have no information they wish to be considered for a requested item. Western is not responsible for errors in data or missing pages. All items of information in the APD should be answered as if prepared by the entity seeking the allocation. The APD shall consist of the following:

1. Applicant:

a. Applicant's (entity requesting a new allocation) name and address.

b. Person(s) representing applicant: Please provide the name, title, address, telephone and fax number, and e-mail address of such person(s).

c. Type of organization: For example, Federal or state agency, irrigation district, municipal, rural, or industrial user, municipality, Native American tribe, public utility district, or rural electric cooperative. Please provide a brief description of the organization that will interact with Western on contract and billing matters and whether the organization owns and operates its own electric utility distribution system.

d. Parent organization of applicant, if any.

e. Name of members or suballottees, if any.

f. Applicable law under which the organization was established.

g. Taxpayer Identification Number (TIN).

h. Applicant's geographic service area: If available, submit a map of the service area, and indicate the date prepared.

2. Loads:

a. All Applicants:

I. If applicable, number and type of customers served in calendar year 2003; *e.g.*, residential, commercial, industrial, military base, agricultural.

II.The actual monthly maximum demand (in kilowatts) and energy use (in kilowatt hours) experienced in calendar year 2003.

III. For Native American tribe applicants, if actual demand and energy data is not available, provide estimated monthly demand (in kilowatts) with a description of the method and basis for this estimated demand.

3. Resources:

a. A list of current power supplies, including the applicant's own generation and purchases from others. For each supply, provide capacity and location.

b. Status of power supply contract(s), including a contract termination date. Indicate whether power supply is on a firm basis or some other type of arrangement.

4. Transmission:

a. Point(s) of delivery: Provide the preferred point(s) of delivery on Western's P–DP system or a third party's system and the required service voltage.

b. Transmission arrangements: Describe the applicant's transmission arrangements necessary to deliver firm power to the requested points of delivery beyond Western's P–DP system. Provide a single-line drawing of applicant's system, if one is available.

5. Other Information: The applicant may provide any other information pertinent to receiving an allocation.

6. Signature: The signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for allocation is required.

B. Western's Consideration of Applications

1. Upon receiving the APD, Western will verify that the applicant meets the general eligibility criteria in Section II, and that the application contains all items requested in the APD.

a. Western may request in writing additional information from any applicant whose APD is determined to be deficient. The applicant will have 15 days from the date on Western's letter of request to provide the information.

b. If Western determines the applicant does not meet the general eligibility criteria, Western will send a letter explaining why the applicant did not qualify.

c. If the applicant has met the eligibility criteria, Western, through the public process, will determine the amount of firm power, if any, to allocate in accordance with the general allocation criteria in Section III. Western will send a draft contract to the applicant that identifies the terms and conditions of the offer and the amount of firm power allocated to the applicant.

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

VII. Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

VIII. Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

IX. Environmental Compliance

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in 60 FR 53181, October 12, 1995. Western's NEPA review assured all environmental effects related to these actions have been analyzed.

Dated: September 16, 2004.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 04–22050 Filed 9–30–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0118; FRL–7822–1]

Protection of Stratospheric Ozone: Notice 19 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This Notice of Acceptability expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. The substitutes are for use in the following sectors: Refrigeration and air conditioning, foam blowing, fire suppression and explosion protection, and sterilants. This document also clarifies the status of the use of a hydrochlorofluorocarbon as an aerosol solvent, revises the global warming potential for a substitute previously listed as acceptable for use in fire suppression and explosion protection based on new information, and clarifies a statement from the previous SNAP notice of acceptability of August 21, 2003, regarding a refrigerant.

EFFECTIVE DATE: October 1, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2003–0118 (continuation of Air Docket A–91–42). All electronic documents in the docket are listed in

the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Air Docket (No. A–91–42), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard by telephone at (202) 343–9163, by facsimile at (202) 343–2338, by e-mail at *sheppard.margaret@epa.gov,* or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 1310 L Street, NW., 8th floor, Washington, DC 20005.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/* including the SNAP portion at *http://www.epa.gov/ozone/snap/.*

SUPPLEMENTARY INFORMATION:

I. Listing of New Acceptable Substitutes
A. Refrigeration and Air Conditioning
B. Foam Blowing
C. Fire Suppression and Explosion Protection
D. Sterilants
II. Clarification of Status of HCFC–142b in Aerosols under SNAP
III. Revised Global Warming Potential of C6-Perfluoroketone Based on New Data
IV. Clarification for RS–44
V. Section 612 Program
A. Statutory Requirements
B. Regulatory History
Appendix A—Summary of Acceptable Substitutes
Appendix B—New Information Available

I. Listing of New Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the following industrial sectors: Refrigeration and air conditioning, foam blowing, fire suppression and explosion protection, and sterilants. For copies of the full list of SNAP decisions in all industrial sectors, visit EPA's Ozone Depletion Web site at *http://www.epa.gov/ozone/snap/lists/index.html.*

The sections below discuss each substitute listing in detail. Appendix A contains a table summarizing today's listing decisions for new substitutes. The statements in the ''Further Information'' column in the table provide additional information, but are not legally binding under section 612 of the Clean Air Act. In addition, the ''Further Information'' may not be a comprehensive list of other legal obligations you may need to meet when using the substitute. Although you are not required to follow recommendations in the ''Further Information'' column of the table to use a substitute, EPA strongly encourages you to apply the information when using these substitutes. In many instances, the information simply refers to standard operating practices in existing industry and/or building-code standards. Thus, many of these statements, if adopted, would not require significant changes to existing operating practices.

Submissions to EPA for the use of the substitutes listed in this document may be found under category VI–D of EPA air docket A–91–42 at the address described above under **ADDRESSES**. You can find other materials supporting the decisions in this action under category IX–B of EPA docket A–91–42 and in e-docket OAR–2003–0118 at *http://www.epa.gov/edocket/.*

A. Refrigeration and Air Conditioning

1. ISCEON 79

EPA's decision: ISCEON 79 [R–125/134a/600a (85.1/11.5/3.4)] is acceptable for use in new and retrofit equipment as a substitute for R–502, HCFC–22, and other HCFC blends including but not limited to R–401A, R–401B, R–402A, R–402B, R–406A, R–408A, R–409A, R–411A, R–411B, R–411C, R–414A, R–414B and R–416A in:

- Industrial process refrigeration;
- Retail food refrigeration;
- Cold storage warehouses;
- Refrigerated transport;
- Commercial ice machines;
- Ice skating rinks;
- Household refrigerators and freezers.

ISCEON 79 is a blend of 85.1% by weight HFC–125 (pentafluoroethane, Chemical Abstracts Service Registry Number (CAS ID #354–33–6), 11.5% by weight HFC–134a (1,1,1,2-tetrafluoroethane, CAS ID #811–97–2), and 3.4% by weight HC–600a (isobutane, 2-methyl-propane, CAS ID #75–28–5). You may find the submission under EPA Air Docket A–91–42, item VI–D–302 (or see e-docket OAR–2003–0118).

Environmental information: The ozone depletion potential (ODP) of ISCEON 79 is zero. The Global Warming Potentials (GWPs) of HFC–125 and HFC–134a are 3450 and 1320, respectively (relative to carbon dioxide, using a 100-year time horizon (United Nations Environment Programme (UNEP) and World Meteorological Organization (WMO) Scientific Assessment of Ozone Depletion: 2002).) The atmospheric lifetimes of these constituents are 29 and 14.0 years, respectively.

HFC–125 and HFC–134a are excluded from the definition of volatile organic compound (VOC) under Clean Air Act regulations addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards. 40 CFR 51.100(s).

Flammability information: While isobutane is flammable, the blend as formulated and under worst case fractionated formulation scenarios is not flammable.

Toxicity and exposure data: HFC–125 and HFC–134a have 8 hour/day, 40 hour/week workplace environmental exposure limits (WEELs) of 1000 ppm established by the American Industrial Hygiene Association (AIHA). Isobutane has a 10 hour/day, 40 hour/week recommended exposure limit (REL) established by the National Institute for Occupational Safety and Health (NIOSH) of 800 ppm. EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. We also expect that users of ISCEON 79 will adhere to the AIHA's WEELs and the ACGIH's TLV and other specified exposure limits.

Comparison to other refrigerants: ISCEON 79 is not an ozone depleter; thus, it poses a lower risk for ozone depletion than R–502, a blend of HCFC–22 and CFC–115; HCFC–22; and HCFC blends, the ODSs ISCEON 79 replaces. ISCEON 79 has a comparable or lower GWP than most other common substitutes for R–502, HCFC–22, and HCFC blends. Flammability and toxicity risks are low, as discussed above. Thus, we find that ISCEON 79 is acceptable because there are no other substitutes that are currently or potentially available and that provide a substantially lower risk to public health

and the environment in the end uses listed.

2. R–420A

EPA's decision: R–420A is acceptable for use in new and retrofit equipment as a substitute for R–500 and CFC–12 in:

- Retail food refrigeration;
- Cold storage warehouses;
- Commercial ice machines;
- Ice skating rinks;
- Water coolers;
- Vending machines;
- Residential dehumidifiers;
- Industrial process refrigeration;
- Industrial process air conditioning;
- Reciprocating chillers;
- Screw chillers;
- Centrifugal chillers;
- Household refrigerators and freezers.

R–420A is a blend of 88% by weight HFC–134a (1,1,1,2-tetrafluoroethane, CAS ID #811–97–2), and 12% by weight HCFC–142b (1-chloro-1,1-difluoroethane, CAS ID #75–68–3). A common trade name for this refrigerant blend is Choice refrigerant. You may find the submission under EPA Air Docket A–91–42, item VI–D–302 (or see e-docket OAR–2003–0118).

Environmental information: The ozone depletion potential (ODP) of HCFC–142b is 0.065 and HFC–134a has an ODP of zero. The GWPs of HCFC–142b and HFC–134a are 2400 and 1320, respectively (relative to carbon dioxide, using a 100-year time horizon (United Nations Environment Programme (UNEP) and World Meteorological Organization (WMO) Scientific Assessment of Ozone Depletion: 2002).) The atmospheric lifetimes of these constituents are 17.9 and 14.0 years, respectively.

Because R–420A contains an ODS, regulations on its use apply, including the requirements for technician certification, mandatory recovery of refrigerant during service of equipment containing R–420A, a requirement that sales of the refrigerants be made only to EPA-certified technicians, and the statutory prohibition under section 608(c) of the Clean Air Act against knowingly venting refrigerants. Production of HCFC–142b will be subject to further control beginning in 2010, so blends containing HCFC–142b such as R–420A are only transitional substitutes.

HCFC–142b and HFC–134a are excluded from the definition of volatile organic compound (VOC) under Clean Air Act regulations addressing the development of SIPs to attain and maintain the national ambient air quality standards. 40 CFR 51.100(s).

Flammability information: Although HCFC–142b is moderately flammable, the blend is not flammable as formulated or under worst case fractionated formulation scenarios.

Toxicity and exposure data: HCFC–142b and HFC–134a have 8 hour/day, 40 hour/week WEELs of 1000 ppm established by the AIHA. EPA expects users to follow all recommendations specified in the MSDS for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. We also expect that users of R–420A will adhere to the AIHA's WEELs.

Comparison to other refrigerants: R–420A has a lower ODP than the Class I ODSs it replaces, CFC–12 or R–500, a blend containing CFC–12. R–420A has a comparable GWP to that of most other substitutes for R–500 and CFC–12. Flammability and toxicity risks are low, as discussed above. Thus, we find that R–420A is acceptable as a substitute for Class I ODS in the end uses listed.

3. HFC–134a

EPA's decision: HFC–134a is acceptable for use in new and retrofit equipment as a substitute for HCFC–22 in motor vehicle air conditioning for buses and passenger trains.

HFC–134a is also known as 1,1,1,2-tetrafluoroethane (CAS ID #811–97–2).

Environmental information: See the decision above in section I.A.1for ISCEON 79 for environmental information about HFC–134a.

Toxicity and exposure data: See the decision above in section I.A.1 for ISCEON 79 for toxicity and exposure data about HFC–134a.

Flammability information: HFC–134a is non-flammable.

Comparison to other refrigerants: HFC–134a has no ozone depletion potential and thus, poses a lower risk in ozone depletion then HCFC–22, the ODS it replaces. HFC–134a has a comparable or lower GWP than HCFC–22 and blends previously found acceptable as a substitute for HCFC–22 in bus air conditioning. Flammability and toxicity risks are low, as discussed above. Therefore, we find HFC–134a acceptable in motor vehicle air conditioning for buses and passenger trains.

4. R–407C

EPA's decision: R–407C is acceptable for use in new and retrofit equipment as a substitute for HCFC–22 in motor vehicle air conditioning for buses and passenger trains.

R–407C is a blend of 23% by weight HFC–32 (difluoromethane, CAS ID #75–10–5), 25% by weight HFC–125 (pentafluoroethane, CAS ID #354–33–6) and 52% by weight HFC–134a (1,1,1,2-tetrafluoroethane, CAS ID #811–97–2).

EPA previously listed R–407C as an acceptable alternative for HCFC–22 and CFCs (February 8, 1996; 61 FR 4736), for HCFC blends (December 20, 2002; 67 FR 77927), and for R–502 (August 21, 2003; 68 FR 50533) in various end uses for refrigeration and air conditioning.

Environmental information: The ODP of R–407C is zero. The GWPs of HFC–125, HFC–32 and HFC–134a are 3450, 543, and 1320, respectively (relative to carbon dioxide, using a 100-year time horizon). HFC–32 is the only component of this blend that is a VOC under Clean Air Act regulations.

Flammability information: While HFC–32 is moderately flammable, the blend is not flammable as formulated or under worst case fractionated formulation scenarios.

Toxicity and exposure data: All components of the blend have WEELs of 1000 ppm established by the AIHA. EPA expects users to follow all recommendations specified in the MSDS for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. We also expect that users of R–407C will adhere to the AIHA's WEELs.

Comparison to other refrigerants: R–407C is not an ozone depleter; thus, it reduces risk from ozone depletion compared to HCFC–22 and blends containing HCFCs. R–407C has a comparable or lower GWP than that for HCFC–22 and blends previously found acceptable as a substitute for HCFC–22 in bus air conditioners. Flammability and toxicity risks are low, as discussed above. Thus, we find that R–407C is acceptable because it reduces overall risk to public health and the environment in motor vehicle air conditioning in buses and passenger trains.

5. R–410A

EPA's decision: R–410A is acceptable for use in new equipment as a substitute for HCFC–22 in motor vehicle air conditioning for buses and passenger trains.

R–410A is a blend of 50% by weight HFC–32 (difluoromethane) and 50% by weight HFC–125 (pentafluoroethane). Due to the high operating pressures typical of R–410A systems, this blend is acceptable only in new equipment and not in retrofit equipment.

EPA previously listed R–410A as an acceptable alternative for HCFC–22 and CFCs (February 8, 1996; 61 FR 4736) and for HCFC blends (December 20, 2002; 67 FR 77927) in various end uses for refrigeration and air conditioning.

Environmental information: The ODP of R–410A is zero. For environmental information about HFC–125, see section I.A.1 above for ISCEON 79; for environmental information about HFC–32, see section I.A.5 above for R–407C.

Flammability information: While HFC–32 is moderately flammable, the blend is not flammable.

Toxicity and exposure data: For toxicity and exposure data on HFC–125 and HFC–32, see section I.A.5 above for R–407C. We expect that users of R–410A will adhere to the AIHA's WEELs.

Comparison to other refrigerants: R–410A is not an ozone depleter; thus, it reduces risk from ozone depletion compared to HCFC–22 and blends previously found acceptable as a substitute for HCFC–22 in bus air conditioners. Flammability and toxicity risks are low, as discussed above. Thus, we find that R–410A is acceptable because it reduces overall risk to public health and the environment in motor vehicle air conditioning in buses and passenger trains.

B. Foam Blowing

1. Ecomate™

EPA's decision: Ecomate™ is acceptable as a substitute for CFCs and HCFCs in polyurethane spray foam.

This decision corresponds with the SNAP decision published in Notice 18, August 21, 2003 (68 FR 50533) for other foam blowing end-uses.

The submitter, Foam Supplies, claims that the composition of Ecomate™ is confidential business information (see docket A–91–42, item VI–D–296 or see e-docket OAR–2003–0118).

Environmental information: Ecomate™ has no ODP and very low or zero global warming potential (GWP). Users should be aware that Ecomate™ is not excluded from the definition of volatile organic compound (VOC) under Clean Air Act regulations addressing the development of State implemention plans (SIPs) to attain and maintain the national ambient air quality standards. 40 CFR 51.100(s). For more information refer to the manufacturer of Ecomate™, EPA regulations, and your state or local air quality agency. Also, because Ecomate™ is considered hazardous, spills and disposal should be handled in accordance with requirements of the Resource Conservation and Recovery Act (RCRA).

Flammability information: Ecomate™ is flammable and should be handled with proper precautions. Use of Ecomate™ will require safe handling and shipping as prescribed by the Occupational Safety and Health Administration (OSHA) and the Department of Transportation (for example, using personal safety equipment and following requirements for shipping hazardous materials at 49 CFR parts 170 through 173). However, when blended with fire retardant, the flammability of Ecomate™ can be reduced to make a formulation that is either combustible or non-flammable (refer to the manufacturer of Ecomate™ for more information). The manufacturer of Ecomate™ has prepared for safety training for use of this flammable blowing agent in spray foam (see docket A–91–42, item VI–D–307 or e-docket OAR–2003–0118).

Toxicity and exposure data: Ecomate™ should be handled with proper precautions. EPA anticipates that Ecomate™ will be used consistent with the recommendations specified in the manufacturers' Material Safety Data Sheets (MSDSs). OSHA established a permissible exposure limit for the main component of Ecomate™ of 100 ppm for a time-weighted average over an eight-hour work shift.

Comparison to other foam blowing agents: Ecomate™ is not an ozone depleter; thus, it reduces risk overall compared to the ODS it replaces. Ecomate™ has a comparable or lower GWP than the other substitutes for CFCs and HCFCs in these end uses. Although Ecomate™ is flammable, we find that the manufacturer's recommended precautions for safety are sufficient so that the risks will not be significantly higher than for other available or potentially available substitutes in this end use. Meeting federal exposure requirements allows Ecomate™ to be used with no greater risk of toxicity than for other available or potentially available substitutes in this end use. Thus, we find that Ecomate™ is acceptable because there are no other substitutes that are currently or potentially available and that provide a substantially lower risk to public health and the environment in polyurethane spray foam.

C. Fire Suppression and Explosion Protection

1. HFC–227ea With 0.15% *d*-Limonene (NAF S 227)

EPA's decision: NAF S 227 is acceptable for use as a substitute for halon 1301 in the total flooding end use in both normally occupied and unoccupied spaces.

NAF S 227 is a mixture of HFC–227ea, also known as 1,1,1,2,3,3,3-heptafluoropropane, (CAS ID #431–89–0), and 0.15% *d*-limonene, also known as 4-isopropenyl-1-methycyclohexene (CAS ID #5989–27–5), by weight. You may find the submission under Docket A–91–42, item VI–D–305 (or see e-docket OAR–2003–0118).

EPA's decision is that NAF S 227 is acceptable for use as a substitute for halon 1301 in the total flooding end use in both normally occupied and unoccupied spaces. EPA finds the blend acceptable as submitted; however, blends containing more than 0.15% *d*-limonene are not addressed by today's decision. EPA previously found HFC–227ea acceptable in total flooding (January 29, 2002; 67 FR 4185). This decision is similar to the SNAP decision published in Notice 18, August 21, 2003 (68 FR 50533) concerning HFC–125 with 0.15% *d*-limonene (NAF S 125).

Environmental information: Both of the components of NAF S 227 have an ozone depletion potential of zero. HFC–227ea has a global warming potential (GWP) of 3660 and *d*-limonene has a GWP of 10. These values are lower than the GWP of halon 1301 (6900).

HFC–227ea is currently defined as a VOC, although EPA has proposed that it be excluded from the definition of volatile organic compound (VOC) under Clean Air Act regulations addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards (September 3, 2003; 68 FR 52373). 40 CFR 51.100(s). *d*-limonene is a VOC.

Flammability: Although *d*-limonene is flammable, the blend is non-flammable.

Toxicity and exposure data: As with other fire suppressants, EPA recommends that you minimize exposure to this agent. If personnel are exposed to the agent, they should exit the area within five minutes or less. EPA recommends that unnecessary exposure to fire suppression agents and their decomposition products be avoided and that personnel exposure be limited to no more than 5 minutes. This minimizes the risk of effects on the heart (irregular heartbeats) from HFC–227ea and other halocarbons.

In order to keep exposure levels as low as possible, EPA recommends the following for establishments installing and maintaining total flooding systems:

—Put adequate ventilation in place. If ventilation is suspected to be inadequate, self-contained breathing apparatus (SCBA) should be available;

—Wear proper personal protection equipment (impervious butyl gloves, eye protection, chemical resistant aprons, long sleeves, and safety shoes);

—Clean up all spills immediately in accordance with good industrial hygiene practices; and

—Provide training for safe handling procedures to all employees that would be likely to handle the containers of

NAF S 227 or extinguishing units filled with the material.

Use of this agent should conform with relevant Occupational Safety and Health Administration (OSHA) requirements, including 29 CFR part 1910, subpart L, § 1910.160 for fixed fire extinguishing systems, § 1910.162 for gaseous agents and § 1910.165 for predischarge employee alarms. Per OSHA requirements, protective gear (SCBA) should be available in the event that personnel reenter the area. In addition, users should also observe the guidelines in the latest edition of the National Fire Protection Association (NFPA) 2001 Standard on Clean Agent Fire Extinguishing Systems for use of HFC–227ea.

Comparison to other fire suppressants: NAF S 227 has no ODP; thus, it reduces risk overall compared to halon 1301, the ODS it replaces. EPA has already found acceptable HFC–227ea, the main ingredient in NAF S 227. The components of NAF S 227 have a GWP comparable with or lower than that of many other acceptable substitutes for halon 1301. Thus, we find that NAF S 227 is acceptable because it does not present a greater risk to public health and the environment in the end use listed than other substitutes that are available.

D. Sterilants

1.–3. IoGas™ Sterilant Blends 1, 3, and 6

EPA's decision: IoGas™ 1 Sterilant, IoGas™ 3 Sterilant, and IoGas™ 6 Sterilant are acceptable as substitutes for CFC–12, HCFC–22, HCFC–124, and blends thereof in ethylene oxide blends for sterilization. The IoGas™ Sterilant Blends are all blends of ethylene oxide, carbon dioxide (CO_2), and trifluoroiodomethane (CF_3I). CF_3I, CAS ID #2314–97–8, is also called FIC–13I1 or trifluoromethyl iodide. EPA previously found ethylene oxide alone and blends of CO_2 and ethylene oxide acceptable as substitutes for CFC–12 in blends with ethylene oxide (59 FR 13044, March 18, 1994). You may find the submission under EPA Air Docket A–91–42 item VI–D–304 or see e-docket OAR–2003–0118.

Environmental information: The ozone depletion potential (ODP) of CF_3I is less than 0.0025, and ethylene oxide and CO_2 have an ODP of zero. The Global Warming Potentials (GWPs) of CF_3I and CO_2 are less than 1 and 1 respectively (relative to carbon dioxide, using a 100-year time horizon (United Nations Environment Programme (UNEP) and World Meteorological Organization (WMO) Scientific Assessment of Ozone Depletion: 2002).) The atmospheric lifetime of CF_3I is approximately 0.007 years.

CF_3I and ethylene oxide are volatile organic compounds (VOCs). CO_2 is excluded from the definition of VOC under Clean Air Act regulations addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards. 40 CFR 51.100(s).

Ethylene oxide is a hazardous air pollutant under section 112 of the Clean Air Act. A National Emission Standard for Hazardous Air Pollutants applies to commercial sterilization and fumigation operations (40 CFR part 63, subpart O).

Flammability information: Although ethylene oxide is flammable, the blends as formulated are not flammable.

Toxicity and exposure data: Ethylene oxide has a permissible exposure limit (PEL) of 1 ppm on an 8-hour time-weighted average from the Occupational Safety and Health Administration (OSHA). EPA recommends an acceptable exposure limit of 150 ppm on an 8-hour time-weighted average for CF_3I, with an exposure ceiling of no more than 2,000 ppm. EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the medical sterilization industry. We also expect that users of IoGas™ Sterilant Blends will adhere to EPA's recommended exposure limit.

Comparison to other sterilants: IoGas™ Sterilant Blends 1, 3, and 6 have an ODP of less than 0.001; thus, they pose a lower risk for ozone depletion than CFC–12, HCFC–22, or HCFC–124, the ODSs they replace. IoGas™ Sterilant Blends 1, 3, and 6 have a comparable or lower GWP than most other substitutes for CFC–12, HCFC–22, or HCFC–124. Flammability risks are low, as discussed above. The toxicity of the sterilant blends is less than that of ethylene oxide alone, which is also an acceptable substitute. Thus, we find IoGas™ Sterilant Blends 1, 3, and 6 acceptable because there are no other substitutes that are currently or potentially available and that provide a substantially lower risk to public health and the environment in the end uses listed.

II. Clarification of Status of HCFC–142b in Aerosols under SNAP

Some individuals have inquired whether HCFC–142b may be sold in aerosol products as a substitute for HCFC–141b, particularly as a solvent to assist in mold release of plastics. Substitutes for ozone-depleting substances are required to be submitted to the SNAP program for review before they may be sold, with minor exceptions (*see* 40 CFR 82.174(a) and 82.176; Clean Air Act section 612(e)). No one has submitted information on this substitute in this end use to EPA, and therefore, we conclude that HCFC–142b is not currently legal to sell as an aerosol solvent as a substitute for HCFC–141b or CFC–113. If any manufacturer or distributor is interested in selling such a product, they should complete a submission form for review (available at *http://www.epa.gov/ozone/snap/submit/index.html*).

III. Revised Global Warming Potential of C6–Perfluoroketone Based on New Data

The Environmental Protection Agency published in the **Federal Register** of December 20, 2002 (67 FR 77927), a Notice of Acceptability related to the SNAP program. We also published a rule under the SNAP program on fire suppressant alternatives to halon on January 27, 2003 (68 FR 4004). After publication of these documents, EPA received updated information related to the calculation of the environmental impact of C6-perfluoroketone, also known as FK–5–1–12mmy2, a fire suppression substitute that was listed as an acceptable total flooding agent in the Notice and as an acceptable streaming agent, subject to narrowed use limits, in the rule. Based on this new information, EPA published two correction notices in the **Federal Register** of April 7, 2003 (68 FR 16728 and 68 FR 16729), listing a GWP for C6-perfluoroketone of between four and seven, relative to CO_2 over a 100-year time horizon. Since then, new information found in the literature was recently made available to EPA. Based on this additional, new information, EPA is correcting the GWP listed for C6-perfluoroketone to between 0.6 and 1.8, relative to CO_2 over a 100-year time horizon. This range includes both the direct GWP and the indirect GWP. The corrected values are also listed in Appendix B of this document.

EPA's evaluation of this new information is available in EPA air docket A–2002–08 at the address described above under **ADDRESSES**. This correction does not change EPA's finding of acceptability for use of C6-perfluoroketone as a substitute for halon 1301 in total flooding fire suppression applications in both normally occupied and unoccupied areas or our finding that C6-perfluoroketone is acceptable for use as a substitute for halon 1211 as a streaming agent in non-residential areas.

IV. Clarification for RS–44

EPA published a Notice of Acceptability related to the SNAP Program in the **Federal Register** of August 21, 2003 (68 FR 50533, Notice 18). In FR Doc. 03–75472, published on August 21, 2003, a typographical error was made inadvertently.

EPA decided in that notice of acceptability that RS–44, a refrigerant, is acceptable for use in new and retrofit equipment as a substitute for HCFC–22 in a number of end uses for refrigeration and air conditioning. However, on page 50535 in the first column immediately after the heading, ''Comparison to other refrigerants,'' the document incorrectly stated that RS–44 was a substitute for CFC–12. Instead, it is a substitute for HCFC–22, as stated elsewhere in that document and in the accompanying table. Therefore, that first sentence in the first column on page 50535 should read as follows: ''RS–44 is not an ozone depleter; thus, it reduces risk from ozone depletion compared to HCFC–22, the ODS it replaces.''

V. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. We refer to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612 also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, it must publish the revised lists within an additional six months.
- *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the rulemaking (59 FR 13044) which described the process for administering the SNAP program. In the same notice, we issued the first acceptability lists for substitutes in the major industrial use sectors. These sectors include:

- Refrigeration and air conditioning;
- Foam blowing;
- Solvents cleaning;
- Fire suppression and explosion protection;
- Sterilants;
- Aerosols;
- Adhesives, coatings and inks; and
- Tobacco expansion.

These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Therefore, by this notice we are adding substances to the list of acceptable alternatives without first requesting comment on new listings.

However, we do believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from the lists of prohibited or acceptable substitutes. We publish updates to these lists as separate notices of rulemaking in the **Federal Register**.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance. Anyone who produces a substitute must provide EPA with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators, or end-users, when they are responsible for introducing a substitute into commerce.

You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations from the SNAP section of EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/title6/snap/chron.html.* This information is also available from the Air Docket (*see* **ADDRESSES** section above for contact information).

Dated: September 23, 2004.

Edward Callahan,

Acting Director, Office of Atmospheric Programs, Office of Air and Radiation.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A: Summary of Acceptable Decisions

REFRIGERATION AND AIR CONDITIONING

End-use	Substitute	Decision	Further information
Motor vehicle air conditioning for buses and passenger trains (new).	R–410A as a substitute for HCFC–22 ...	Acceptable	
Motor vehicle air conditioning for buses and passenger trains (retrofit and new).	HFC–134a as a substitute for HCF–22	Acceptable	

REFRIGERATION AND AIR CONDITIONING—Continued

End-use	Substitute	Decision	Further information
	R–407C as a substitute for HCFC–22 ...	Acceptable	
Industrial process refrigeration (retrofit and new).	ISCEON 79 as a substitute for R–502, HCFC–22 and HCFC blends.	Acceptable	*See* note.[1]
	R–420A as a substitute for R–500 and CFC–12.	Acceptable	
Industrial process air conditioning (retrofit and new).	R–420A as a substitute for R–500 and CFC–12.	Acceptable	
Ice skating rinks (retrofit and new)	ISCEON 79 as a substitute for R–502, HCFC–22 and HCFC blends.	Acceptable	*See* note.[1]
	R–420A as a substitute for R–500 and CFC–12.	Acceptable	
Cold storage warehouses (retrofit and new).	ISCEON 79 as a substitute for R–502, HCFC–22 and HCFC blends.	Acceptable	*See* note.[1]
	R–420A as a substitute for R–500 and CFC–12.	Acceptable	
Refrigerated transport (retrofit and new)	ISCEON 79 as a substitute for R–502, HCFC–22 and HCFC blends.	Acceptable	*See* note.[1]
Retail food refrigeration (retrofit and new).	ISCEON 79 as a substitute for R–502, HCFC–22 and HCFC blends.	Acceptable	*See* note.[1]
	R–420A as a substitute for R–500 and CFC–12.	Acceptable	
Vending machines (retrofit and new)	R–420A as a substitute for R–500 and CFC–12.	Acceptable	
Water coolers (retrofit and new)	R–420A as a substitute for R–500 and CFC–12.	Acceptable	
Commercial ice machines (retrofit and new).	ISCEON 79 as a substitute for R–502, HCFC–22 and HCFC blends.	Acceptable	*See* note.[1]
	R–420A as a substitute for R–500 and CFC–12.	Acceptable	
Household refrigerators and freezers (retrofit and new).	ISCEON 79 as a substitute for R–502, HCFC–22 and HCFC blends.	Acceptable	*See* note.[1]
	R–420A as a substitute for R–500 and CFC–12.	Acceptable	
Centrifugal chillers (retrofit and new)	R–420A as a substitute for R–500 and CFC–12.	Acceptable	
Reciprocating chillers (retrofit and new)	R–420A as a substitute for R–500 and CFC–12.	Acceptable	
Screw chillers (retrofit and new)	R–420A as a substitute for R–500 and CFC–12.	Acceptable	
Residential dehumidifiers (retrofit and new).	R–420A as a substitute for R–500 and CFC–12.	Acceptable	

[1] **Note:** HCFC blends include, but are not limited to, R–401A, R–401B, R–402A, R–402B, R–406A, R–408A, R–409A, R–411A, R–411B, R–411C, R–414A, R–414B, and R–416.

FOAM BLOWING

End-use	Substitute	Decision	Further information
Rigid polyurethane spray foam	Ecomate as a substitute for CFCs and HCFCs.	Acceptable	Use of the agent should be in accordance with the manufacturers' Material Safety Data Sheets (MSDSs). *See* note.[1]

[1] **Note:** OSHA established a permissible exposure limit for the main component of Ecomate™ of 100 ppm for a time-weighted average over an eight-hour work shift.

FIRE SUPPRESSION AND EXPLOSION PROTECTION

End-use	Substitute	Decision	Further information
Total flooding	NAF S 227 as substitute for Halon 1301	Acceptable	Use of the agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems. Extinguisher bottles should be clearly labeled with the potential hazards associated with the use of HFC–227ea and *d*-limonene, as well as handling procedures to reduce risk resulting from these hazards.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—Continued

End-use	Substitute	Decision	Further information
			See additional notes 1, 2, 3, 4, 5.

Additional notes:
1. Should conform with relevant OSHA requirements, including 29 CFR part 1910, subpart L, §§ 1910.160, 1910.161 (dry chemicals and aerosols) and 1910.162 (gaseous agents).
2. Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.
3. Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.
4. The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.
5. EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.,* respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

STERILANTS

End-use	Substitute	Decision	Further information
Sterilants	IoGas™ Sterilant Blends 1, 3, and 6 as substitutes for CFC–12, HCFC–22, HCFC–124, in sterilant blends with ethylene oxide.	Acceptable	

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix B: New Information Available

FIRE SUPPRESSION AND EXPLOSION PROTECTION

End-use	Substitute	Information available
Total flooding	C6-perfluoroketone (FK–5–1–12mmy2, CAS Reg. No. 756–13–8).	EPA reviewed three additional papers on C6-perfluoroketone photolysis. The new information recently made available in the literature supports revising the global warming potential of C6-perfluoroketone to be between 0.6 and 1.8, relative to CO_2 on a 100-year time horizon. See Docket A–91–42, item IX–B–93 or e-docket OAR–2003–0118–0049.
Streaming	C6-perfluoroketone (FK–5–1–12mmy2, CAS Reg. No. 756–13–8).	EPA reviewed three additional papers on C6-perfluoroketone photolysis. The new information recently made available in the literature supports revising the global warming potential of C6-perfluoroketone to be between 0.6 and 1.8, relative to CO_2 on a 100-year time horizon. See Docket A–91–42, item IX–B–93 or e-docket OAR–2003–0118–0049.

[FR Doc. 04–21928 Filed 9–30–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6656–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–SFW–L64050–00 Rating EC2, Caspian Tern (sterna caspia) Management to Reduce Predation of Juvenile Salmonids in the Columbia River Estuary, To Comply with the 2002 Settlement Agreement, Endangered Species Act (ESA), Columbia River, WA, OR, ID, and CA.

Summary: EPA raised concerns about tern consumption of ESA-listed salmonids in the vicinity of proposed nesting sites, the need for alternative nesting sites and water quality impacts from the creation, enhancement and maintenance of tern nesting habitat.

ERP No. DB–NOA–E91007–00 Rating LO, South Atlantic Shrimp Fishery Management Plan, Amendment 6, Propose to Amend the Bycatch Reduction Device (BRD) Testing Protocol System, South Atlantic Region.

Summary: While EPA has no objection to the preferred alternatives, EPA requested clarification on why some alternatives only apply to either penaeid or rock shrimp, rather than to both.

Final EISs

ERP No. F–AFS–G65085–NM, Sacramento, Dry Canyon and Davis Grazing Allotments, Authorization of Livestock Grazing Activities, Lincoln National Forest, Sacramento Ranger District, Otero County, NM.

Summary: The Final EIS adequately responded to EPA's comments on the Draft EIS. EPA has no objection to the preferred action.

ERP No. F–COE–E39063–AL, Choctaw Point Terminal Project, Construction and Operation of a

Container Handling Facility, Department of the Army (DA) Permit Issuance, Mobile County, AL.

Summary: EPA continues to express concern due to impacts to wetlands. EPA recommended that the issue of avoiding/minimizing impacts to wetlands be further addressed in the Record of Decision.

ERP No. F–FHW–F40364–WI, Burlington Bypass State Trunk Highway Project, Construction, from WI–36, WI–11 and WI–83, Funding and COE Section 404 Permit, In the City of Burlington, Racine, and Walworth Counties, WI.

Summary: While EPA's previous objection regarding direct impacts to the fresh fen have been avoided, EPA continues to express concerns about indirect impacts to the fen and the need to provide a detailed wetland compensation plan.

ERP No. F–IBW–G39039–00, Rio Grande Canalization Project (RGCP), Long-Term River Management Alternatives Practices, Implementation, from below Percha Dam in Sierra County, NM to American Dam in El Paso, TX.

Summary: EPA has no objection to the prepared action.

ERP No. F–NPS–G65086–TX, Big Bend National Park General Management Plan, Implementation, Brewster County, TX.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–K65251–AZ, Petrified Forest National Park General Management Plan Revision, Implementation, Navajo and Apache Counties, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–K65267–CA, Point Reyes National Seashore (PRNS) and the North District of Golden Gate National Recreation Area (GGNRA) Fire Management Plan, Implementation, Marin County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FB–NOA–G64002–00, Reef Fish Fishery Management Plan Amendment 22, To Set Red Snapper Sustainable Fisheries Act Targets and Thresholds, Set a Rebuilding Plan, and Establish Bycatch Reporting Methodologies for the Reef Fish Fishery, Gulf of Mexico.

Summary: While EPA has no objection to the proposed action, EPA did request clarification on whether additional regulatory controls in the Shrimp FMP may be necessary to limit the juvenile red snapper that are caught as bycatch in shrimp fishery.

Dated: September 28, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–22088 Filed 9–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6656–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed September 20, 2004 through September 24, 2004

Pursuant to 40 CFR 1506.9.

EIS No. 040455, Draft EIS, AFS, WA, Fish Passage and Aquatic Habitat Restoration at Hemlock Dam, Implementation, Gifford Pinchot National Forest, Mount Adams District, Skamania County, WA, *Comment Period Ends:* November 15, 2004, *Contact:* Bengt Coffin (509) 395–3425.

EIS No. 040456, Draft EIS, NRS, OR, Williamson River Delta Restoration Project, To Restore and Maintain the Ecological Functions of the Delta, Williamson River, Klamath County, OR, *Comment Period Ends:* November 15, 2004, *Contact:* Kevin Conroy (541) 883–6924. Ext 115.

EIS No. 040457, Draft Supplement, AFS, AZ, NM, Southwestern Region Amendment of Forest Plans, Updated Information, Implementation, Standard and Guidelines for Northern Goshawk and Mexican Spotted Owl, AZ and NM, *Comment Period Ends:* November 15, 2004, *Contact:* Lou Wottering (505) 842–3898.

EIS No. 040458, Draft EIS, NIH, MD, National Institutes of Health (NIH) Master Plan 2003 Update, National Institutes of Health Main Campus, Bethesda, MD, Montgomery County, MD, *Comment Period Ends:* November 29, 2004, *Contact:* Ron Wilson (301) 496–5037.

EIS No. 040459, Draft EIS, IBR, CA, Sacramento River Settlement Contractors (SRSR) To Renew the Settlement Contractors Long-Term Contract Renewal for 145 Contractors, Central Valley Project (CVP), Sacramento River, Shasta, Tehama, Butte, Glenn, Colusa, Sutter, Yolo, Sacramento, Portion of Placer and Solano Counties, CA, *Comment Period Ends:* November 15, 2004, *Contact:* Buford Holt (916) 989–7179.

Dated: September 28, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–22089 Filed 9–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7822–9]

Availability of FY 03 Grant Performance Reports for State of KY; and the Local Agencies of Louisville, KY, Knox County, TN and Memphis-Shelby County, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.115) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of one state air pollution control program (Commonwealth of Kentucky); and three local programs (Louisville Metro Air Pollution Control District, KY; Memphis-Shelby County Health Department, TN; and Knox County Department of Air Quality Management, TN). The four evaluations were conducted to assess the agencies' performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection.

ADDRESSES: The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW., Atlanta, Georgia 30303, in the Air, Pesticides, and Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Marie Persinger (404) 562–9048 for information concerning the State of Kentucky and the local agency of Louisville, Kentucky; and Rayna D. Brown (404) 562–9093 for the local agencies of Knox County, Tennessee and Memphis-Shelby County, Tennessee. They may be contacted at the above Region 4 address.

Dated: September 16, 2004.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 04–22085 Filed 9–30–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7822–8]

Valley Chemical Superfund Site Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an Agreement that will settle a section 106(b) Petition that Hercules filed in 1997 pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Valley Chemical Superfund Site in Greenville, Washington County, Mississippi. In the Agreement, Hercules agrees to drop its section 106(b) Petition in exchange for addressing past costs at three other sites in Region 4. The sites are the Terry Creek Dredge Spoil Area/Hercules Outfall Superfund Site located in Brunswick, Glynn County, Georgia; the Hercules 009 Landfill Superfund Site located in Brunswick, Glynn County, Georgia; and the T.H. Agriculture & Nutrition Company Superfund Site located in Albany, Dougherty County, Georgia. EPA will consider public comments on the proposed settlement until November 1, 2004. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–SEIMB), 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562–8887, *Batchelor.Paula@EPA.GOV.*

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: September 20, 2004.

Rosalind Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. 04–22086 Filed 9–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7823–1]

Notice of Availability of Draft NPDES General Permits for Certain Publicly Owned Treatment Works and Other Treatment Works in the States of Massachusetts and New Hampshire and Indian Country Lands in the State of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Draft NPDES General Permits MAG580000 and NHG580000.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency—Region 1, is today providing notice of availability for public comment the Draft National Pollutant Discharge Elimination System (NPDES) general permits for certain Publicly Owned Treatment Works (POTWs) and other treatment works treating domestic sewage in the States of Massachusetts and New Hampshire and Indian Country Lands located in the State of Massachusetts. These draft general permits establishes notification requirements, effluent limitations, standards, and prohibitions, for discharges to freshwaters and marine waters.

Coverage under these general permits will be available to facilities classified as minor facilities in Massachusetts or classified as major or minor facilities in New Hampshire. Owners and/or operators of POTWs and other treatment works treating domestic sewage, including those facilities currently authorized to discharge under individual NPDES permits, will be eligible to apply for coverage under the final general permit and will receive a written notification from EPA whether permit coverage and authorization to discharge under one of the general permits is approved. The eligibility requirements, including the requirement that the facility have a dilution factor equal to or greater than 50 in the receiving water, are discussed in detail in the fact sheet and general permits. These general permits do not cover new sources as defined under 40 CFR 122.2.

DATES: Comments must be received or postmarked by midnight on November 1, 2004. Interested persons may submit comments on the draft general permits as part of the administrative record to the EPA—Region 1 at the address given below. Within the comment period, interested persons may also request in writing a public hearing pursuant to 40 CFR 124.12 concerning the draft general permits. All public comments or requests for a public hearing must be submitted to the address below.

ADDRESSES: Written comments may be hand delivered or mailed to: EPA–Region 1, Office of Ecosystem Protection (CPE), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023 and also sent via e-mail to *wandle.bill@epa.gov*. No facsimiles (faxes) will be accepted. The draft permits are based on an administrative record available for public review at EPA–Region 1, Office of Ecosystem Protection (CPE), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. Copies of information in the record are available upon request. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permits may be obtained between the hours of 8 a.m. and 4 p.m. Monday through Friday excluding holidays from: William Wandle, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100 (CPE), Boston, MA 02114–2023, telephone: (617) 918–1605, e-mail: *wandle.bill@epa.gov*.

SUPPLEMENTARY INFORMATION: The draft general permit may be viewed over the Internet via the EPA—Region 1 Web site for dischargers in Massachusetts at *http://www.epa.gov/ne/npdes/mass.html* and for dischargers in New Hampshire at *http://www.epa.gov/ne/npdes/newhampshire.html*. The draft general permits include the freshwater and marine acute toxicity protocols, sludge guidance, standard permit conditions in Part II and the fact sheet which sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the draft permits and provides the facilities eligible for permit coverage. To obtain a paper copy of the documents, please contact William Wandle using the contact information provided above. A reasonable fee may be charged for copying requests.

When the general permits are issued, the notice of final issuance will be published in the **Federal Register**. The general permits shall be effective on the date specified in the notice of final issuance of the general permits published in the **Federal Register** and will expire five years from the effective date.

Dated: August 23, 2004.

Robert W. Varney,

Regional Administrator, Region 1.

[FR Doc. 04–22082 Filed 9–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0064, FRL–7822–6]

National Clean Water Act Recognition Awards: Presentation of Awards at the Water Environment Federation's Technical Exposition and Conference (WEFTEC), and Announcement of 2004 National Awards Winners

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: The Environmental Protection Agency will recognize municipalities and industries for outstanding and innovative technological achievements in wastewater treatment and pollution abatement programs at the annual Clean Water Act Recognition Awards ceremony during the Water Environment Federation's Technical Exposition and Conference (WEFTEC) in New Orleans, Louisiana. An inscribed plaque will be presented to first and second place winners for projects and programs in operations and maintenance at wastewater treatment plants, biosolids management, pretreatment, storm water management and combined sewer overflow controls. This action also announces the 2004 national awards winners.

DATES: Monday, October 4, 2004, 11:30 a.m. to 1 p.m.

ADDRESSES: The national awards presentation ceremony will be held at the Ernest N. Morial Convention Center, 900 Convention Center Boulevard, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Maria E. Campbell, Telephone: (202) 564–0628. Facsimile Number: (202) 501–2396. E-Mail: *campbell.maria@epa.gov.* Also visit the Office of Wastewater Management's webpage at *http://www.epa.gov/owm.*

SUPPLEMENTARY INFORMATION: The Clean Water Act Recognition Awards are authorized by section 501(a) and (e) of the Clean Water Act, and 33 U.S.C. 1361(a) and (e). Applications and nominations for the national award must be recommended by EPA regions. State agencies can also provide recommendations to EPA regional offices. A regulation establishes a framework for the annual recognition awards program at 40 CFR part 105. EPA announced the availability of application and nomination information for this year's awards (69 FR 13826, March 24, 2004). The awards program provides national recognition and encourages public support of programs aimed at protecting the public's health and safety and the nation's water quality. Programs and projects being recognized are in compliance with applicable water quality requirements and have a satisfactory record with respect to environmental quality. Municipalities and industries are recognized for their demonstrated achievements in five awards categories as follows:

(1) Outstanding operations and maintenance practices at wastewater treatment facilities;

(2) Exemplary biosolids management projects, technology/innovation or development activities, research and public acceptance efforts;

(3) Outstanding municipal implementation and enforcement of local pretreatment programs;

(4) Implementing outstanding, innovative, and cost-effective storm water control; and,

(5) Outstanding combined sewer overflow control programs.

The winners of the EPA's 2004 National Clean Water Act Recognition Awards are listed below by category.

	Sub-category
Operations and Maintenance Awards Category	
First place:	
Dos Rios Water Reclamation Center, San Antonio Water Systems, San Antonio, Texas.	Large Advanced Plant.
City of Dunbar Sanitary Board, Dunbar, West Virginia	Medium Advanced Plant.
Florence Regional Sewage District, Florence, Indiana	Small Advanced Plant.
Oceanside Treatment Plant, Southwest Ocean, Outfall and Westside Wet Weather Facility, San Francisco, California.	Large Secondary Plant.
Central Davis Sewer District, Kaysville, Utah	Medium Secondary Plant.
Old Forge Sewer District, Old Forge, New York	Small Secondary Plant.
Second place:	
James C. Kirie Water Reclamation Plant, Des Plaines, Illinois	Large Advanced Plant.
Iowa Hill Water Reclamation Facility, Breckenridge Sanitation District, Breckenridge, Colorado.	Medium Advanced Plant.
Beaver Estates Water Pollution Control Plant, Douglasville-Douglas County Water & Sewer Authority, Douglasville, Georgia.	Small Advanced Plant.
Gautier Regional Wastewater Treatment Plant, Pascagoula, Mississippi.	Medium Secondary Plant.
Henniker, New Hampshire Wastewater Treatment Facility, Henniker, New Hampshire.	Small Secondary Plant.
Biosolids Management Awards Category	
First place:	
Metro Denver—Metrogro Farm, Denver, Colorado	Large Operating Projects (tie).
Parker Ag Services-NYC Program, Lamar, Colorado	Large Operating Projects (tie).
Central Davis Sewer District, Kaysville, Utah	Small Operating Projects.
Dr. Sally Brown, College of Forest Research, University of Washington, Seattle, Washington.	Research Activities.
City of Tacoma Wastewater Management, Tacoma, Washington	Technology/Innovation or Development Activities.
Second place:	
Clean Water Services of Washington County, Hillsboro, Oregon	Large Operating Projects.

	Sub-category
Rockingham WWTP & Composting Facility, Rockingham, North Carolina.	Small Operating Projects.
Special award:	
Orange County Sanitation District, Fountain Valley, California	Continued commitment to effective program planning, management, public outreach and stakeholder involvement, and pioneer efforts in developing and implementing their Biosolids Environmental Management Systems (EMS).
Pretreatment Awards Category	
First place:	
Borough of Catasauqua, Catasauqua, Pennsylvania	0 to 5 Significant Industrial Users (SIUs).
Warwick Sewer Authority, Warwick, Rhode Island	6–20 SIUs.
East Bay Municipal Utility District, Oakland, California	21 & Greater SIUs.
Second place:	
Kent County Regional Wastewater Treatment Facility, Dover, Delaware.	6–20 SIUs.
Columbus Water Works, Columbus, Georgia	21 & Greater SIUs (tie).
Hampton Roads Sanitation District, Virginia Beach, Virginia	21 & Greater SIUs (tie).
Stormwater Management Awards Category	
First place:	
Sanitation District No. 1 of Northern Kentucky, Fort Wright, Kentucky.	Municipal.
Second place:	
City of Sacramento Stormwater Quality Improvement Program, Sacramento, California.	Municipal.
Combined Sewer Overflow Controls	
First place:	
City of Mount Clemens, Mount Clemens, Michigan	Municipal.
Second place:	
City of Port Huron, Port Huron, Michigan	Municipal.

Dated: September 23, 2004.

Elaine Brenner,

Acting Director, Office of Wastewater Management.

[FR Doc. 04–22087 Filed 9–30–04; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

Interagency Ocean Policy Task Force

AGENCY: Council of Environmental Quality.

ACTION: Notice of request for comments.

SUMMARY: The Council on Environmental Quality (''CEQ'') has formed an Interagency Ocean Policy Group (''IOPG'') to develop the President's response to the recommendations in the U.S. Commission on Ocean Policy's Final Report that was released on September 20, 2004. In the process of developing the Administration response, the IOPG is accepting public comments on the Commission's Final Report. Because the IOPG has access to the public comments submitted to the commission on its Preliminary Report, which was released on April 20, 2004, the IOPG is seeking specific comments on the changes introduced in the Final Report.

DATES: Public comments will be accepted beginning on Friday, October 1, 2004. CEQ requests that comments be delivered to CEQ no later than the close of business (5:30 p.m. EST) on Monday, November 1, 2004.

ADDRESSES: Send electronic comments to: *finalreportcomments@noaa.gov*. Comments may be sent by facsimile to: (202) 456–9728. Comments may also be mailed to Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503 Attention: Interagency Ocean Policy Group.

SUPPLEMENTARY INFORMATION: The ''Oceans Act Of 2000'' (Pub. L. 106–256) established the U.S. commission on Ocean Policy to make recommendations for a coordinated and comprehensive national ocean policy that will promote: (1) Protection of life & property, (2) stewardship of ocean & coastal resources, (3) protection of marine environment and prevention of marine pollution, (4) enhancement of maritime commerce, (5) expansion of human knowledge of the marine environment, (6) investments in technologies to promote energy and food security, (7) close cooperation among government agencies, and (8) U.S. leadership in ocean & coastal activities. The law required the Commission to develop, in coordination with the States, a scientific advisory panel, and the public, a National Oceans Report. This Report makes recommendations to the President and Congress on ocean and coastal issues. The U.S. Commission on Ocean Policy's Final Report was released on September 20, 2004, and may be found at *http://oceancommission.gov*. Section 4 of the Oceans Act provides for the President to submit to Congress, within ninety (90) days of the receipt of this Report, a statement of proposals to implement or respond to the U.S. Ocean Commission's recommendations for a coordinated, comprehensive and long-range national policy for the responsible use and stewardship of ocean and coastal resources for the benefit of the United States. The IOPG will assist in the development of the Administration's response to the final recommendations. As Chair of the IOPG, and pursuant to

the requirements of Section 4(b) of the Oceans Act of 2000, CEQ is accepting comments on U.S. Ocean Commission's recommendations. Further instructions for submitting comments to the IOPG may be found at *http://ocean.ceg.gov.*

Dated: September 24, 2004.

Philip Cooney,

Chief of Staff, Council on Environmental Quality.

[FR Doc. 04–22031 Filed 9–30–04; 8:45 am]

BILLING CODE 3125–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Subcommittee Meeting Time and Date: 9:30 a.m.–11:30 a.m., October 19, 2004.

Committee Meeting Times and Dates: 1 p.m.–4:15 p.m., October 19, 2004. 7 p.m.–8:30 p.m., October 19, 2004. 8 a.m.–4 p.m., October 20, 2004.

Place: The Westin St. Francis, 355 Powell Street, San Francisco, California 94102, telephone 415/397–7000, fax 415/774–0124.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The ABRWH (''the Board'') was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, delegated to the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on petitions to add classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, and renewed on August 3, 2003.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: Agenda for this meeting will focus on Program Status Reports from NIOSH and Department of Labor; Special Exposure Cohort Petition Process Procedures; Scientific Research Issues Update; Site Profile Reviews; Subcommittee Report and Recommendations; and Board working sessions. There will be an evening public comment period scheduled for October 19, 2004, and a public comment period at midday on October 20, 2004. The Subcommittee will convene on October 19, 2004, from 9:30 a.m.–11:30 a.m.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–6825, fax 513/533–6826.

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 20, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–22044 Filed 9–30–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0166]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Infant Feeding Practices Study II

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 1, 2004.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

I. Background on the Infant Feeding Practices Study II

Under section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)), FDA is authorized to conduct research and educational and public information programs relating to foods and devices. Under this authority, FDA is planning to conduct a consumer study about infant feeding and the diet of pregnant women and new mothers. The study will provide detailed information about foods fed to infants, including breast milk and infant formula; factors that may contribute to infant feeding choices and to breastfeeding success, including intrapartum hospital experiences, mother's employment status, mother's self confidence, postpartum depression, infant sleeping arrangements; and other issues of interest to FDA, including infant food allergy, and experiences with breast pumps. The study will measure dietary intake of pregnant women and new mothers. It will also be used as one component of an evaluation of the Department of Health and Human Services (HHS) National Breastfeeding Awareness Campaign.

A sample of pregnant women will be drawn from a commercial consumer opinion panel for a longitudinal study in which almost all data will be collected by mailed questionnaires. The sample design was chosen to maximize the response rate, which is critical for the success of a longitudinal study.

Almost all of the sample will be members of the consumer opinion panel from which the sample will be drawn, while a few will be household members but not the panel member. All participants will be asked to complete one questionnaire during pregnancy, a short telephone interview shortly after delivery, a neonatal questionnaire sent a few weeks after the birth, and nine postnatal questionnaires sent approximately monthly from infant age 2 to 12 months. The postnatal questionnaires consist of various combinations of nine modules, some of which will be sent at each data collection, while others will be sent only some of the time. Seven of the questionnaires will take about 25 minutes to complete, and the other two will take about 15 minutes.

A subset of the sample will be asked to complete a modified Diet History Questionnaire (from National Institutes of Health, National Cancer Institute) during pregnancy and again when the infants are about 3 months old. Pregnant women who reside in a panel member's home but are not themselves the panel member will be sent a short additional questionnaire to collect basic demographic information.

The expected sample size is about 3,500 pregnant women, of whom about 2,250 are expected to complete questionnaires in the later infant ages. The sample will be well distributed throughout the United States. Only women who give birth to a full-term, healthy, singleton infant will be included in the study. An estimated 12 percent of the original 3,500 women will be ineligible for the study by these criteria. Many of the questions are identical to ones asked in a previous Infant Feeding Practices Study (IFPS) conducted by FDA in 1993 to 1994. Use of the same questions in both time periods will enable comparison between the two data collections. Because the previous data are a decade old, and research suggests that significant changes in infant feeding issues have occurred in the past 10 years, it is likely that consumer attitudes and practices have changed since the first data collection. FDA needs current information to support consumer education programs and to describe the policy context of current issues related to infant feeding. In addition, HHS and its agencies need data to evaluate various outreach efforts about child and maternal nutrition.

In the **Federal Register** of April 21, 2004 (69 FR 21548), FDA published a 60-day notice requesting public comment on the information collection provisions.

FDA received five paperwork reduction comments on the proposed Infant Feeding Practices Study II; one comment was from a member of the public, two from industry groups, one from another government agency, and one from a medical center. In the request for comments (69 FR 21548–21549), the agency invited comments on four topics. Two of the comments we received addressed the first topic: whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility. Two comments addressed the second topic: the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used. Two comments addressed the third topic: ways to enhance the quality, utility, and clarity of the information to be collected. These latter two comments were from the infant formula industry and provided detailed comments about many aspects of the study, including the sampling design, the questionnaire design and specific questions, and possible interpretations of results. No comments specifically addressed the fourth topic: ways to minimize the burden on the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

II. Comments on Topic One

Is the proposed collection of information necessary for the proper performance of FDA's functions, including whether the information will have practical utility?

(Comment 1) One comment from a member of the public states that the agency does not need additional information about infant feeding practices because there is already a substantial amount of information on this topic.

(Response) The agency is not persuaded that existing information will fulfill the agency's needs. We note that detailed, longitudinal information about infant feeding has not been collected by anyone in over a decade. In the approximate decade since the first IFPS, a number of dietary practices related to infants have changed. These changes include the availability of new formulations of infant formula (specifically the addition of docosahexaenoic acid (DHA) and arachidonic acid (ARA)—types of omega-3 and omega-6 fatty acids—to some formula), the increased use of breast pumps, and probable increased intake by infants and mothers of dietary supplements (i.e., vitamins, minerals, herbal, and botanical supplements). Knowledge related to infant feeding has also increased, including the possibility of preventing or delaying food allergy through early infant diet and evidence that certain other diseases, such as diabetes, may be related to solid food timing. Furthermore, overall breastfeeding rates have risen dramatically over the past decade, creating the need to better understand how infant feeding patterns and their determinants have changed. Breastfeeding initiation in 2002 was 70 percent, compared with 54 percent in 1992, and duration to 6 months was 33 percent, compared with 19 percent in 1992. Additionally, increased physician education related to breastfeeding, improved maternity care practices, and some State and Federal laws have altered the barriers that women face in making infant feeding decisions. There is a need to understand infant feeding in the context of these new environments. Consequently, a need exists to update the database with a current description of the practices of mothers of infants.

(Comment 2) One comment from another government unit states that staff use the data from the first IFPS and that they are in favor of the IFPS II.

(Response) The agency agrees that information from the IFPS II will be useful to many government agencies and their staff.

III. Comments on Topic Two

What is the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used?

(Comment 3) One comment from a medical center recommends that the data collection be done by an independent contractor and not by a formula manufacturer. It states that the contractor should not have any affiliation with the formula industry.

(Response) The agency agrees that the data should not be collected by a formula manufacturer. The data will be collected by an independent contractor under the direction of FDA employees.

(Comment 4) One comment from the formula industry states that the sample of the IFPS II should be representative of the general population of new mothers in the United States. The comment asks what steps will be taken to ensure that the proposed data collection is truly representative of the general population. The comment also notes, however, that the sample of the first IFPS was not representative and

acknowledges that if the sample of IFPS II is representative of the general population, FDA will not be able to validly compare results from the two data collections.

(Response) Although the agency agrees with the principle that a nationally representative sample is ideal, it disagrees that this characteristic is essential for the IFPS II. The IFPS II sample will not be representative of the general population of new mothers in the United States. The IFPS II sample will be drawn from the same consumer opinion panel (a collection of households throughout the United States in which members have agreed to answer questionnaires by mail) from which the original study sample was drawn. Before the first infant feeding study was conducted, project staff considered many possible designs and consulted with several experts. The conclusion was that screening costs would be enormous to find a large sample at the required stage of pregnancy to assemble a panel, and that subsequent nonresponse from a panel composed of the general population would be so high that the nonresponse bias would invalidate the study. The people most likely to drop out would be those not included in the consumer opinion panel, such as those with a low level of education, those from unstable households, and those with low English proficiency. Use of the consumer opinion panel will provide data primarily on a middle segment of the U.S. population, but the segment included is fairly broad. For example, 20 percent of the previous study sample participated in the Supplemental Feeding Program for Women, Infants, and Children (WIC), the same proportion as the general population of mothers of infants at the time. In this study, the nature of the bias will be known and the data will be truly longitudinal because most of those who begin the study will complete it. Panel members who have a low level of education and who are of minority race and ethnicity will be oversampled to increase the total numbers from these groups. Use of the same sample frame as the original study will enable comparison across time on some key variables.

For certain analyses the IFPS II sample will be weighted to the distributions of characteristics of new mothers in vital statistics to make the results more representative.

(Comment 5) One comment from industry states that the data collection instruments are lengthy and detailed and appear to be written for an educated, highly literate population. The comment states that this characteristic will make it difficult for the consumer sample to be representative of the general population. The comment recommends that the agency take steps to make all survey instruments appropriate for the general population, including low literacy and minority subgroups. The comment also refers to the agency's proposal to have a subset of the sample complete a modified National Institutes of Health, National Cancer Institute (NIH–NCI) Diet History Questionnaire (DHQ), and asks how the DHQ will be modified for use in the IFPS II. The comment states that the standard DHQ appears to be based primarily on a typical Western diet and collects limited information on ethnic/culture-specific foods.

(Response) The agency disagrees that the data collection instruments should be appropriate for low literacy subgroups. The agency notes that all panel members are, in fact, literate. It would be impossible to conduct a mail survey with people who have low literacy. As noted earlier, the consumer opinion panel will provide data on a fairly broad middle segment of the U.S. population, with oversampling of panel members who have a low level of education and who are of minority race and ethnicity. Thus, the sample will include a range of education and income, including some panel members with no more than a high school education and some low income respondents who qualify for the WIC program. Based on pretesting and on our experience with the first IFPS, we expect that the length and detail of the questionnaires will be appropriate for the IFPS II sample.

Major parts of the instruments were extensively tested and used successfully in the previous IFPS. In the previous study, 32 percent of the sample had no more than a high school education, and as noted above, 20 percent participated in WIC. Some of the previous questions and the new questions have been cognitively tested with a small number of WIC mothers and mothers from the panel from which the sample will be drawn. After OMB approval for the data collection, a pilot test will be conducted for additional testing. One finding from the cognitive testing is that, for some types of questions, it is easier for the mothers to give detailed answers than to answer ''in general'' responses.

In response to the question about modification of the DHQ, the original NIH–NCI Diet History Questionnaire asks participants about foods consumed during the past year. For the IFPS II, the questionnaire was modified to ask about foods consumed in the past month, a more appropriate interval for measuring diet in pregnancy and lactation. Additionally, foods and dietary supplements of special interest in pregnancy and lactation were added to the questionnaire, including certain fortified foods, foods relevant to developing messages about food safety, prenatal vitamin supplements and herbal and botanical preparations known to be used for conditions of pregnancy or breastfeeding or known to be taken by pregnant women. The wording of the question items is given in our draft modified DHQ, which was available for review at the time of our first notice of proposed data collection (69 FR 21548–21549) and is again available with the present notice.

The DHQ was designed based on food intake from a general population national dietary survey, U.S. Department of Agriculture's (USDA's) Continuing Survey of Food Intakes by Individuals 1994 to 1996. These reference data are representative of the entire U.S. adult population. It is true that the DHQ collects limited information on culture-specific foods. However, significant portions of the questionnaire inquire about consumption of whole foods, such as various fruits, vegetables, and grains which are common to many cultures. Because the DHQ was developed using nationally representative food intake data, it is appropriate for this sample of mothers from a fairly broad middle segment of the U.S. population.

Regarding the comment about length and detail of proposed survey instruments, we note that the infant related questionnaires take less time to complete than they appear because of skip patterns. All questionnaires include some questions that only mothers with certain characteristics will answer, and most mothers will skip at least some of these sections. In the postnatal questionnaires that are composed of various modules, some of the modules will be completed only by select mothers. For example, Module B, Stopping Breastfeeding, and Module C, Food Allergy, will be skipped by most mothers in most months they are sent.

The NIH–NCI DHQ may appear to be lengthy and detailed, but its design emphasizes clarity and ease of use for the respondent. The DHQ, developed using extensive cognitive testing, presents food questions individually, rather than in the older, ''grid'' format; avoids grouping food items that are not conceptually similar (although their nutrients may be similar); and uses nested questions about differing forms of a food. When compared with an older, grid format questionnaire in a

mailed survey, the DHQ had a better response rate, was rated easier to use by participants, and had fewer missing or unusable responses on portion size, even though the grid format questionnaire had fewer pages and took less time to complete. Other studies have shown that the accuracy of dietary intake using the DHQ is similar to or better than that for standard grid format questionnaires when compared with checklist or 24-hour diet recall criteria.

(Comment 6) One comment from industry states that use of the IFPS II data to evaluate the HHS National Breastfeeding Awareness Campaign will not be valid unless the sample is truly representative of the U.S. population and has an adequate sample of African-Americans, a group that the campaign especially hopes to reach.

(Response) The agency is not persuaded that this component of the campaign evaluation requires a nationally representative sample. A separate pre-post design evaluation that has a national probability sample will examine the campaign's effect on attitudes related to breastfeeding, and most of the questions used in that evaluation have been included in the IFPS II. The design of the campaign evaluation component of the IFPS II is a prospective post-test only measure using statistical controls. The analysis will statistically compare mothers who are more and less exposed to the campaign and who are more and less aware of the campaign on the dimensions of perceptions and beliefs about breastfeeding, breastfeeding confidence, feeding intentions, and the breastfeeding behaviors of initiation, duration of exclusive breastfeeding, and duration of any breastfeeding. Appropriate control variables will be included in the analysis, such as demographic characteristics and previous breastfeeding experience. Mother's race will be included in the analysis to provide information on the extent to which the campaign was effective among African-American mothers. As noted above, African-American mothers will be oversampled to ensure an adequate number for analysis.

The IFPS II includes several elements that enhance the evaluation design. One strength of the design is the prospective data collection. Information about awareness of the campaign will first be obtained during pregnancy (in addition to monthly after the infant's birth), and the outcome variables will be measured throughout the infant's first year. In addition, the data will be collected nationally, which will provide geographic variation and therefore the ability to collect data in communities with varying degrees of exposure to the campaign.

IV. Comments on Topic Three

What are the ways to enhance the quality, utility, and clarity of the information to be collected?

(Comment 7) One comment from industry urges FDA not to ask for specific formula brand name because this information is not needed for the agency purposes and could be misused by researchers outside of the agency who analyze the data. It recommends that if brands are asked, colored package photos of each brand be provided to respondents to improve accuracy.

(Response) The agency agrees that formula brand information is not needed for our purposes, and we have revised response options to obtain the information we need without identifying specific brands. Our interest is in certain characteristics of the formula, such as whether it was milk, soy, or hydrolysate based, and whether it contains DHA and ARA. We have determined that a series of questions to obtain formula characteristics directly from mothers is not the best option because some mothers do not know some of the characteristics of interest and because the series of questions required each time formula characteristics are asked would increase the length and repetitiveness of the survey. Therefore, we will ask mothers what brand of formula they are using, but the brands will be grouped so that individual brands cannot be identified. For example, all of the milk-based formulas, including store brands, without DHA and ARA will be grouped together; all of the soy-based formulas, including store brands, without DHA and ARA will be grouped together, and so forth. The exact groupings are listed in the questionnaire. Because brands are grouped, there is no need to use color photos to distinguish different formulas with similar names because the most similar ones will be in the same group.

(Comment 8) One comment from industry questions whether the two psychological testing scales should be used in a mail survey. Particularly regarding the depression scale, the concern is that the Federal Government would possess potentially life-saving information that cannot be used without violating the promise of respondent confidentiality.

(Response) The agency is confident of the appropriateness of these scales for a mail survey. The Edinburgh Postpartum Depression Scale is a publicly available instrument and is established in the field as a standard screening tool for postpartum depression. The Edinburgh Postnatal Depression Scale has been used previously in at least two large mail surveys, one of which also assessed the relation between breastfeeding and postpartum depression. It is administered as a self-completed survey when it used in clinics or other settings where face-to-face interactions are possible. The IFPS II will use a version slightly modified for consistency with the conventions of the American language, as used in the Listening to Mothers Study.

The Listening to Mothers Survey (LtMS) was a concurrently administered mail and Web survey completed by 1,583 women who had given birth in the last 24 months. This survey was developed by the Maternity Center Association and Harris Interactive to assess a broad range of issues related to birth experiences. The survey included items on breastfeeding related to the intrapartum hospital stay and the Edinburgh Postpartum Depression Scale. The agency has consulted with the principal investigators on the LtMS, who have expertise in postpartum depression as well as this particular survey methodology, and is convinced that administration of the Edinburgh Postpartum Depression Scale survey in this medium is appropriate and does not introduce risk to the mothers involved in the IFPS II.

The comment is correct that the IFPS II will not have procedures to refer women for followup evaluation if they score relatively high on the depression scale. We note that even a high score does not indicate a life-threatening extent of depression. Previous researchers have faced this same issue of lack of followup as well, which has been reviewed in all cases by the appropriate Institutional Review Board. The Institutional Review Boards reviewing prior mail surveys have determined this risk to be minimal, and use of this measure has also been approved by FDA's Research Involving Human Subjects Committee. The Rosenberg Self-Esteem Scale measure was developed to be self-administered and has high reliability. It measures a stable characteristic of adults, and therefore a characteristic unlikely to change greatly during pregnancy and the postpartum period. The Rosenberg Self-Esteem Scale contains no items that are sensitive. It is more scientifically rigorous, as well as efficient for the government to use established reliable instruments that are available and appropriate than to develop its own.

(Comment 9) One comment from industry states that the wording and order of questions in the 1993

questionnaire have been changed so much that FDA has lost the ability to legitimately compare the two studies and draw conclusions about changes over time.

(Response) The agency is not persuaded that comparisons between all question results will be invalid because of the addition of new questions and the slight differing in order from the previous study. Nearly all repeated surveys add and drop some questions between data collections because of the imperative need to address current issues while keeping the survey length reasonable. The agency recognizes that some of the questions have changed from the 1993 study and that the context of some questions has necessarily changed because new questions have been added. However, FDA has kept the same order of questions relative to the 1993 study to the extent possible, but with some modifications to improve but questionnaire flow. In addition, for the postnatal questionnaires the modules will be placed in the same order as they appeared in the 1993 study. Most of the postnatal modules will be sent with the same frequency and at the same infant ages as in the previous study. The modules that primarily consist of new questions will be placed near the end of each postnatal questionnaire in order to minimize a change in context for the questions repeated from the previous study.

(Comment 10) One comment from industry states that the questionnaire flow, i.e., the order of topics and the transition between topics, needs to be improved. It points out that some of the problem with questionnaire flow occurs because of the difficulty of accommodating new questions within the order of the old questions.

(Response) The agency has evaluated the order of topics in some of the cognitive testing that has been conducted and will also evaluate it in the pilot tests to be conducted after OMB approval of the data collection. The comment is correct our addition of new questions and deletion of old ones has led to a less smooth questionnaire flow in some places. We have sacrificed improvements in order to maintain maximum comparability with the previous study except where the flow was especially awkward. The agency is convinced that comparability is the more important characteristic and that questionnaire flow is sufficient to achieve valid data.

(Comment 11) One comment from industry states that some of the questionnaires are extremely long and that some of the repeated questions have increased in length and complexity. The comment urges FDA to conduct pretests to identify and correct sources of respondent fatigue, confusion, or inconsistency.

(Response) The agency agrees that pretesting the questionnaires is important. We have conducted cognitive interviews on some parts of the questionnaires, and we plan to conduct larger pretests after OMB approval for information collection is granted. We disagree that any of the questionnaires are extremely long. None are longer than the questionnaires in the original study, for which response rates and data quality were very good. As part of the questionnaire development and in response to these comments, we will continue to evaluate the effect of lengthy questions before the questionnaires are fielded.

(Comment 12) One comment from industry states that some of the questionnaires do not include a WIC participation question.

(Response) The WIC participation question will appear in all questionnaires. It is in Module L, which will be sent in all postnatal questionnaires.

(Comment 13) One comment states that factual information is needed on how much influence, if any, infant formula labeling and advertising have on a woman's decision to use infant formula. It recommends that questions be added that will address formula marketing and use of infant formula. A specific question recommended is whether mothers read infant formula labels before they decide whether or not to breastfeed, and if so, how much influence the information on the labels has on their decision.

(Response) The agency is not persuaded that direct questions about the influence of various factors on infant feeding intentions will be useful. At the time of the prenatal questionnaire, mothers will have intentions for methods of feeding their babies but actual behavior will come after the infant is born. We have included questions about sources of information, which is an appropriate and related topic.

(Comment 14) One comment states that an assessment of the impact of the National Breastfeeding Awareness Campaign on a woman's decisionmaking would be useful.

(Response) The agency agrees with this comment. We note that the questionnaires have been designed to measure the association between awareness of and agreement with the campaign messages and breastfeeding behaviors promoted by the campaign.

V. Specific Comments on the Prenatal Questionnaire

(Comment 15) The questionnaire emphasizes breastfeeding, which could bias respondents postnatally. The concern is that answering questions about breastfeeding prenatally will have an artificial effect on behavior.

(Response) The agency disagrees that any effect on behavior of answering questions prenatally will be large. While the agency is concerned about the possibility of previous questions influencing behavior, it is essential to obtain a description of infant feeding intentions and attitudes from the prenatal questionnaire. Most of the sources of information about infant feeding that a pregnant woman is exposed to probably mention the value of breastfeeding, so that answering questions about breastfeeding will not introduce an idea to which the mother would not otherwise be exposed. It is unlikely that the presence of questions about breastfeeding will affect subsequent behavior differently than questions from health care professionals and important family members or information already available to pregnant women. Additionally, approximately 70 percent of new mothers in the United States initiate breastfeeding and the rates are expected to be higher in this sample because of the demographic characteristics. Therefore, most women in the sample will have thought about breastfeeding and will have planned to initiate breastfeeding before reading the IFPS II questions.

(Comment 16) One comment recommends that prenatal questions about intended feeding methods appear earlier in the questionnaire, followed by questions to elicit the primary influencers of her decision. A similar comment states that the prenatal question about exposure to breastfeeding and infant formula information from various sources is adequate to assess awareness of those sources, but that to assess impact, additional questions about how much impact the public communication or advertisements had on knowledge, decisionmaking and behavior should follow. The comment recommends that the agency ask the mother to rate the influence of certain information on her decisionmaking.

(Response) The agency agrees that moving intended feeding methods to an earlier part of the questionnaire will substantially improve the questionnaire flow and has made this change.

We are not persuaded that direct questions about the influence of labels

and advertising on infant feeding behavior are as useful as questions about exposure to various factors and the subsequent measurement of attitudes and behaviors. People are often unaware of the effect of specific information. For example, most people report that advertising has no effect on their behavior, but research indicates that this is not the case. We do ask about the reasons for certain behaviors, including stopping breastfeeding, changing formula brands, and choosing formula brands. For the first behavior, the mother is not likely to be aware of the influence of specific information such as formula advertising. For the other two behaviors, it is possible that mothers sought information from formula labels and advertising and are therefore more likely to be able to report their influence.

(Comment 17) One comment states that the question about which medical conditions the baby's relatives have will confuse the respondents, particularly the ''other relatives'' column because it is unclear how to answer if some other relatives have the condition, some do not, or their conditions are not known. It recommends that the question be reduced to ask whether anyone in the family has each condition. In addition, the comment states that the terms ''eczema,'' ''food allergy,'' and ''overweight/obesity'' are not defined, thereby allowing for a wide range of interpretations.

(Response) The agency has completed cognitive testing of this question and has found that pregnant women and mothers do not have trouble answering it. This type of checklist is commonly completed at doctor's offices and in other medical settings. The information is important to have for the mother herself because some of the conditions may affect breastfeeding. Whether the infant's first degree relatives, in contrast to other relatives, have the condition is important. The question asks about ''any'' other relatives, not ''all'' other relatives, a wording which should help the mother understand the meaning of the question.

As people answer medical condition checklists, they should recognize the term if they have the condition. Cognitive tests have shown that mothers are not disturbed by encountering unknown conditions in this list. The agency has asked whether respondents or their infants or children have food allergies in the original IFPS and also in general population telephone surveys. It is likely that people who have a true food allergy, and especially a severe one, will classify themselves correctly so that the category will include nearly all of the targeted group, but will also include some that are not actually in the classification. That is, the classification will be useful even though it is not perfect. Regarding ''overweight/obesity,'' although some respondents may misclassify themselves or their relatives, prior research has demonstrated that self-report of this condition is appropriate for use in this type of research setting.

(Comment 18) One comment states that the workplace questions ask mothers to speculate on workplace receptiveness to breastfeeding but that all these questions are vague and should be qualified.

(Response) The agency is not persuaded that the workplace questions are vague nor that they ask for speculation on the part of the mother. The pregnant women we have interviewed so far have been aware of workplace issues related to breastfeeding because they are in a situation that makes the information very relevant to them. A later questionnaire asks about specific issues related to workplace and to child care support for breastfeeding, and it asks for the mother's overall impression using the same questions as in the prenatal questionnaire. Cognitive testing on the full set of questions has shown that mothers can answer the specific and the general question easily and that they see the general question as a summary of all various practices and policies of the workplace. The mother's overall impression is what the question intends to measure, and it appears to work for this purpose. The cognitive interviews suggest that mothers give the question a consistent interpretation.

(Comment 19) Both comments from industry find this question to be vague: ''Which of the following statements is closest to your opinion? The best way to feed a baby is:'' They state that the age of the baby is not specified in the question and that ''best'' is not defined in terms of the mother's or child's interest. One comment recommends a different question: ''From what you know, which is generally healthier for an infant: breastfeeding, formula feeding, both are about the same?''

(Response) The agency is not persuaded that the question is vague when asked in the context of the prenatal questionnaire. The question was asked on the original IFPS, and it was analytically useful. The context of the prenatal questionnaire leads respondents to think of very young babies rather than older ones. The question asks for a general, overall assessment by the mother, similar to the overall assessment we ask regarding the supportiveness of the workplace. We have no reason to believe that mothers have varied interpretations of this question. If we ask about the best feeding method for different interests and different dimensions, such as physical or psychological health, many additional questions would be needed, and we would not know how important the various aspects are to the mothers. The one question provides us with the information we are seeking.

In addition to these considerations, this question was asked on the population survey to assess pre-campaign attitudes toward breastfeeding. It is important to ask the same question of mothers in the IFPS II.

(Comment 20) One comment states that new mothers are notoriously poor at remembering where advertising has been seen. It suggests that responses be collapsed into a single response on the question which asks where mothers where they have seen advertisements about breastfeeding and about infant formula.

(Response) The agency disagrees that these response categories should be collapsed. This information was asked for breastfeeding on the population survey to assess precampaign attitudes toward breastfeeding. As noted previously, it is important to ask the same question of mothers in the IFPS II. It would be confusing to ask mothers one set of sources for breastfeeding and a different one for infant formula.

(Comment 21) Both comments from industry suggest that the agency differentiate between emotional commitment and understanding of scientific relationships in the following question: ''How strongly do you agree or disagree with the following statement? Infant formula is as good as breast milk'' and other statements. Both comments from industry assert that the question does not specify the meaning of ''good'' or of ''less'' likely.

(Response) This question is one asked on the population survey conducted before the National Breastfeeding Awareness Campaign launched. Each statement asks about a specific information element of the campaign. These are essential and direct measures of agreement with the campaign messages. The agency is not persuaded that the question should be changed.

(Comment 22) One comment asks that the following question be deleted because such adjective checklists of this type are typically administered immediately after exposure to an ad, not when respondents must recall their feelings about an ad they saw in the past. ''Thinking about the advertisement for breastfeeding, please mark whether

you agree or disagree with each of the following statements. It's entertaining,'' and other statements.

(Response) The agency agrees that this question should be deleted throughout the questionnaires.

(Comment 23) Both comments from industry recommend adding a question about formula feeding similar to the following question to reduce potential bias caused by a concentration on breastfeeding. ''About how many of your friends and relatives have breastfed their baby?'' It also recommends adding ''if any'' after ''about how many,'' to ensure that the response ''none'' is not underreported.

(Response) The agency agrees that it would enhance the study to include a similar question to determine whether the respondent has friends or relatives who have used formula. Because most infants receive formula some time during the first year even if they are breastfed, the more meaningful question would be how many friends and relatives used only formula from their baby's birth. We are not persuaded that the additional phrase ''if any'' is needed. The question is one from the original study, in which 3 percent of respondents chose the option ''none have breastfed.'' In addition, 1 percent said that none of their friends or relatives have children, and 8 percent responded ''don't know.'' In all, 12 percent chose an answer other than a number. While a frequency distribution cannot assure that a response was not underreported, it does at least indicate that a sizeable number of respondents noticed the response options other than numbers.

(Comment 24) One comment notes that ''never'' was added to the response options and recommends that ''never'' be replaced with ''don't know'' in the following question: ''How old do you think your baby will be when you first feed him or her formula or any other food besides breast milk?''

(Response) The agency is persuaded that ''never'' should be deleted from these response options. In order to keep the response options the same as in the original question, ''don't know'' will not be added.

(Comment 25) One comment asks that the agency delete these questions: ''How old do you think your baby will be when you completely stop breastfeeding?'' and ''Using 1 to mean 'not at all confident' and 5 to mean 'very confident,' how confident are you that you will be able to breastfeed until the baby is the age you marked in the previous question?'' The comment states that the questions are a repeated measure and that they invite mothers to speculate on when they will stop breastfeeding and their ability to do what they say (via a ''confidence'' scale). Sensitizing mothers to this issue prenatally can bias their behavior postnatally. Similarly, repeatedly asking it postnatally could also bias continued behavior.

(Response) The agency is not persuaded that the study would be improved by deleting these questions. Intended duration of breastfeeding was asked in the original study and is an important variable for explaining actual duration. The addition of how confident the mother is that she will breastfeed for that duration is a question suggested by the Health Belief Model of behavioral change. As noted previously, the agency is concerned about the possibility that asking questions about breastfeeding might affect subsequent behavior. As mentioned in the response to the first item commenting about the prenatal questionnaire, pregnant women are exposed to information about breastfeeding in multiple ways and from authoritative sources such as child birth educators, nurses, physicians, and important family members. It is unlikely that additional exposure through a questionnaire will have substantial additional effect.

VI. Birth Screener

(Comment 26) One comment recommends that the agency clarify this question: ''Did the mother/you have any medical problems that prevented (her/you) from feeding the baby for more than a week?'' The comment states that it is not clear whether the question pertains only to breastfeeding.

(Response) The agency is not persuaded that changing this question will improve the usefulness of the data because it was used in the previous study to screen out mothers with serious medical problems. However, we will add an interviewer instruction to clarify if needed to the respondent that we mean any type of feeding, not just breastfeeding. To mix the concepts of how the mother intended to feed the infant and her health in one question would change the selection criteria for the sample. Similarly, to change the question to a series of questions on mothers' health would eliminate comparability with the previous sample.

VII. Specific Comments on the Neonatal Questionnaire

(Comment 27) One comment states that unnecessary complexity to the point that it interferes with comprehension has been added to this question modified from the 1993 study: ''In your opinion, which statement best describes your doctor or health professional's attitude about feeding your baby, and the attitude of the staff in the hospital, clinic, or birth center where you delivered?'' The comment suggests that influences be simplified to obstetrician/gynecologist (OB/GYN), pediatrician, doctor on staff at hospital, and other staff at hospital. It suggests that responses be simplified to breastfeed only, formula feed only, breastfeed and formula feed, or no opinion/did not discuss. The comment also recommends a simpler alternative, asking whether any medical professionals or staff at the hospital gave advice or opinions on how to feed your baby in the hospital. Those who responded yes would be asked to check all the ways they were advised to feed their baby with the responses listed above (breastfeed only, etc.).

(Response) The agency notes that the 1993 question asked only about hospital staff and a different question asked about the recommendation of a doctor or other health professional. The new question asks about the two health professional categories in the same format while differentiating between the mother's and baby's doctors, and it asks about perception of attitude rather than recommendation.

The agency is persuaded that some of the changes recommended in the comment will improve the usefulness of the data but that other recommended changes will not. In a paper published from the previous questions on this topic, we found that many women did not report receiving positive breastfeeding messages from doctors and hospital staff and that mothers who perceived that the hospital staff expressed no preference on feeding method were significantly less likely to breastfeed beyond 6 weeks. Cognitive interviews have suggested that mothers differentiate the attitudes of their physician or obstetrician and those of the baby's doctor. Therefore, in the proposed study, it is important to ask the mother to provide an answer for each type of physician and for hospital staff and to include ''had no preference for method of feeding'' as a response option. In cognitive interviews, the question was tested with the last two response options (had no preference and had no discussion of feeding) combined, and one of the mothers expressed a need for the latter category.

The response options in the question, strongly favored breastfeeding to strongly favored bottle feeding, were tested in cognitive interviews to determine whether mothers differentiated strength of attitude. It was found that they did not. Therefore, the

agency has used the response option change recommended in the comment (breastfeed only, formula feed only, etc.), along with the no preference and no discussion response options.

(Comment 28) One comment asks that the agency reword the question on what the mother thinks is the recommended number of months to exclusively breastfeed a baby to ask whether the mother received a recommendation about how long to exclusively breastfeed. The comment expresses concern that the current question will lead mothers to assume that there are a recommended number of months and invites them to guess what it is.

(Response) The agency is not persuaded that this question should be changed as suggested. Because there is a recommendation from the American Academy of Pediatrics Work Group on Breastfeeding and from the American Dietetic Association to exclusively breastfeed for 6 months and from the American Academy of Pediatrics Committee on Nutrition to breastfeed exclusively for 4 to 6 months, and because the National Breastfeeding Awareness Campaign will include exclusive breastfeeding for 6 months as a message, the IFPS II needs to collect data on what mothers think the recommendation is, regardless of whether a health professional has made a specific recommendation to the mother. The agency added a response option, ''Don't know,'' so that mothers will not be encouraged to guess.

(Comment 29) Both industry comments state that some response options are missing from this question: ''What were the reasons you decided not to breastfeed your baby?'' Both comments are concerned that personal preference and the inconvenience of breastfeeding are not included. Both comments also suggest rewording one of the response options from ''had to go back to work/school'' to ''planned to go back to work/school.'' Both recommend that the question obtain a measure of importance for the reasons. One comment recommended including responses to identify infant formula advertising and breastfeeding promotion as reasons for the feeding choice. The comment also recommended including economic reasons because of the claimed health benefits of continued breastfeeding and associated medical care cost reductions.

(Response) The agency is persuaded that obtaining a measure of importance will improve the question because it will make it comparable to other similar questions. We note that ''breastfeeding was too inconvenient'' was a response option for a similar question on reasons for stopping breastfeeding, and we have changed this neonatal question to have the same response options, to the extent possible, as the question on stopping breastfeeding. It now includes the option, ''I thought that breastfeeding would be too inconvenient.'' The agency does not agree that ''personal preference'' will be a helpful response option because it is too vague. We also do not agree that adding a response option on economics will be useful for this question because the economic benefits are associated with breastfeeding, not with formula feeding.

As discussed earlier, we do not believe that mothers will be aware of or be able to adequately report the influence of formula labeling and advertisement. That option has not been added.

(Comment 30) One comment states that this question is vague and should be deleted ''How long was it until you became emotionally comfortable nursing your baby?''

(Response) The agency is not persuaded that this question should be deleted. One reason is that it is repeated from the original study. Another reason is that initial cognitive testing has shown that mothers for whom breastfeeding has gone well have chosen shorter times than mothers who have had more difficulty with breastfeeding.

(Comment 31) One comment recommends that this question be returned to the wording in the 1993 questionnaire: ''Did you get any help with these problems from a doctor or other health professional, a lactation consultant, or a breastfeeding support group?'' It notes that the original questions said ''did you ask for help.''

(Response) The agency notes that these two questions address very different phenomena. The original question will reveal whether mothers recognize the need for help and ask for help in the early days of breastfeeding, whereas the revised question addresses the actual provision of assistance to mothers regardless of whether they asked for help. The agency is persuaded that the 1993 question should be retained; however, the revised question will be included as well to differentiate these two experiences. Because mothers may receive help whether they ask for it or not, one question is not contingent on the other.

(Comment 32) One comment recommends changing the question on pain with breastfeeding. The comment states that the 10-point scale (from no pain at all to the worst pain you have ever felt) is not applicable to breastfeeding and risks trivializing the issue. It also states that it is debatable whether mothers can accurately recall and differentiate the pain level over four short and successive periods of time. It suggests that the question be divided into two questions. The first question would ask the mother to rate the pain the first time she breastfed on a 4-point scale from very severe to no pain. The second question would ask whether the pain became less severe over time.

(Response) The agency disagrees that changing this question will improve the data. Cognitive interviews have shown that breastfeeding pain usually begins later than the first breastfeeding and that after pain develops, it diminishes rapidly for some mothers but slowly for others. Therefore, a question will not characterize the pain if it only asks about pain at the first breastfeeding and then evolution of this pain for a time. In addition, a 10-point scale for pain with anchors similar to those used in the question is a standard pain self-assessment. We have changed the anchor to read ''worst possible pain'' to reflect the exact wording of the published anchors for this scale. Our use of this scale for different time periods will enable respondents to describe the level of pain over time, not only whether it got better. The mothers will be about 3 weeks postpartum when they answer this question, and it is unlikely that the time periods will have already blurred for them.

(Comment 33) One comment states that the questions about gift packs should be modified to reflect the possibility of multiple gift packs or multiple samples in the mail.

(Response) The agency acknowledges that mothers receive multiple gift packs and may also receive multiple samples of infant formula through the mail. A question was added that asks about receiving gift packs from places other than the hospital, and the question about receiving a gift pack from the hospital has been clarified. The issue of distinguishing formula brands from the various sources of gift packs is no longer relevant because we do not ask about formula brand.

(Comment 34) One comment states that an added response option to this question is vague and could apply to almost any brand: ''When you first began buying formula, how did you decide which brand of formula to buy for your baby?'' The option of concern is: ''Chose a brand advertised as better for my baby's development.'' The comment notes that the statement is leading because consumers are not likely to distinguish between ''advertising'' and other forms of information about brand benefits.

(Response) The agency is persuaded that the option should be changed rather than deleted, and we have reworded it as follows: ''I heard that the brand is better for my baby.'' The question is asking for the mothers' reasons for choosing a formula brand, and most of the response options could apply to any formula brand. We agree that mothers are not likely to distinguish advisements from brochures or other information about formula, and we are not interested in a narrow definition of advertisement. The new wording does not ask the mother to distinguish advertising from other information.

(Comment 35) One comment states that the reference formula in this question is unclear: ''Did you discuss your choice of formula brand with the baby's doctor.''

(Response) The agency agrees that the reference formula is unclear and has revised the question to clarify it.

(Comment 36) One comment recommends that ''brand of formula'' replace ''choice of formula'' so that it is not confused with form of formula in two questions: ''Did you discuss your choice of formula brand with the baby's doctor,'' and ''During the past two weeks, have you switched the formula you feed your baby?''

(Response) The agency notes that formula brand is already in the first question. The second one has been changed to incorporate the recommended change.

(Comment 37) One comment states that too many response options have been added to this question: ''What kind of problem(s) have you had (breastfeeding since the first week)?'' The comment states that the added response options complicate the question and contribute to driving the questionnaire to an unacceptable length.

(Response) The agency is not persuaded that adding relevant response options complicates a question. Rather, it gives respondents a way to indicate an answer that best fits them. In cognitive interviews, respondents offer additional responses to questions if they find that none of the responses fit them or if they have additional salient responses that they want to give. The agency is not persuaded that the neonatal questionnaire is an unacceptable length. The new questionnaire is about the same length as the neonatal questionnaire in the 1993 study, which had a very high response rate.

(Comment 38) One comment repeats comment 25 of this document on the prenatal questionnaire, concerning the repeated question regarding intended duration of breastfeeding and confidence in achieving the intended duration.

(Response) See response under comment 25 of this document for the prenatal questionnaire.

(Comment 39) One comment suggests that the agency change this question to ask about concerns rather than feelings: ''How often do you have the feelings described in the following statements?''

(Response) The agency is not persuaded that the change would improve the data. The purpose of the question is to measure the mother's confidence in breastfeeding. The concepts included are those that occur in several lengthy measures of breastfeeding confidence, none of which as a whole were determined to be appropriate for the IFPS II. It is possible for a person to be very concerned about something, and therefore more vigilant and successful, or very concerned because they are not successful. Changing the question as recommended would provide an indication of concerns without information on how the mothers coped with the concerns. In cognitive interviews, mothers have indicated that they are concerned about some statements to which they respond very positively. For example, a mother said that she is always concerned whether her infant gets enough milk at a feeding, so she observes the baby to see that he appears satisfied. She marked ''always'' for ''I feel that my baby gets enough breast milk at each feeding.'' It is the latter information that will be useful in the study.

VIII. Specific Comments on Module A

(Comment 40) One comment states that this question attempts to combine two issues that should be kept separate to minimize the risk of overstating the situation: ''During the past two weeks, how often has your baby been put to bed with a bottle of formula, juice, juice drink, or milk of any kind?'' The two issues are how often and on what occasions babies are put to sleep with a bottle.

(Response) The agency is not persuaded that the recommended change would improve the validity of the data and believes that it would be much more burdensome to respondents. This question is easy for mothers to answer and it repeats a question from the previous study. The purpose of the question is to find out how regularly the infant goes to sleep with a bottle of anything besides water. The naps and bedtimes were divided in the response options because mothers in the cognitive testing for the first study indicated that behavior sometimes differs by these sleep times.

(Comment 41) One comment states that certain medical conditions need to be defined in the check list for this question: ''Did your baby have any of the following illnesses or problems during the past two weeks?'' In particular, the comment recommends that these terms be defined as the following: food allergy, eczema, and other skin rashes.

(Response) The agency agrees that the term ''other skin rash'' is vague and has deleted it from the list of illnesses. As we stated in the response to the comment on the prenatal questionnaire item that asks the mother to report family history of medical conditions, it is likely that those mothers whose infants have a food allergy or eczema will know what the terms mean, and the others will not be concerned that they cannot define some of the terms. We do not agree that these terms need to be defined.

IX. Specific Comments on Module B

(Comment 42) One comment states that the response grid has been lengthened substantially for this question: ''How important was each of the following reasons for your decision to stop breastfeeding your baby?'' The comment states that responses located at the end of the response grid will probably be understated. It recommends that similar responses be consolidated. Another comment recommends that additional response options be added to elicit information on the influence of formula advertisements and labels as reasons the mother stopped breastfeeding.

(Response) The agency shares the comment's concern about lengthy lists of response options. The issue has been addressed in cognitive interviews, but a larger number of respondents is needed to evaluate the issue. In the previous IFPS, items at the end of the list had sizeable positive responses. For example, 20 percent of respondents to Module B at infant age 3 months marked the next-to-last item, ''I wanted my body back to myself'' as greater in importance than ''not at all important.'' (This response option was inadvertently omitted from the question and has been added.) It may be that when respondents are asked to rate each item, they are less likely to stop reading before the end of the list.

The agency will conduct tests of the effects of long lists on responses after OMB approval of the study, when the questionnaires can be administered to additional respondents. The agency has combined as many responses as it deems sufficiently similar in this and other long response option lists to

reduce the number of items, and further items will be combined if possible after additional tests. As noted earlier, the agency does not agree that information about the influence of formula advertisements and labels can be obtained from this survey, and we have not added items regarding formula labels.

(Comment 43) One comment recommends that this question should be revised and should be preceded by a question asking whether anyone said that the mother should stop breastfeeding: ''Did any of the following people want you to stop breastfeeding?'' It notes that this will enable asking a question that was on the 1993 questionnaire. It also suggests that respondent may feel uncomfortable singling out their employer or supervisor.

(Response) The agency is not persuaded that two questions should be asked. It is not persuaded that the question should be asked as in the 1993 questionnaire because ''said you should stop'' is only one form of communication; ''want you to stop'' allows for communications that are not direct statements. By asking the mother to consider whether each of the people listed wanted her to stop breastfeeding, we do not require the mothers to think through everyone they have contact with to answer a first broad question. By listing specifically those people of interest, we help the mothers remember all people of interest to us. The category, ''employer or supervisor,'' has been tested through cognitive interviewing and was not problematic. This is probably because mothers understand that their employers and supervisors do not have access to their responses on this survey. In all data files, mothers will be anonymous so that the possibility of anyone tracking down their employer or giving employers the information is even more remote.

(Comment 44) One comment is concerned that the following question is too speculative: ''How likely is it that you would breastfeed again if you had another child * * * .'' It recommends that the question be changed to ask mothers how interested they would be in breastfeeding their next baby.

(Response) The agency is not persuaded that the recommendation would improve the data. The question is repeated from the 1993 survey, so that change would destroy the possibility of comparison across time. In addition, intentionality and confidence in the decision to breastfeed have been found to be a strong predictor of actual subsequent breastfeeding behavior, whereas ''interest'' is a diffuse concept to operationalize.

X. Specific Comments on Module C

(Comment 45) One comment relates to this question: ''What brand of formula did your baby have the problem with or react to?'' The comment is concerned that the question perpetuates a misconception that formula causes intolerance symptoms and states that if formula intolerance occurs, it would be more likely to be related to the type (e.g., milk or soy-based) than brand. It recommends that if the question is kept, the 1993 version be used because it does not ask mothers to attribute causality to formula used at the time. It also notes that it has asked that all questions that ask respondents to identify brands of formula be deleted.

(Response) The agency agrees that formula brand is not needed for this question. We will ask the mother to choose a formula brand from grouped categories as described in the response to the first comment on the third topic for which we requested comments. In addition, the questions has been changed to that asked in the 1993 study.

(Comment 46) One comment concerns this question: Is there an infant formula your baby was given and did not have a reaction to? The comment notes that it has asked that all questions that ask respondents to identify brands of formula be deleted. These alternative questions are recommended: ''What other types of infant formula have you used,'' or ''What form of formula were you using when the baby did not experience any symptoms of allergy or intolerance?''

(Response) The agency agrees that brand is not needed and has changed the question.

(Comment 47) One comment concerns questions about age at first problem that mother thought was food allergy to formula and to any other food and symptoms of food allergy to formula and to food. The comment does not want specific brand to be indicated.

(Response) The agency agrees that specific formula brands are not needed for this question. The questions have been reworded.

(Comment 48) One comment concerns this question: ''Were the symptoms diagnosed as a food allergy by a doctor or other health professional?'' The comment is concerned that the question leads the respondents, and that they will interpret whatever the doctor said as indicating a food allergy. It recommends a rewording to include whether the problem was diagnosed as a food allergy or as an intolerance and offers several other options.

(Response) The agency is not persuaded that the question leads the respondents. In the previous study, about half of respondents who had consulted a doctor for the baby's symptoms said that the baby had been diagnosed as having a food allergy. Without independent assessment, it is not possible to know whether the respondents properly classified themselves, but it is certainly the case that not all respondents who had seen a doctor reported that the baby had a food allergy. We note that additional information in the questionnaire is available regarding the probable accuracy of the mother's report, including method of diagnosis and symptoms.

(Comment 49) One comment recommends that ''allergy'' be used in the following question and the instruction before it instead of ''food allergy.'' ''What method did the doctor use to diagnose the food allergy?'' The comment is concerned that the doctor may have only said ''allergy'' and not ''food allergy'' so that the question will lead to underreporting.

(Response) The agency is not persuaded that the wording of questions in this section should delete the term ''food'' to modify ''allergy.'' The section screens people in only if they state that the baby has had an allergic reaction or intolerance to food. Therefore, only people who believe that their baby has some sort of reaction to food will be answering these questions. In question 6, which asks what symptoms of food allergy or intolerance the baby had, the question may be confusing to people whose infants have had reactions to substances other than food if we only ask about ''allergy.'' The agency will test these questions for clarity before the questionnaires are finalized.

XI. Specific Comments on Module D

(Comment 50) One comment repeats comment 25 of this document on the prenatal questionnaire, concerning the repeated question regarding intended duration of breastfeeding and confidence in achieving the intended duration.

(Response) See response under comment 25 of this document for the prenatal questionnaire.

(Comment 51) One comment concerns this question: ''Where have you obtained information about breastfeeding and where have you obtained information about breast pumps for this baby or other babies?'' The comment states that recollection on sources of information for specific topics with previous children is likely to be poor. In addition, the list is too

long, risking understatement of items at the end.

(Response) The agency is persuaded that the question should be changed. As with other questions about sources of information, sources for this baby and previous babies are combined so that the mother does not have to distinguish them. More important, the question has been revised to ask about breast pumps only and has been moved to the section on breast pumps.

Rather than asking about sources of information about breastfeeding, we ask about sources of information about infant feeding, and this question will be asked in module F only. The times of administration of module F have been revised to obtain the information earlier.

We kept the idea of including sources of information for previous babies because cognitive testing revealed that respondents with older children were concerned that they were not able to mark any sources of information, or very few, for the current baby, despite having obtained information prior to this child. They pointed out that they had already read the books, discussed issues with health professionals, etc., and didn't need to do it again. The agency is concerned about the lengthy list of sources and has shortened it.

(Comment 52) One comment notes that answer grids are inconsistent between similar questions. For example, ''How important were each of the following reasons for feeding your baby formula?'' and other questions on reasons for not breastfeeding and questions about reasons for stopping breastfeeding have similar items as reasons, but some ask the respondent to complete a four-point rating scale of importance whereas others ask the respondent to mark which reasons were important. Both industry comments suggest that the response list include advertisements for infant formula including other media such as direct mail, Internet physician brochures, as well as infant formula labels as a possible reason the mother feeds her baby formula.

(Response) The agency is persuaded that the data will be more useful if all of these types of questions have the same answer grids and have response options as similar as possible. The specific reasons have been revised to accommodate concerns about redundancy and lengthy lists to the extent possible to maintain comparability with the 1993 questions and to provide the detail needed for some classes of reasons. As noted previously, the agency does not agree that information about the influence of infant formula advertising and labels can validly be obtained from this survey.

(Comment 53) One comment offers a suggestion for changing the questions about cleaning the bottle nipples used to feed the baby expressed breast milk and about sterilizing the pump collection kit, the container used to collect the milk, and the bottle used to feed the baby the expressed milk. The suggestion is to ask two questions: ''What are all the ways you cleaned the bottle nipples in the last seven days,'' and ''Which one way did you clean the most often?''

(Response) The agency is not persuaded that the suggestion is an improvement. Asking two questions would increase the length of the questionnaire. Asking which of several possible cleaning methods was used most often would increase respondent burden without adding important information because the main interest is in the less safe methods, which will rarely be used ''most often.'' Results from cognitive interviews and reviews by experts have led to changes in the question about sterilizing the pump collection kit, etc. The question now asks how often the items are sterilized rather than whether or not they are sterilized before being used again.

(Comment 54) One comment states that the term ''hurt'' is vague in this question: ''Have you been hurt by any breast pump that you used or tried to use to express milk since this baby was born?''

(Response) The agency is not persuaded that the term ''hurt'' is vague. Cognitive interviews were conducted using the term ''injured,'' which might be seen as more specific, in the above question. Respondents were alarmed and disturbed about the possibility of being injured by a breast pump. In subsequent interviews, the term ''hurt'' was used, and respondents answered the question without expressing alarm. The term ''hurt'' will enable respondents who have been injured to provide the information without alarming other mothers who have not been injured.

XII. Specific Comments on Module E

(Comment 55) One comment states that the question asking respondents to evaluate certain characteristics of formula labels is complicated and will invite confusion and inconsistency. It recommends that respondents be asked if they have looked at certain information before they are asked to evaluate it. The comment also recommends specific questions to replace this one for the current brand of formula. The recommended questions are as follows: (1) Is there anything on the label that is hard to understand? (2) Is there any information you wanted that was missing? and (3) Is there any part of the label that you tried to look at but had difficulty finding or reading because the print size was too small? In addition, the comment asks that the agency include a question regarding the mother's perception or understanding of how important it is to follow the label directions regarding the prepared formula.

(Response) The agency agrees that respondents need to be asked whether they have looked at the various types of information on formula labels before this question asking for their evaluation. It also agrees that this question needs to be simplified and has done so. However, the changes recommended in the comment are not adequate for our information needs. One reason is that the agency wants respondents to think about the specific types of information mentioned and not other information, such as the ingredient list, which might have different reading characteristics. The agency also does not want to rely on ''top-of-the-mind'' responses from open-ended ''specify'' instructions, which may be too vague to interpret. The agency agrees that it would be useful to add a question about how important the mother believes it is to follow certain label directions.

(Comment 56) Regarding the question asking the respondent to evaluate the pictorial directions for preparing formula, one comment asks that a question be added to establish whether the mother has looked at this part of the label.

(Response) The agency agrees that a question should be added to establish whether the mother has looked at the pictorial directions before evaluating this part of the label.

(Comment 57) One comment states that respondents will not be able to recall what ingredient they were looking for when they looked at the ingredient list of the label. It suggests that we ask what ingredient they were most concerned about when they decided to look at the label, with a response option, ''no particular ingredient.''

(Response) The agency agrees that use of the phrase ''concerned about'' rather than ''looking for'' will make the question closer to the 1993 question, and the change will be made. The agency believes that respondents who were not looking for a specific ingredient are accommodated already by the preceding question that asks whether they used the list to look for any specific ingredient. Those who were not looking for a particular ingredient can mark ''no'' in this question and skip

the question about what ingredient they were looking for. In addition to these changes, the questions have been revised to allow for looking anywhere on the label for any particular ingredient or characteristics because the presence or absence of certain ingredients is often indicated somewhere else in addition to the ingredient list.

(Comment 58) One comment recommends that questions be added to determine whether mothers find the nutrition content and information on special attributes on infant formula labels useful and desirable. The comment states that it would be valuable to know if mothers understand health claims and labels claims on formula in the proper context of one formula compared to other formulas, or if the statements require rewording to avoid inappropriate comparison of formula to breastfeeding, or unintended comparisons to other foods like cow milk or juice.

(Response) The agency disagrees that the IFPS II is an appropriate mechanism to examine detailed understanding of label claims and the effect of specific label wording. These types of issues are better addressed in experimental studies where researchers know exactly what subjects are viewing when they answer specific questions. The label questions in the IFPS apply to all formula containers, whereas health and label claims differ by brand and other formula characteristics.

(Comment 59) One comment recommends that a question be added to assess mother's perception of how safe infant formula powder is from a microbiological standpoint and whether infant formula powder is sterile.

(Response) The agency agrees that this additional information will be useful and has added a question.

(Comment 60) One comment recommends a simplification of the question about cleaning bottle nipples used to feed formula. It suggests this question, ''In the past seven days, how did you usually clean the bottle nipples (select one response from list)?''

(Response) The agency is not persuaded that the suggestion is an improvement. This question needs to be parallel to the question about cleaning the nipples used to feed expressed milk (see comment 53 of this document under module D). As noted in the response to that comment, the main interest is in the less safe methods, which will probably be used only some of the time, so that asking about usual cleaning methods will not provide the information required.

(Comment 61) One comment recommends a lead-in to help mothers feel more comfortable as they answer the question about handwashing before preparing formula.

(Response) The agency agrees that a lead-in such as that recommended will improve the data and has added it.

(Comment 62) One comment points out that respondents who have switched brands of formula more than 2 weeks earlier answer a question that includes no responses related to digestibility or tolerance, in contrast to those who switched in the past 2 weeks. They recommend that either the response list for the two questions be made comparable or that the time period for formula brand switching be lengthened to any period of time.

(Response) The agency rejects the suggestion that the time period for formula brand switching be lengthened to any period of time. A longer time period for brand switching would lead to less precise answers and more misclassification because mothers would not be able to rely on their recent memory, particularly if the reasons for switching were not salient to them. Therefore, the time period has not been changed.

We examined the possibility of making the two lists comparable. However, one question asks for reasons for leaving a brand and the other asks for reasons for using a brand, and the comparable reasons do not work for the two opposite questions. We added a response on the list for reasons for choosing a brand that relates to intolerance of the previous brand: ''My previous formula brand did not agree with my baby and this brand is better for the problem.''

XIII. Specific Comments on Module F

(Comment 63) One comment recommends a different placement for the question on sources of information about herbal preparations and also states that the response list is unnecessarily detailed and too long. It also recommends that the questionnaire first establish whether the respondent has ever sought information about herbs, botanicals, or other dietary supplements.

(Response) The agency calls attention to the note at the beginning of module F, which states that these questions will not be asked as a separate module, but will be inserted in appropriate places within other modules. This question about information sources for dietary supplements will follow questions about intake of these substances, but only in months 4 and 10.5.

The agency has considered response lists for all questions about sources of information together, has make them consistent to the extent possible given the information needs, and has combined some of the detailed but similar categories. Regarding asking first whether the mother has sought information, we note that information is often unsolicited, whether or not the respondent chooses to use the substances.

(Comment 64) One comment recommends that the agency not ask about sources of information for previous infants and that the response list for sources of information be consolidated and shortened. They refer to comment 53 of this document in module D.

(Response) See comment 53 of this document in module D.

XIV. Specific Comments on Module G

(Comment 65) One comment states that the questions in module G repeat questions in the prenatal and other questionnaires about the National Breastfeeding Awareness Campaign. It expresses concern that no questions determine whether the respondent has seen any of the campaign advertisements or that the campaign is responsible for any of the attitudes that are measured.

(Response) The agency does not agree that awareness of campaign advertisements is not measured. These questions appear in the prenatal questionnaire, the neonatal questionnaire, and in module L, which will be sent at each administration of the postnatal questionnaires. The questions state that ''a description of a campaign advertisement will be provided,'' although one example is given. The specific advertisements asked about will rotate among the various ads from the campaign.

It is the case that specific questions about the campaign are asked in the prenatal questionnaire and are repeated at infant ages 3 and 7 months. While the research design will not be able to prove that breastfeeding attitudes are affected by the campaign, the design will be able to provide evidence of the effect of the campaign. The analysis of breastfeeding attitudes and knowledge in geographical areas with different extents of exposure to the campaign advertisements and between individuals who have and who have not seen the advertisements will provide this evidence.

(Comment 66) One comment asks the agency to consider the comments stated in comment 20 of this document for the prenatal questionnaire regarding recall of where advertisements or other information was seen.

(Response) The agency refers to the response under that comment.

(Comment 67) One comment states that the lack of an infant age in the question asking what is the best way to feed a baby is a greater limitation in the ability to interpret the response when this question is asked of older infants.

(Response) The agency is persuaded that the same question asked in the prenatal questionnaire cannot be repeated for older infants. We have added infant age in the month 3 question and dropped the question for month 7.

(Comment 68) One comment states that comment 21 of this document for the prenatal questionnaire applies to this repeated question also. That comment concerned the question asking about agreement with campaign messages.

(Response) The agency refers to the response under that comment.

XV. Specific Comments on Module H

(Comment 69) One comment refers back to comment 18 of this document of the prenatal questionnaire for a repeated question regarding workplace supportiveness for breastfeeding.

(Response) The agency refers to the response under that comment.

(Comment 70) One comment suggests that a question on workplace policies regarding breastfeeding will require the respondent to speculate when they answer whether all mothers are covered by the policies. It recommends changing the question to a yes-no response format.

(Response) The agency agrees that respondents may not know what the workplace policy is for other mothers. The question has been changed.

(Comment 71) One comment states that the question about breastfeeding obstacles at work covers very sensitive material that may have legal implications to the extent that respondents are invited to record real or imagined improper actions by people at work.

(Response) The agency disagrees that the question is sensitive or has legal implications. The question asks the mother whether she has had certain experiences at work, but the responses will be the mothers' perceptions. Details are not asked that would be needed to determine whether illegal behavior has occurred. Furthermore, none of the experiences asked about is illegal in the general way described. None of the respondents in cognitive interviews have thought the questions sensitive.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN YEAR 1[1]

Questionnaire	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Prenatal	3,500	1	3,500	.25	875
Prenatal Diet History Questionnaire	1,400	1	1,400	1.00	1,400
Demographic Questionnaire	140	1	140	.17	24
Birth Screener	2,772	1	2,772	.07	194
Neonatal Questionnaire	2,494	1	2,494	.25	624
Postnatal Diet History Questionnaire	1,400	1	1,400	1.00	1,400
Month 2 Questionnaire	2,250	1	2,250	.42	945
Month 3 Questionnaire	2,250	1	2,250	.42	945
Month 4 Questionnaire	2,250	1	2,250	.25	562.5
Month 5 Questionnaire	1,875	1	1,875	.42	787.5
Month 6 Questionnaire	1,500	1	1,500	.42	630
Month 7 Questionnaire	1,125	1	1,125	.42	472.5
Month 9 Questionnaire	375	1	375	.25	94
Total			23,331		8,953

[1]There are no capital costs or operating and maintenance costs associated with the collection of information.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN YEAR 2[1]

Questionnaire	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Month 5 Questionnaire	375	1	375	.42	157.5
Month 6 Questionnaire	750	1	750	.42	315
Month 7 Questionnaire	1,125	1	1,125	.42	472.5

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN YEAR 2[1]—Continued

Questionnaire	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Month 9 Questionnaire	1,875	1	1,875	.25	469
Month 10 Questionnaire	2,250	1	2,250	.42	945
Month 12 Questionnaire	2,250	1	2,250	.42	945
Total			8,625		3,304

[1]There are no capital costs or operating and maintenance costs associated with the collection of information.

The burden estimate is based on FDA's experience with the 1993 to 1994 survey mentioned in the previous paragraph and information available for the Diet History Questionnaire.

Dated: September 22, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22052 Filed 9–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Preparation for the International Conference on Harmonization Meetings in Yokohama, Japan: Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Preparation for ICH meetings in Yokohama, Japan'' to provide information and receive comments on the International Conference on Harmonization (ICH) as well as the upcoming meetings in Yokohama, Japan. The topics to be discussed are the topics for discussion at the forthcoming ICH Steering Committee Meeting. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Experts Working Groups meetings in Yokohama, Japan on November 15 through 18, 2004, at which discussion of the topics underway and the future of ICH will continue.

Date and Time: The meeting will be held on October 19, 2004, from 1:30 to 3 p.m.

Location: The meeting will be held at 5600 Fishers Lane, 3rd floor, Chesapeake Conference Room, Rockville, MD. For security reasons, all attendees are asked to arrive no later than 1:15 p.m., as you will be escorted from the front entrance of 5600 Fishers Lane to the Chesapeake Conference Room.

Contact Person: Sema Hashemi, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3050, FAX 301–480–0716, e-mail: *Sema.Hashemi@fda.hhs.gov*.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by October 15, 2004.

If you need special accommodations due to a disability, please contact Sema Hashemi at least 7 days in advance.

Transcripts: Transcripts of the 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, approximately 15 working days after the meeting at a cost of 10 cents per page.

SUPPLEMENTARY INFORMATION: The ICH of Technical Requirements for the Registration of Pharmaceuticals for Human Use was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labor, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA). The ICH Steering Committee includes representatives from each of the ICH sponsors and Health Canada, the European Free Trade Area, and the World Health Organization. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: *http://www.ich.org.*

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled between approximately 2:30 and 3 p.m. Time allotted for oral presentations may be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by October 15, 2004, and submit a brief statement of the general nature of the evidence or arguments they which to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

The agenda for the public meeting will be made available on October 8, 2004, on the Internet at *http://www.fda.gov/cder/meeting/ICH_10192004.htm*.

Dated: September 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22053 Filed 9–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions; Correction

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions; correction.

SUMMARY: The HHS Office of Inspector GeneralPublished a document in the **Federal Register** of September 15, 2003, imposed exclusions. The document contained an incorrect exclusion type.

FOR FURTHER INFORMATION CONTACT: Jacqueline Freeman, (410) 786–5197.

Correction

In the **Federal Register** of September 15, 2004, in FR Doc. 20710, on page 55641, correct the exclusion date to read:

LABONTE, MARY ..... SCOTTSDALE, AZ	9/20/2004

Dated: September 21, 2004.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 04–22046 Filed 9–30–04; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Cytonectin, Cytonectin Gene and Cytonectin Inhibitors and Binding Ligands and Their Use in the Diagnosis and Treatment of Disease

Soni J. Anderson et al. (NCI)

U.S. Provisional Application No. 60/553,977 Filed 18 Mar 2004 (DHHS Reference No. E–128–2004/0–US–01); U.S. Provisional Application No. 60/578,068 Filed 09 Jun 2004 (DHHS Reference No. E–128–2004/1–US–01)

Licensing Contact: Fatima Sayyid; (301) 435–4521; *sayyidf@mail.nih.gov*.

Cytonectin is a 35K molecular weight protein that displays ion-independent adherence properties, is expressed in a variety of organs and tissues and is evolutionarily conserved from human to rodent and avian species. Within the body it is thought to serve the function of ''super glue'' contributing to cell-cell interactions and 3-dimensional tissue structure and a physiologic ''do not attack'' signal molecule that prevents tissue destruction by cells of monocyte lineage including odontoclasts in secondary teeth. It also plays an important role in the pathology associated with cancer, arthritis, Alzheimer's and Parkinson's disease.

The present invention relates to cytonectin, to polynucleotides that encode cytonectin, to inhibitors and antibodies that bind to cytonectin and to the use of compositions in the diagnosis and treatment of cytonectin-related diseases and conditions.

Genetic Fingerprint of Acute Stroke

Alison E. Baird (NINDS)

U.S. Provisional Application No. 60/575,279 Filed 27 May 2004 (DHHS Reference No. E–306–2003/0–US–01)

Licensing Contact: Fatima Sayyid; (301) 435–4521; *sayyidf@mail.nih.gov*.

Stroke is the third leading cause of death and the leading cause of adult disability in developed countries. Despite the prevalence and burden of this disease, stroke precipitants and pathophysiological mechanisms in individual patients are often unknown. It is also difficult to accurately predict whether a stroke will lead to only minor neurological sequelae or more serious medical consequences. Although animal experiments in focally ischemic brain tissue have indicated that there are alterations in gene expression following a stroke, gene expression profiling has not yet been applied to clinical human stroke, primarily because brain tissue samples are inaccessible and rarely justified.

The present provisional patent application discloses methods of determining whether a subject had an ischemic stroke, methods of determining the prognosis of a subject who had an ischemic stroke, as well as methods of determining an appropriate treatment regimen for a subject who had an ischemic stroke.

Inhibition of Smad3 To Prevent Fibrosis and Improve Wound Healing

Anita B. Roberts et al. (NCI)

U.S. Patent Application No. 10/299,886 Filed 18 Nov 2002 (DHHS Reference No. E–070–2000/0–US–06), claiming priority to PCT Application No. PCT/US00/13725 Filed 19 May 2000 (DHHS Reference No. E–070–2000/0–PCT–01)

Licensing Contact: Marlene Shinn-Astor; (301) 435–4426; *shinnm@mail.nih.gov*.

Millions of dollars are spent each year to heal chronic non-healing wounds and in the treatment of severe burn patients. The NIH announces a new technology that may lead to improved approaches to treatment of burn patients and the reduction of scarring and more rapid closure of both acute (surgical) and chronic wounds (*e.g.,* diabetic, decubitus, and venus statis ulcers).

Smad2 and Smad3 are highly homologous cytoplasmic proteins which function to transduce signals from Transforming Growth Factor–beta (TGF–beta) and activin receptors to promoters of target genes found in the nucleus. This new technology indicates that interference with specific signaling pathways downstream of TGF–beta may be more selective and have a better outcome than approaches aimed at blocking all effects of this pleiotropic cytokine.

Specifically, it is proposed that elimination or inhibition of Smad3 may interfere with fibrogenic mechanisms and reduce the accumulation of scar tissue associated with high dose radiation and wound healing, while increasing the rate of re-epithelialization of wounds.

Although this technology is still in an early stage, our researchers have obtained solid evidence of the involvement of Smad3 in these processes by use of a Smad3 null mouse model which they have developed. Based on these results, it is believed that antisense Smad3 or small molecule inhibitors of Smad3 will have clinical applications in wound healing, in improving growth and reducing unwanted fibrosis of autologous skin grafts for treatment of burn patients, and in treatment of radiation fibrosis and other fibrotic diseases associated with chronic inflammation. In addition, the discovery of inhibitors to Smad3 signaling may lead to radiation dose escalation and accelerated tumor cell death while reducing the side effects associated with radiation therapy.

Use of Smad3 Inhibitor in the Treatment of Fibrosis Dependent on Epithelial to Mesenchymal Transition as in the Eye and Kidney

Anita B. Roberts (NCI)

PCT Application No. PCT/US04/03563 Filed 16 Jan 2004 (DHHS Reference No. E–062–2003/3–PCT–01)

Licensing Contact: Marlene Shinn-Astor; (301) 435–4426; *shinnm@mail.nih.gov.*

Fibroid scar tissue has been associated with wound healing of the epithelial layer following tissue damage created by surgery or other means. Examples of which include the opaque scar tissue associated with cataract surgery and the fibroid scar tissue produced in several kidney diseases such as is seen in unilateral ureteral obstruction.

Smad2 and Smad3 are highly homologous cytoplasmic proteins which function to mediate signals from Transforming Growth Factor Beta (TGF–B) and activin receptors to promoters of target genes found in the nucleus. The NIH announces a technology wherein Smad 3 is now implicated in TGF–B-dependent transdifferentiation of epithelial cells to mesenchymal cells (EMT), which blocks the endpoint of fibrosis at an early stage of differentiation of epithelial cell precursors into interstitial fibroblasts. In particular, fibrosis was blocked following wounding of the lens of the eye and damage created to the kidney. It is believed that an inhibitor of Smad 3 could be used to block fibrosis following cataract surgery and lens implantation in patients, as well as slowing the progression of end-stage renal disease.

Dated: September 22, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–22148 Filed 9–30–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

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Bovine Adeno-Associated Viral (BAAV) Vector and Uses Thereof

John Chiorini et al. (NIDCR)

U.S. Provisional Application No. 60/526,786 Filed 04 Dec 2003 (DHHS Reference No. E–329–2003/0–US–01)

Licensing Contact: Jesse Kindra; (301) 435–5559; *kindraj@mail.nih.gov.*

Adeno-associated viruses (AAVs) are common in humans, but no disease has been associated with AAV infections. This, as well as several other properties, has made AAVs potentially useful for gene therapy. Bovine AAV (BAAV) is serologically distinct from AAVs isolated from humans and may not be neutralized by circulating antibodies in patients receiving gene therapy. Moreover, BAAV has a unique tropism for various cell lines when compared to other AAVs. For instance, recombinant BAAV transduced murine submandibular salivary glands about ten times more efficiently than AAV–2. Therefore, BAAV may be a useful addition to the repertoire of gene transfer tools because of its unique serological identity, cell tropism, and efficient gene transfer in vivo.

The present invention describes the isolation, subcloning and sequencing of BAAV and provides a vector comprising BAAV viral particles, or a vector comprising subparts of the vectors. The invention also provides a method of delivering a nucleic acid to a cell subject. We note that this vector may also have future application(s) in the cattle industry.

This invention has been described in Schmidt *et al.* 2004. J. Virol. 78:6509–16.

Treatments for Inhibiting Development and Progression of Nevi and Melanoma Having *BRAF* Mutations

Paul S. Meltzer (NHGRI)

PCT Application No. PCT/US03/32989 Filed 16 Oct 2003 (DHHS Reference No. E–021–2003/0–PCT–01)

Licensing Contact: Charmaine Richman; (301) 451–7337; *richmanc@mail.nih.gov.*

The technology encompasses activating mutations in the *BRAF* gene that promote nevi and melanoma proliferation. These mutations produce an activated form of B–Raf, a serine/threonine kinase participant in the Ras/Raf/MEK/ERK MAPK pathway. In one example of the activating *BRAF* mutations, a 1796 T → A transversion produces a V599E mutated form of B–Raf. This mutated form of B–Raf possesses a tenfold greater basal kinase activity and induces focus formation in NIH3T3 cells 138 times more efficiently than does wild type B–Raf. Methods of diagnosing *BRAF* mutations in a subject, methods of treating nevi and melanoma in subjects having *BRAF* mutations, methods of selecting treatments, methods of screening for agents that influence B–Raf activity, and methods of influencing the expression of *BRAF* or *BRAF* variants are also claimed. Nucleotide sequences for use in the described methods are also provided, as are protein-specific binding agents, such as antibodies, that bind specifically to at least one epitope of a B–Raf variant protein preferentially compared to wild type B–Raf.

Important publications: *Oncogene* (2004) 23, 4060–4067; *Nature* (2002) 417(6892), 949–54.

Lentivirus Vector System

Suresh K. Arya (NCI)

U.S. Provisional Application No. 60/115,247 Filed 07 Jan 1999 (DHHS Reference No. E–231–1998/0–US–01)

PCT Application No. PCT/US/00/00390 Filed 06 Jan 2000, which published as WO 00/40741 on 13 Jul 2000 (DHHS Reference No. E–231–1998/0–PCT–02)

U.S. Patent Application No. 09/869,588 Filed 28 Jun 2001 (DHHS Reference No. E–231–1998/0–US–03)

U.S. Patent Application No. 10/731,988 Filed 09 Dec 2003 (DHHS Reference No. E–231–1998/0–US–04)

Licensing Contact: Jesse Kindra; (301) 435–5559; *kindraj@mail.nih.gov*.

This application relates to the field of gene therapy. More particularly the application describes a vector system useful in gene therapy. The vectors employed in this system are lentiviral vectors, particularly retroviral vectors based on HIV2. Retroviral vectors based on HIV2, unlike most other retroviral vectors such as MuLV, are capable of infecting non-proliferating cells thereby making them useful in situations where other retroviral vectors are not. The vector system uses a two vector approach to minimize the possibility of HIV infection and comprises a transfer vector, for carrying the foreign gene of interest, and a packaging vector. The transfer vector carries a specific modification that demonstrates an improved ability to package and express the gene of interest when compared to a control. In the experimental system this increase was 25 fold. This improved packaging and expression ability is one means to address current low viral titers which are problematic in the gene therapy field.

This research has been published, in part, in Human Gene Therapy 1998 June 10; 9(9): 1371–86.

Food Quality Indicator Device

Dwight W. Miller, Jon G. Wilkes, Eric D. Conte (FDA)

U.S. Provisional Application No. 60/052,674 Filed 17 Jul 1997 (DHHS Reference No. E–093–1997/0–US–01)

PCT Application No. PCT/US98/14780 Filed 16 Jul 1998, which published as WO 99/04256 on 28 Jan 1999 (DHHS Reference No. E–093–1997/0–PCT–04)

U.S. Patent Application No. 09/116,152 Filed 16 Jul 1998 (DHHS Reference No. E–093–1997/0–US–02)

U.S. Patent Application No. 10/005,004 Filed 04 Dec 2001 (DHHS Reference No. E–093–1997/0–US–03)

Licensing Contact: George Pipia; (301) 435–5560; *pipiag@mail.nih.gov*.

Scientists at the U.S. Food and Drug Administration have invented an effective way to monitor food quality and freshness in real time. The major factor for food spoilage is the release of volatile gases due to the action of enzymes contained within the food or produced by microorganisms, such as bacteria, yeasts and molds growing in the food. The rate of release of such gases depends on food's storage history. In this technology, a reactive dye locked in a water-repellent material reacts with the gases released during food decomposition, and changes color. Thus a rapid and informed decision can be made about quality of food and its shelf life under the storage conditions used. Since the detection is based on biological processes that are the root cause for food spoilage, these indicators are much more reliable.

This technology provides an excellent alternative to the current methods for assessing food quality that cannot accurately estimate shelf life of food products due to unreliable storage history. This technology is also much less expensive than the current methods. These indicators have been successfully tested on seafood and meats and can be easily adapted to dairy products. This product is fully developed, market-tested and ready for full commercial rollout.

Dated: September 22, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–22149 Filed 9–30–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

DNA-Based Vaccination of Retroviral Infected Individuals Undergoing Treatment

Barbara K. Felber *et al.* (NCI)

U.S. Provisional Application filed 09 Jul 2004 (DHHS Reference No. E–249–2004/0–US–01); PCT Application No. PCT/US01/45624 filed 01 Nov 2001, which published as WO02/36806 on 10 May 2002 (DHHS Reference No. E–308–2000/0–PCT–02); National Stage filed in EP, CA, AU, JP, and U.S. (DHHS Reference No. E–308–2000/0–US–07)

Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov*.

This technology describes DNA-based vaccine vectors that produce either secreted or intracellularly degraded antigens that can be administered to individuals receiving antiretroviral therapy (ART) against HIV. Because some of the virus is sequestered in reservoirs, thus evading ART, drug regimen does not result in complete clearance of the virus, and prolonged ART is associated with toxicity and development of virus resistance. These vectors have recently been shown to work unusually well in controlling viremia when administered as DNA vaccines to SIV-infected monkeys that

are undergoing treatment with antiretroviral agents. The current technology would decrease the drug dependence and assist in clearing or reducing virus burden. The nucleic acids utilized used as a DNA immunization plasmids in the current technologies encode a fusion protein containing a destabilizing amino acid sequence or encode a secreted fusion protein.

Inhibition of HIV–1 Expression by PSP2

Barbara K. Felber *et al.* (NCI)
U.S. Provisional Application No. 60/573,135 filed 21 May 2004 (DHHS Reference No. E–136–2004/0–US–01)
Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov*.

This technology describes methods of identifying inhibitors of HIV–1 gene expression, where such inhibitors are small molecules or nucleic acids. The compounds thus identified could be used as potential anti-retroviral therapeutics. The candidate agents are those that affect the interaction of human paraspeckle protein 2 (PSP2) (also known as SYT-interacting protein or SIP, RNA binding motif protein 14 or RBM 14, and coactivator activator or CoAA) with inhibitory sequences (INS) present in the HIV–1 genome. PSP2 has been shown to act via INS present in the HIV genome, thus decreasing the levels of retrovirus gene expression like gag and env. Therefore, compounds that modulate or enhance effects of PSP2 on INS are potential inhibitors of retrovirus expression. The methods involve analyzing the effects of PSP2 on INS and evaluating the level of retrovirus gene expression in the presence of a candidate agent. The technology provides for PSP2 to be introduced into the cell using an expression vector that encodes PSP2.

Anti-Plasmodium Compositions and Methods of Use

David Narum (NIAID), Kim Le Sim (EM)
U.S. Patent Application Nos. 09/924,154 filed 07 Aug 2001 (DHHS Reference No. E–049–2004/0–US–02) and 10/630,629 filed 29 Jul 2003 (DHHS Reference No. E–049–2004/0–US–04), with priority to 07 Aug 2000
Licensing Contact: Robert Joynes; 301/594–6565; *joynesr@mail.nih.gov*.

This invention describes methods and compositions of peptides that inhibit the binding of *Plasmodium falciparum (P. falciparum)* to erythrocytes. Malarial parasites enter the red blood cell through several erythrocyte receptors, each being specific for a given species of *Plasmodia*. For *P. falciparum*, the erythrocyte binding antigen (EBA–175) is the ligand of the plasmodia merozoites that interacts with the receptor glycophorin A on the surface of red blood cells. Inhibiting this ligand/receptor interaction is one method of preventing further malarial attacks and is an active area of vaccine research.

This invention describes another specific peptide and antibodies that inhibit this ligand/receptor binding, thus is a potential source for vaccine development. The peptide described herein is a paralogue of EBA–175, identified as EBP2. Further, the invention includes antibodies and peptides that are specific for the claimed paralogue. Claims include the development of vaccines to the EBA–175 and EBP2. In addition, these antibodies and peptides can be developed as diagnostic and analytical reagents as well. Methods include the use of the peptides and the antibodies for the diagnosis, prevention and potential treatment of malaria. Further claims include their use in detection of *P. falciparum* in biological samples and culture methods.

A Novel Interferon-Gamma-Inducible *Secretoglobin*

Anil B. Mukherjee *et al.* (NICHD)
U.S. Provisional Application No. 60/534,381 filed 06 Jan 2004 (DHHS Reference No. E–028–2004/0–US–01); U.S. Provisional Application No. 60/570,088 filed 12 May 2004 (DHHS Reference No. E–028–2004/1–US–01)
Licensing Contact: Robert Joynes; 301/594–6565; *joynesr@mail.nih.gov.*

Interferons (IFNs) are a family of cytokines that are paramount in protecting the host from viral infections. The effects of the IFNs are mediated through interactions with specific cellular receptors, activation of second messenger systems effecting the expression of several antiviral and immunomodulatory proteins.

This invention describes a novel gene that is induced by IFN-γ treatment of lymphoblast cells. This gene, termed IIS (IFN-gamma-inducible Secretoglobin) is a member of the Secretoglobin (SCG) superfamily in which uteroglobin (UG) is the founding member. IIS shares 30% amino acid identity with UG. Data shows that IIS is expressed in virtually all tissues with highest levels found in lymph nodes, tonsils, lymphoblasts and ovary. IIS levels are also highly elevated in $CD8^+$ and $CD19^+$ cells. In further experiments, treatment of immune cells with antisense-s-oligonucleotides to IIS are shown to prevent chemotactic migration and invasion. Taken together, these data give insight into the immunological function of this novel IIS gene.

These results are described in MS Choi *et al.*, IFN-gamma stimulates the expression of a novel secretoglobin that regulates chemotactic cell migration and invasion, J. Immunol. (2004) 172:4245–5252.

Solid Supported Membranes Inside Porous Substrates and Their Use in Biosensors

Klaus Gawrisch *et al.* (NIAAA)
U.S. Provisional Application No. 60/534,380 filed 06 Jan 2004 (DHHS Reference No. E–011–2004/0–US–01) and U.S. Provisional Application No. 60/547,067 filed 09 Jun 2004 (DHHS Reference No. E–011–2004/1–US–01)
Licensing Contact: Robert Joynes; 301/594–6565; *joynesr@mail.nih.gov*.

This invention relates to reagents and methods for forming tubular single lipid bilayer membranes containing high concentrations of membrane receptors inside porous solid supports for use in biosensors. It reports compositions and methods for forming a high surface area lipid bilayer matrix in which the membrane is separated from the support by a closed and stable aqueous cushion. The membranes inside the porous substrate have a very large surface area that is freely accessible from an outside solution. The aluminum oxide-based support provides the advantage of high flow rates to exchange solutions, efficient particle retention, rigid, uniform surface, and transparency (when wet). Using this technology, G-protein coupled membrane receptors (GPCR), purified from natural sources, as well as recombinant receptors expressed in E-coli were incorporated into the bilayer in functional form. Membrane loaded supports can be stored at low temperature. The setup is ideal for ligand binding studies, including drug testing. The technology may be applied to a broad variety of membrane receptors but appears to be particularly useful for GPCR. The use of single lipid bilayers greatly reduces nonspecific interactions of ligands with the substrate therefore enhancing sensitivity and reproducibility of binding studies. The water layer between the membrane and the solid support prevents perturbation of receptor function. The substrates are compatible with signal detection by fluorescence, radiotracers, NMR, and other methods.

Dated: September 22, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–22150 Filed 9–30–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: ''Anthrax Toxin Fusion Proteins and Uses Thereof,'' ''Anthrax Toxin Fusion Proteins and Related Methods,'' and ''Targeting Agents to the MHC Class I Processing Pathway with an Anthrax Toxin Fusion Protein''

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the Food and Drug Administration and the Department of Health and Human Services is contemplating the grant of an exclusive license to practice the inventions embodied in ''Anthrax toxin fusion proteins and uses thereof'', by Leppla *et al.*, issued as U.S. patent 5,591,631 on January 7, 1997; ''Anthrax toxin fusion proteins and related methods'' by Leppla *et al.*, issued as U.S. patent 5,677,274 on October 14, 1997; and ''Targeting agents to the MHC class I processing pathway with an anthrax toxin fusion protein'' by Klimpel *et al.* filed internationally as PCT/US97/16452, and claiming priority to U.S. provisional patent application 60/025,270, filed September 17, 1996 to Avant Immunotherapeutics, Inc., which is located in Needham, MA. The patent rights in these inventions have been assigned to the United States of America. This technology is currently licensed to Avant Immunotherapeutics, Inc. on a non-exclusive basis in the area of immune diseases.

The prospective exclusive license territory will be worldwide and the field of use may be limited to vaccines and immunotherapeutics for the prevention or treatment of the following human and animal diseases: Human immunodeficiency, hepatitis B virus and hepatitis C virus.

DATES: Only written comments and/or license applications that are received by the National Institutes of Health on or before November 30, 2004 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Brenda J. Hefti, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone: (301) 435–4632; Facsimile: (301) 402–0220; and e-mail: *heftib@od.nih.gov.*

SUPPLEMENTARY INFORMATION: In this technology, an anthrax binary toxin system provides antigen access to MHC Class I processing pathway. The *Bacillus antracis* binary toxin consists of two proteins, a protective antigen (PA) combines with lethal factor (LF) to make anthrax toxin. In this system PA binds to the protein receptor on the target cell, is cleaved to produce the PA63 fragment, PA63 binds to LF and the binary anthrax toxin is endocytosed and transported into the cell to be processed by the MHC Class I processing pathway. Advantages of this system include its ability to accommodate large fusion proteins and the fact that anthrax toxin is not widely used for immunization.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 27, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–22146 Filed 9–30–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive License: Monoclonal Antibodies Against the IL–2 Receptor Alpha Chain as a Novel Treatment for Multiple Sclerosis

AGENCY: National Institutes of Health, Public Health Services, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a co-exclusive license to practice the inventions embodied in U.S. Provisional Patent Application No. 60/393,021, filed June 28, 2002, ''Method of Treating Autoimmune Diseases with Interferon-Beta and IL–2R Antagonist'' (DHHS ref. no. E–143–2002/0–US–01), International Patent Application No. PCT/US2002/038290, filed November 27, 2002, International Publication No. WO 2004/002500 A1, published January 8, 2004, ''Method of Treating Autoimmune Diseases with Interferon-Beta and IL–2R Antagonist'' (DHHS ref. no. E–143–2002/0–PCT–02), International Application No. PCT/US2003/020428, filed June 27, 2003, International Publication No. WO 2004/002421 A2, published January 8, 2004, ''Method For the Treatment of Multiple Sclerosis'' (DHHS ref. no. E–143–2002/0–PCT–04), and U.S. Patent Application No. 10/607,598, filed June 27, 2003, Publication No. U.S. 2004/0109859 A1, published June 10, 2004, ''Method For the Treatment of Multiple Sclerosis'' (DHHS ref. no. E–143–2002/0–US–03), and all corresponding foreign patent applications to Serono S.A., of Geneva, Switzerland. The patent rights in these inventions have been assigned to the United States of America. This notice is a correction of a notice published in the **Federal Register** in 69 FR 52515–52516, Aug. 26, 2004.

The prospective co-exclusive license territory will be worldwide. The field of use may be limited to the treatment of multiple sclerosis using monoclonal antibodies against the interleukin-2 receptor. Two co-exclusive licenses may be granted.

DATES: Only license applications which are received by the National Institutes of Health on or before October 25, 2004 will be considered.

ADDRESSES: Requests for information, inquiries, comments, and other materials relating to the contemplated co-exclusive license should be directed to: Thomas P. Clouse, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301–435–4076; Facsimile: 301–402–0220; E-mail: *clouset@mail.nih.gov.* Copies of the international publications can be obtained from *http://ep.espacenet.com.* Copies of the U.S. publication can be obtained from *http://www.uspto.gov.*

SUPPLEMENTARY INFORMATION: The above-identified patent applications relate to the discovery that administration of an interleukin-2

receptor antagonist to a patient is effective in the treatment of autoimmune disorders. Examples in the patent applications show that a humanized antibody to the interleukin-2 receptor alpha chain (IL–2Rα) (humanized anti-Tac antibody), daclizumab, is effective in treating MS. In particular, it has been discovered that patients who failed to respond to therapy with interferon-beta showed dramatic improvement when treated with daclizumab, with patients showing both a reduction in the total number of lesions and cessation of appearance of new lesions during the treatment period. Pending claims in the above-referenced patent applications are directed to methods of treating a patient with multiple sclerosis (MS) by administering a therapeutically effective amount of an IL–2 receptor antagonist. IL–2 receptor antagonists can be antibodies, peptides, chemical compounds, and small molecules.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated co-exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 27, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–22147 Filed 9–30–04; 8:45 am]

BILLING CODE 4140–01–U

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2333–04]

Termination and Re-designation of Liberia for Temporary Protected Status; Correction

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

ACTION: Notice of correction.

SUMMARY: The Bureau of Citizenship and Immigration Services (BCIS) is correcting a notice that was published in the **Federal Register** on August 25, 2004 at 69 FR 52297 which announced the termination and re-designation of Temporary Protected Status (TPS) for nationals of Liberia. In the supplemental information to the notice, BCIS inadvertently misstated that the termination would be effective, and benefits obtained through the Liberia TPS designation will expire, on October 1, 2004. However, under section 244(b)(3)(B) of the Immigration and Nationality Act (Act), a TPS designation may be terminated no earlier than 60 days after publication of the termination notice in the **Federal Register**. Pursuant to section 244(a)(2) of the Act and 8 CFR 274a.12(a)(12), persons granted TPS retain that status and employment authorization until the effective date of termination unless their TPS is withdrawn before then.

Therefore, BCIS is notifying affected Liberians and their employers that termination of the Liberian TPS designation is effective October 24, 2004, sixty (60) days after the August 25, 2004 termination notice. Accordingly, BCIS is extending until October 24, 2004 the validity of Form I–688B employment authorization documents issued to Liberian TPS beneficiaries that bear an expiration date of October 1, 2004 and a notation of ''274a.12(a)(12)'' or ''274a.12(c)(19).'' The effective date of the re-designation remains October 1, 2004.

DATES: This correction is effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jonathan Mills, Residence and Status Services, Office of Programs and Regulations Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd floor, Washington, DC 20529, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the **Federal Register** on August 25, 2004 (69 FR 52297), the notice contains an error that is in need of correction.

Correction of Publication

Accordingly, the publication on August 25, 2004 (69 FR 52297), of the notice that was the subject of FR Doc. 04–19448 is corrected as follows:

1. On page 52297, in the second column, in the third line under **SUMMARY** the date ''October 1, 2004'' is corrected to read: ''October 24, 2004''

2. On page 52298, in the third column, the paragraph under the heading ''If I Currently Have TPS Through the Liberia TPS Designation, Do I Have to Register for the New TPS Designation?'' is corrected to read:

Yes. If you already have received TPS benefits through the Liberia TPS designation, your benefits will expire on October 24, 2004. Accordingly, BCIS is extending until October 24, 2004 the validity of Form I–688B employment authorization documents issued to Liberian TPS beneficiaries that bear an expiration date of October 1, 2004 and a notation of ''274a.12(a)(12)'' or ''274a.12(c)(19).''

After October 24, 2004, individual TPS beneficiaries must comply with the registration requirements described below in order to maintain their TPS benefits through October 1, 2005. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).''

Dated: September 29, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, Bureau of Citizenship and Immigration Services.

[FR Doc. 04–22198 Filed 9–29–04; 10:08 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD01–04–125]

Announcement of Public Scoping Meetings for Environmental Impact Statement Preparation in Conjunction With Proposed Replacement of the Goethals Bridge

AGENCY: Coast Guard, DHS.

ACTION: Notice of public scoping meetings.

SUMMARY: The U.S. Coast Guard, as the federal lead agency, and in cooperation with the Port Authority of New York and New Jersey (PANY&NJ), hereby advises of the dates for public scoping meetings to be held in conjunction with preparation of an Environmental Impact Statement for the replacement of the Goethals Bridge. A Notice of Intent published in the **Federal Register** on August 10, 2004, announced that hearings would be held; however, dates for the scoping meetings were not finalized at that time. Public scoping meetings will be held in Staten Island, New York and Elizabeth, New Jersey, on October 5 and 6, 2004, respectively.

DATES: Public scoping meetings will be held in Staten Island, New York and Elizabeth, New Jersey, on October 5 and 6, 2004, respectively.

ADDRESSES: The October 5, 2004, meetings will be held at the Staten Island Hotel, Harbor Room and Ballroom, located at 1415 Richmond Avenue, Staten Island, New York 10314. The October 6, 2004, meetings will be held at the City of Elizabeth City Hall, in the Council Chambers on the Third Floor, located at 50 Winfield Scott Plaza, Elizabeth, New Jersey 07201.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Bridge Program Manager at Commander (obr), First Coast Guard District Battery Building, One South Street, New York, NY 10004–1466 or at (212) 668–7021.

SUPPLEMENTARY INFORMATION: This notice of public scoping meetings is published in accordance with the regulations of the Council on Environmental Quality at 40 CFR 1506.6.

The U.S. Coast Guard, as the lead Federal agency for the oversight of the Environmental Impact Statement to be prepared for the Goethals Bridge replacement project, is teamed with the Port Authority of New York and New Jersey (PANY&NJ). The U.S. Coast Guard, with the cooperation of PANY&NJ, will hold public scoping meetings regarding this project. These meetings seek to involve the public in preparing and implementing NEPA procedures.

Meetings will be held on October 5 and 6, 2004, with two separate sessions each day. A formal presentation will be given during each of the sessions. The schedule and location is as follows. On October 5, 2004, the meetings will be held at the Staten Island Hotel, Harbor Room and Ballroom, located at 1415 Richmond Avenue, Staten Island, New York 10314. The two sessions include an afternoon session and an evening session. The afternoon session will start at 2 p.m. and end at 5 p.m., with a formal presentation at 2:30 p.m. The evening session will begin at 5:30 p.m. and end at 8:30 p.m. with formal presentation at 6 p.m.

On October 6, 2004, the meetings will be held at the City of Elizabeth City Hall, in the Council Chambers on the third Floor, located at 50 Winfield Scott Plaza, Elizabeth, New Jersey 07201. The two sessions include an afternoon session and an evening session. The afternoon session will start at 2 p.m. and end at 5 p.m., with a formal presentation at 2:30 p.m. The evening session will begin at 5:30 p.m. and end at 8:30 p.m. with formal presentation at 6 p.m.

Dated: September 17, 2004.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 04–22140 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1549–DR]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1549–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: September 23, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 15, 2004:

Barbour, Blount, Bullock, Calhoun, Clay, Cullman, Dale, Etowah, Fayette, Franklin, Lamar, Lawrence, Lee, Macon, Marshall, Marion, Pike, St. Clair, Tallapoosa, Walker, and Winston Counties for Individual Assistance.

Autauga, Bibb, Chilton, Choctaw, Coosa, Dallas, Elmore, Greene, Hale, Jefferson, Lowndes, Marengo, Montgomery, Perry, Pickens, Shelby, Sumter, Talladega, Tuscaloosa, and Wilcox Counties for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A & B) under the Public Assistance Program including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22062 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1545–DR]

Florida; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1545–DR), dated September 4, 2004, and related determinations.

EFFECTIVE DATE: September 23, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 2004:

Alachua, Brevard, Clay, Gilchrist, Nassau, Pasco, Putnam, and Sumter Counties for (Categories C–G) under the Public Assistance

program (already designated for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance Program and direct Federal assistance at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22061 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1545–DR]

Florida; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1545–DR), dated September 4, 2004, and related determinations.

EFFECTIVE DATE: September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 2004:

Liberty County for [Categories C–G] under the Public Assistance program (already designated for debris removal and emergency protective measures (Categories A and B) under the Public Assistance Program and direct Federal assistance at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

Baker, Bradford, Dixie, Hernando, Marion, and St. Lucie Counties for [Categories C–G] under the Public Assistance program (already designated for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance Program and direct Federal assistance at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22073 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1545–DR]

Florida; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1545–DR), dated September 4, 2004, and related determinations.

EFFECTIVE DATE: September 25, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 2004:

Manatee, Sarasota, and Suwannee Counties for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program and direct Federal assistance, at 100 percent Federal funding of the total eligible costs for the first 72 hours, and Categories C–G under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22074 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1551–DR]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1551–DR), dated September 16, 2004, and related determinations.

EFFECTIVE DATE: September 25, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 16, 2004:

Charlotte, Collier, Lee, Monroe, and Sarasota Counties for emergency protective measures (Category B) under the Public Assistance program.

Jefferson County for Public Assistance [Categories C through G](already designated

for debris removal and emergency protective measures [Categories A and B] at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, and Washington Counties for Public Assistance [Categories C through G](already designated for Individual Assistance and for debris removal and emergency protective measures [Categories A and B] at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22076 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1554–DR]

Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1554–DR), dated September 18, 2004, and related determinations.

EFFECTIVE DATE: September 24, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2004:

The counties of Dade, Miller, and Pickens for Individual Assistance.

The counties of Banks, Dade, Elbert, Fannin, Forsyth, Habersham, Harris, Lumpkin, Miller, and Pickens for Public Assistance (Categories A through G.)

The counties of Carroll, Cherokee, Dawson, DeKalb, Early, Franklin, Fulton, Gilmer, Madison, Rabun, Towns, Union, and White for Public Assistance [Categories C through G](already designated for assistance for debris removal and emergency protective measures [Categories A and B] under the Public Assistance Program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22067 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1560–DR]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1560–DR), dated September 24, 2004, and related determinations.

EFFECTIVE DATE: September 24, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from Tropical Storm Frances beginning on September 3, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas; and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster:

The counties of Appling, Atkinson, Bacon, Ben Hill, Berrien, Bibb, Brantley, Brooks, Butts, Candler, Charlton, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Echols, Elbert, Evans, Glynn, Greene, Houston, Irwin, Jasper, Johnson, Jones, Lamar, Laurens, Lowndes, Macon, Monroe, Montgomery, Peach, Pulaski, Putnam, Rabun, Schley, Spalding, Sumter, Talbot, Tattnall, Taylor, Telfair, Thomas, Tift, Turner, Twiggs, Upson, Washington, Wheeler, Wilkes, and Wilkinson for Public Assistance.

All counties within the State of Georgia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment

Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22081 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1550–DR]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1550–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 20, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22063 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1553–DR]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1553–DR), dated September 18, 2004, and related determinations.

EFFECTIVE DATE: September 23, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 23, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22066 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1546–DR]

North Carolina; Amendment No. 3 To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–1546–DR), dated September 10, 2004, and related determinations.

EFFECTIVE DATE: September 24, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 10, 2004:

The counties of Ashe and Anson for Public Assistance.

The counties of Avery, Buncombe, Burke, Caldwell, Haywood, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania, Watauga, and Yancey for Public Assistance [Categories C through G] (already designated for debris removal and emergency protective measures [Categories A and B] at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22075 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1556–DR]

Ohio; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1556–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is reopened. The incident period for this declared disaster is now August 27, 2004 and continuing.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22079 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1557–DR]

Pennsylvania; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1557–DR), dated September 19, 2004, and related determinations.

DATES: Effective September 22, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2004:

Bedford, Bradford, Clarion, Clinton, Columbia, Fulton, Jefferson, Juniata, Mifflin, Monroe, Northumberland, Pike, Snyder, Union, and Wayne Counties for Individual Assistance.

Bedford, Bradford, Clarion, Clinton, Columbia, Fulton, Jefferson, Juniata, Mifflin, Monroe, Northumberland, Pike, Snyder, Union, and Wayne Counties for debris removal and emergency protective measures (Categories A & B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22068 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1557–DR]

Pennsylvania; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1557–DR), dated September 19, 2004, and related determinations.

DATE: Effective September 22, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2004:

Franklin, Lebanon, Montour, Tioga, and York Counties for Individual Assistance.

Franklin, Lebanon, Montour, Tioga, and York Counties for debris removal and emergency protective measures (Categories A & B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22069 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1555–DR]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1555–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: September 19, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 19, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of

Pennsylvania, resulting from severe storms and flooding associated with Tropical Depression Frances on September 8 and 9, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas; and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas Davies, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

Beaver, Blair, and Crawford Counties for Individual Assistance.

All counties within the Commonwealth of Pennsylvania are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22078 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1557–DR]

Pennsylvania; Amendment No. 1 To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1557–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2004:

Blair, Bucks, Cameron, Carbon, Greene, Huntingdon, and Lehigh Counties for Individual Assistance.

Blair, Bucks, Cameron, Carbon, Greene, Huntingdon, and Lehigh Counties for debris removal and emergency protective measures (Categories A & B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22080 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1552–DR]

Puerto Rico; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1552–DR), dated September 17, 2004, and related determinations.

EFFECTIVE DATE: September 22, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 17, 2004:

Caguas and Vieques Municipalities for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A & B) under the Public Assistance program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public

Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22064 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1552–DR]

Puerto Rico; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA–1552–DR), dated September 17, 2004, and related determinations.

EFFECTIVE DATE: September 19, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 19, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22065 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1552–DR]

Puerto Rico; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1552–DR), dated September 17, 2004, and related determinations.

EFFECTIVE DATE: September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the Individual Assistance program for the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 17, 2004:

Aguada, Aguadilla, Aguas Buenas, Aibonito, Añasco, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamón, Camuy, Canóvanas, Carolina, Cataño, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerío, Corozal, Dorado, Florida, Guayama, Hatillo, Humacao, Isabela, Juana Díaz, Juncos, Lares, Las Piedras, Loíza, Manatí, Maunabo, Moca, Morovis, Naguabo, Naranjito, Orocovis, Patillas, Quebradillas, Rincón, Río Grande, Salinas, San Lorenzo, San Sebastian, Santa Isabel, Toa Alta, Toa Baja, Utuado, Vega Alta, Vega Baja, Villalba and Yabucoa Municipalities for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A & B) under the Public Assistance program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22077 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1559–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1559–DR), dated September 23, 2004, and related determinations.

EFFECTIVE DATE: September 23, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 23, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Vermont, resulting from severe thunderstorms and flooding on August 12, 2004, through September 12, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas; and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other

Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster:

Addison, Caledonia, Chittenden, Franklin, Lamoille, Orleans, and Windham Counties for Public Assistance.

Addison, Caledonia, Chittenden, Franklin, Lamoille, Orleans, and Windham Counties in the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22072 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1558–DR]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1558–DR), dated September 20, 2004, and related determinations.

EFFECTIVE DATE: September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 20, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of West Virginia, resulting from severe storms, flooding, and landslides on September 16, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Louis Botta, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster:

Brooke, Hancock, Marshall, Ohio, Pleasants, Tyler, Wetzel, and Wirt Counties for Individual Assistance.

All counties within the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22070 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1558–DR]

West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1558–DR), dated September 20, 2004, and related determinations.

EFFECTIVE DATE: September 24, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20, 2004:

Berkeley, Cabell, Jackson, Kanawha, Lincoln, Mason, Morgan, and Wood Counties for Individual Assistance and debris removal and emergency protective measures (Categories A & B) under the Public Assistance Program.

Brooke, Hancock, Marshall, Ohio, Pleasants, Tyler, Wetzel, and Wirt Counties for debris removal and emergency protective measures (Categories A & B) under the Public Assistance Program (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22071 Filed 9–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA–2001–11334 and TSA–2003–16345]

RIN 1652–ZA03

Continuation of the Aviation Security Infrastructure Fee (ASIF)

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA is issuing this notice to inform all U.S. and foreign air carriers (carriers) currently required to pay the Aviation Security Infrastructure Fee (ASIF) that for October 2004 and beyond, until further notice, the amount of the ASIF imposed on each carrier will continue to be the amount the carrier paid for the screening of passengers and property transported by passenger aircraft in the U.S. during calendar year 2000.

FOR FURTHER INFORMATION CONTACT: Randall Fiertz, Director of Revenue, Office of Finance and Administration, TSA–14, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2323; e-mail *TSA-fees@dhs.gov*. You may also access information on TSA's security fees on the internet at *www.tsa.gov*. Click on the ''Industry Partners'' link at the top of the page, or input a keyword and search the ''Site Search'' feature at the top right of the web page.

SUPPLEMENTARY INFORMATION:

Document Availability

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting TSA's Law and Policy web page at *http://www.tsa.dot.gov/public/index.jsp*.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Background

Under 49 U.S.C. 44940, Congress authorized TSA to impose the ASIF on carriers to help defray the Federal government's cost of providing civil aviation security services. See 49 U.S.C. 44940(a)(2). Through the end of fiscal year 2004 (September 30, 2004), the amount of ASIF collected by TSA from the carriers, both overall and per carrier, cannot exceed the carriers' aggregate and individual costs, respectively, for screening passengers and property in calendar year 2000. 49 U.S.C. 44940(a)(2)(B)(i), (ii). Beginning in fiscal year 2005 (October 1, 2004), TSA may change the way the per-carrier limit is determined. TSA may set the amount of each carrier's ASIF according to the carrier's market share or other appropriate measure in lieu of the carriers actual screening costs in calendar year 2000. 49 U.S.C. 44940(2)(B)(iii).

On February 20, 2002, TSA imposed the ASIF on carriers by publishing an interim final rule in the **Federal Register** (67 FR 7926), codified at 49 CFR part 1511. In accordance with 49 U.S.C. 44940(a)(2)(B), TSA used information the carriers provided on their individual screening costs for calendar year 2000 to set each carrier's annual ASIF payment. Section 1511.7(b) of the regulation requires that each carrier remit 8.333 percent (one-twelfth) of its self-reported amount, or an amount otherwise determined by TSA, to TSA on a monthly basis through the end of September 2004.

Section 1511.5(g) of the regulation provides that TSA will redetermine the amount of the ASIF imposed on each carrier beginning in October 2004, and the redetermination may be based on each carrier's market share or other appropriate measure. Similarly, § 1511.7(c) of the regulation provides that, beginning in October 2004, each carrier's monthly ASIF payment is set at one-twelfth of that redetermined amount. These provisions reflect TSA's statutory authorization to reset the ASIF for each carrier beginning in October 2004 based on the carrier's market share or other appropriate measures in lieu of the carrier's costs for screening passengers and property in calendar year 2000. See 49 U.S.C. 44940(a)(2)(B)(iii). Also, under 49 U.S.C. 44940(d)(3), TSA may make modifications to the ASIF through publication of a notice in the **Federal Register**.

TSA has not yet determined whether it will reset each carrier's ASIF payment based on market share or another appropriate measure. On November 5, 2003, TSA issued a notice in the **Federal Register** seeking public comment on this issue (68 FR 62613). TSA is in the process of considering the comments and proposals for revising allocation of the ASIF among carriers. Therefore, TSA has determined that until further notice, for October 2004 and beyond, the amount of the ASIF imposed on each carrier will remain equal to the amount of the carrier's screening costs for calendar year 2000. Therefore, each carrier's monthly payment under § 1511.7(c) for each month beginning with October 2004 will remain at one-twelfth of that amount.

Issued in Arlington, Virginia, on September 29, 2004.

David M. Stone,

Assistant Secretary.

[FR Doc. 04–22202 Filed 9–29–04; 11:06 am]

BILLING CODE 4910–62–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–40]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington,

DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 23, 2004.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–21756 Filed 9–30–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Final Comprehensive Conservation Plan for Arapaho National Wildlife Refuge, Walden, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that a Comprehensive Conservation Plan (CCP) and Summary for Arapaho National Wildlife Refuge is available. This CCP, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969, describes how the U.S. Fish and Wildlife Service intends to manage this Refuge for the next 15 years.

ADDRESSES: A copy of the Plan or Summary may be obtained by writing to U.S. Fish and Wildlife Service, Arapaho National Wildlife Refuge, P.O. Box 457, 953 Jackson County Road #32, Walden, Colorado 80480–0457; or download from *http://mountain-prairie.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Ann Timberman, Project Leader, U.S. Fish and Wildlife Service, Arapaho National Wildlife Refuge, P.O. Box 457, 953 Jackson County Road #32, Walden, Colorado 80480–0457. Phone 970–723–8202; fax 970–723–8528; or e-mail: *ann_timberman@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Arapaho National Wildlife Refuge (NWR), comprised of 23,243 acres, is long and narrow and is nearly bisected throughout its length by the Illinois River, within the headwaters of the North Platte River basin, in Jackson County, northern Colorado. The Refuge is situated in a high valley locally known as North Park where the native upland plant community is dominated by sagebrush and grasses, and bottomland plant associations include grassy wet meadows and willow-dominated riparian habitats, as well as natural and man-made wetlands. Over 250 species of birds, mammals, reptiles, amphibians, and fishes utilize, occur at, or migrate through this Refuge as well as over 390 species of plants, including one federally endangered species endemic only to North Park. Arapaho NWR was established by Congress in 1967 with two purposes: ''* * * for uses as an inviolate sanctuary, or for any other management purpose, for migratory birds (Migratory Bird Conservation Act); and ''* * * for the development, advancement, management, conservation, and protection of fish and wildlife resources * * *'' and ''* * * for the benefit of the United States Fish and Wildlife Service, in performing its activities and services.''

The availability of the Draft CCP and Environmental Assessment (EA) for 30-day public review and comment was announced in the **Federal Register** on August 13, 2003, in Volume 68, Number 156. The Draft CCP/EA identified and evaluated four alternatives for managing Arapaho NWR for the next 15 years. Alternative 1, the No Action Alternative, would have continued current management of the Refuge. Alternative 4 (Preferred Alternative) emphasizes achieving the biological potential of the Refuge through restoration of riparian habitat functions, enhancement and protection of wet meadow and wetland habitats and research on upland sage-steppe habitats within the Refuge as well as promoting partnerships and cooperating with other agencies and groups to enhance wildlife-dependent activities throughout North Park. Alternative 2 would have emphasized working on achieving the purposes of the Refuge through activities at the North Park landscape level while Alternative 3 would have maximized wildlife benefits by focusing on habitat restoration, enhancement and protection and de-emphasizing public use opportunities at the Refuge.

Based on this assessment and comments received, the Preferred Alternative 4 was selected for implementation. The preferred alternative was selected because it best meets the purposes and goals of the Refuge, as well as the goals of the National Wildlife Refuge System. The preferred alternative will also benefit prairie dogs, large ungulates, shore birds, migrating and nesting waterfowl, and neotropical migrants, as well as improvements in water quality from riparian habitat restoration. Environmental education and partnerships will result in improved wildlife-dependent recreational opportunities throughout North Park. Cultural and historical resources will be protected.

Dated: August 11, 2004.

John A. Blankenship,

Regional Director, Region 6, Denver, Colorado.

[FR Doc. 04–22045 Filed 9–30–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for *Sidalcea oregana* var. *calva* (Wenatchee Mountains Checker-mallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (we) announces the availability of the final Recovery Plan for *Sidalcea oregana* var. *calva* (Wenatchee Mountains Checker-mallow). This recovery plan describes the status of the species, recovery objectives and criteria, and conservation measures needed to lessen the threats faced by the plant and bring it to the point where it no longer needs Endangered Species Act (ESA) protection.

ADDRESSES: Copies of the recovery plan are available by request from the U.S. Fish and Wildlife Service, Central Washington Field Office, 215 Melody Lane, Suite 119, Wenatchee, Washington 98801 (telephone: 509–665–3508). An electronic copy of this recovery plan is also available at *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Tim McCracken, Fish and Wildlife Biologist, at the above Wenatchee address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of the ESA and our endangered species program. Recovery means improvement of the status of listed species to the point at which listing is no longer required under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The ESA requires the development of a recovery plan for endangered or threatened species unless such a plan would not promote the conservation of the species. Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. The draft recovery plan for *Sidalcea oregana* var. *calva* was available for public comment from October 15, 2003, to December 15, 2003 (68 FR 59414). Information presented during the public comment period has been considered in the preparation of this final recovery plan and is summarized in the appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to the appropriate Federal agencies or other entities so they can take these comments into account in the course of implementing recovery actions.

Sidalcea oregana var. *calva* was listed as an endangered species on December 22, 1999 (64 FR 71680). This rare, attractive member of the mallow family (Malvaceae) is endemic to Chelan County, Washington, where it is found in wetlands and moist meadows of the Wenatchee Mountains. Just five populations are known, and four of these five number from only eight to a few hundred individuals. Populations occur on a mixture of private, State, and Federal lands. Critical habitat was designated for this species on September 6, 2001 (66 FR 46536).

The primary threats to *Sidalcea oregana* var. *calva* include habitat fragmentation, degradation, or loss due to conversion of native wetlands to orchards and other agricultural uses; rural residential development and associated impacts; altered hydrology; competition from native and nonnative plants; recreational impacts; woody plant encroachment; and activities associated with fire suppression. To a lesser extent the species is threatened by livestock grazing, road construction, and timber harvesting and associated impacts including changes in surface runoff. The species is highly vulnerable to extirpation from demographic factors or random, naturally occurring events due to the very small size of most of the remaining populations.

The primary objective of this recovery plan is to recover the plant to the point that it can be delisted under the ESA. Actions necessary to achieve this objective include: (1) Maintaining the current geographical distribution of the species through effective management and coordination with private landowners and other agencies; (2) identifying potential habitat and developing a sound protocol for reintroducing the species within its historical range; (3) conducting research and monitoring essential to the conservation of the species; (4) collecting seed representing the genetic diversity of the species across its range and storing it in a secure facility; (5) surveying to identify potential additional populations; and (6) developing outreach materials to provide information about the species, its habitat, and management recommendations to local landowners.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 22, 2004.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 04–22188 Filed 9–30–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–01–PB–241A and OMB Control Number 1004–0034]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On February 7, 2003, BLM published a notice in the **Federal Register** (68 FR 6505) requesting comments on the collection. The comment period closed on April 8, 2003. BLM received one comment. You may obtain copies of the proposed collection of information and related explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0034), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* Please provide a copy of your comments to the BLM Information Collection Clearance Officer (WO–630) Bureau of Land Management, Eastern States Office 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility, and clarity of the information collected; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Oil and Gas Lease Transfers by Assignment of Record Title or Operating Rights (Sublease) (43 CFR 3106, 3135, 3216).

OMB Approval Number: 1004–0034.

Abstract: Respondents supply information on these forms (3000–3 and 3000–3a) to assign/transfer an interest in an oil and gas or geothermal lease.

Form Numbers: 3000–3 and 3000–3a.

Frequency: On occasion.

Description of Respondents: Individuals, small businesses, large corporations.

Estimated Completion Time: 30 minutes each form.

Annual Responses: 60,000.

Filing Fee Per Response: $25 for oil and gas and $50 for geothermal.

Annual Burden Hours: 30,000.

Bureau Clearance Officer: Ian Senio, (202) 452–5033.

Dated: September 24, 2004.

Ian Senio,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–22094 Filed 9–30–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–1310–00]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) on the Chapita Wells-Stagecoach Area Gas Development Project, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and notice of scoping.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Vernal Field Office, Vernal, Utah, will be preparing an EIS on EOG Resources, Inc. (EOG) proposed gas development on about 31,872 acres in the Chapita Wells-Stagecoach Area gas producing region. The Vernal Field Office Manager will be the authorized officer for this project.

DATES: A 30-day public scoping period will begin on the date this notice is published in the **Federal Register**. A public scoping open house and information meeting will be conducted during the scoping period. Details on this meeting will be released to the public at least 15 days from the scheduled date. If you have any information, data or concerns related to potential impacts of the proposed action, including the issues identified above, or have suggestions for additional alternatives, please submit them to the address listed below.

ADDRESSES: Written scoping comments should be sent to: Field Manager, Bureau of Land Management, Vernal Field Office, 170 South 500 East. Vernal, Utah 84078, ATTN: QEP Field Development Project.

Comments, including names and street addresses of respondents will be available for public review at the BLM Vernal Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirely.

FOR FURTHER INFORMATION CONTACT: Jean Nitschke-Sinclear, 435–781–4437 or e-mail: *jean_nitschke-sinclear@blm.gov*.

SUPPLEMENTARY INFORMATION: The project area is located about 30 miles southeast of Vernal, Utah. It involves about 71% BLM-administered lands (22,693 acres); 6% (1,914 acres) State of Utah-administered lands; 21% Northern Ute Tribal and/or allotted lands administered by the BIA (6,577 acres); and, 2% (688 acres) patented land. Currently 325 producing gas wells, with their attendant service roads, exist within the project area, and about 100 additional wells have been approved for drilling under a Decision Record, dated April 11, 2000, entitled Chapita Wells Unit Infill Development, Uintah County, Utah (EA No. UT–080–1999–032). There are currently no oil wells or produced water disposal wells in the project area. EOG's long term development plan includes drilling additional wells at the rate of about 90 wells per year, over a period of 7 years, or until the resource base is fully developed. A total of up to 627 new wells would be drilled. Of these, 473 would be new locations and 154 would be twins drilled from existing locations (representing 25% of the total new wells that would be drilled). About 3% of the total wells drilled may result in dry holes. The total number of wells drilled would depend largely on factors outside of EOG's control, such as production success, engineering technology, economic factors, availability of commodity markets, and lease stipulations and restrictions.

Required infrastructure includes electric power lines, roads, gas flowlines and pipelines, well pads, water injection facilities, and gas treatment facilities. Gas would be transported via pipeline to existing centralized compression and treatment facilities. Produced water would be trucked to approved evaporation pits or EOG water injection wells where it would be re-injected into the oil reservoir or disposal zone via an injection well system. Major issues at this time include potential impacts on desert and semi-desert ecosystems and their dependent wildlife species (including antelope, sage grouse, white-tailed prairie dog colonies and their associated species), vegetation (including noxious weeds and reclamation), and riparian habitat associated with the Green River corridor. Alternatives identified at this time include the proposed action, the no action alternatives and in accordance with national policy, an alternative incorporating Best Management Practices designed to reduce the environmental effects of production operations. Best Management Practices considered could include burial of flowlines in the roadbeds for transport of condensate, water and gas to centralized facilities, more extensive interim reclamation of production areas, and other techniques designed to substantially reduce the footprint of new and existing oil and gas production facilities and infrastructure.''

Dated: September 20, 2004.

William Stringer,

Vernal Field Manager.

[FR Doc. 04–22056 Filed 9–30–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO 850–1820–XA–241A]

Acceptance of Electronic Forms and Digital Signatures

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) will accept the electronic submission of forms, including the use of digital signatures where practicable.

DATES: October 1, 2004.

ADDRESSES: 1849 C St., NW., Mail Stop LS 1000, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: For information on BLM's online forms, Karen Wrenn, BLM Forms Manager, 303–236–0233. For information on BLM's e-Government initiative, Peter G. D. Ertman, BLM e-Government Program Manager, 202–452–7706.

SUPPLEMENTARY INFORMATION: Effective October 1, 2004, the BLM will accept as ''properly filed'' any form in electronic format that was previously available only in paper format. If you choose to file on-line, you must use the forms available from *http://www.nc.blm.gov/blmforms*. BLM will not accept as ''properly filed'' the use of electronic forms in other formats or from other sources. In addition to using the form from the BLM forms Web site, you must also have a Federal Bridge Trusted credential. This credential provides a secure means of identifying you across the Internet. At the present time, you may obtain these credentials from two

providers. The contact information for the current providers is: (1) Verisign, Inc., *NPiazzola@verisign.com*, 410–691–2100 and (2) Betrusted US, Inc., *TGreco@betrusted.com*, 443–367–7052, or *JTLazo@betrusted.com*, 443–367–7011.

BLM will consider an electronic form submission to be: (1) Received at the date and time BLM receives the submission electronically by the BLM; and (2) Received in the proper office if filed on-line.

The *Government Paperwork Elimination Act of 1998* (GPEA) mandates that the Federal Government accept electronically submitted forms. The GPEA specifically states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. The public may continue to use, and BLM will continue to accept, filings on paper forms.

In many cases, our existing regulations require a written signature and filing of a paper form in a specific office. GPEA supercedes these regulations. Our intention is to propose regulations to address the inconsistency and to clarify that digital signatures and on-line filing (when performed as described above) is an acceptable way to file applications and other documents.

For more information on electronic signatures and e-Government in general, please visit *http://www.whitehouse.gov/omb/egov/ea.htm* and *http://www.egov.gov*.

Dated: September 8, 2004.

Lawrence E. Benna,

Assistant Director, Business and Fiscal Resources.

[FR Doc. 04–21785 Filed 9–30–04; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

Colorado River Management Plan, Draft Environmental Impact Statement, Grand Canyon National Park, Grand Canyon, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the draft environmental impact statement for the Colorado River Management Plan for Grand Canyon National Park.

SUMMARY: Pursuant to subsection 102(2)(C) of the National Environmental Policy Act of 1969, codified at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of a Draft Environmental Impact Statement for the Colorado River Management Plan, Grand Canyon National Park, Grand Canyon, Arizona. The document describes and analyzes the environmental impacts of several action alternatives, including a preferred alternative, for future visitor use management of the Colorado River through Grand Canyon National Park, including the Lower Gorge. A no-action alternative is also evaluated.

DATES: The National Park Service will accept comments from the public on the Draft Environmental Impact Statement for 90 days after publication of this notice. Public meeting dates will be posted on the Internet at *http://www.nps.gov/grca/crmp.*

ADDRESSES: Copies of the Draft Environmental Impact Statement are available from the Office of the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023. The document is also available on the Internet at: *http://www.nps.gov/grca/crmp.*

You may submit comments to any one of several addresses: (1) You may mail comments to CRMP Project, Grand Canyon National Park, P.O. Box 129, Grand Canyon Arizona 86023; (2) You may comment via the Internet to *http://www.nps.gov/grca/crmp;* and (3) You may hand-deliver comments to Grand Canyon National Park at Park Headquarters, 1 Village Loop Drive, Grand Canyon, Arizona 86023.

FOR FURTHER INFORMATION CONTACT: Mary Killeen, Project Assistant, Grand Canyon National Park, 928–638–7885.

SUPPLEMENTARY INFORMATION:

Document distribution and public meetings: The public review and comment process will involve distribution of the document and a comment form. Public meetings will be held in Denver, Colorado; Phoenix, Arizona; Flagstaff, Arizona; Salt Lake City, Utah; the San Francisco, California area; and the Washington, DC area. Specific information on these meeting locations and their dates, and on any other locations and dates that may be added, will be posted at *http://www.nps.gov/grca/crmp.* Specific information may also be obtained from the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section, below.

Commenting by e-mail: Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: CRMP Project'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Linda Jalbert 928–638–7909.

Confidentiality: 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 addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Mary Killeen, 928–638–7885, or Linda Jalbert, 928–638–7909.

Dated: September 24, 2004.

Stephen P. Martin,

Director, Intermountain Region, National Park Service.

[FR Doc. 04–22040 Filed 9–30–04; 8:45 am]

BILLING CODE 4312–ED–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Renewal of the Sacramento River Settlement Contracts, Shasta, Tehama, Butte, Glenn, Colusa, Sutter, Yolo, and Sacramento Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the draft environmental impact statement (Draft EIS) and notice of public hearing (DES 04–50).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) as lead Federal Agency, has made available for public review a Draft EIS for the renewal of long-term contracts to deliver water from the Central Valley Project (CVP) to the Sacramento River Settlement Contractors. The Sacramento River Settlement Contractors are entities and individuals that typically receive both non-CVP water, referred to as base supply, and supplemental water from the CVP, referred to as Project Water. The proposed contract renewals would continue the delivery of base supply and Project Water for an additional 40 years. The Draft EIS describes and

presents the environmental effects of five alternatives, including no action, for the renewal of up to 145 contracts which include approximately 1.8 million acre-feet of base supply per year and approximately 380,000 acre feet of Project Water per year.

DATES: Submit written comments on the Draft EIS on or before Monday, November 15, 2004, to Mr. Buford Holt at the address provided below. One Public Hearing has been scheduled for Wednesday, October 27, from 3 p.m. to 6 p.m. in Willows, CA.

ADDRESSES: The location for the October 27 Public Hearing is the Eubank Room in the Willows Public Library, 201 N. Lassen St., Willows, CA.

Copies of the Draft EIS may be requested from Ms. Sammie Cervantes, Public Affairs Office, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825 or by calling 916–978–5104, TDD 916–978–5608. *See* **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft EIS are available for public viewing.

Send written comments on the Draft EIS to Mr. Buford Holt, Bureau of Reclamation, Northern California Area Office, 16349 Shasta Dam Boulevard, Shasta Lake, CA 96019; by fax at (530) 275–2441; or by e-mail to *bholt@mp.usbr.gov.* Comments should be received on or before November 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Buford Holt, Environmental Specialist, Bureau of Reclamation, Northern California Area Office, at (530) 275–1554, TDD 530–275–8991.

SUPPLEMENTARY INFORMATION: The CVP was first authorized as a Federal project in 1935 and includes facilities on the Sacramento River. Prior to the authorization of the CVP, individuals and entities along the Sacramento River were diverting water for irrigation and municipal and industrial uses under various claims of right. Construction of CVP dams on the Sacramento River and the Trinity River modified the flows of the Sacramento River. In order to settle controversy over assertions of Sacramento River water rights, the United States, acting through the Bureau of Reclamation, negotiated the Settlement Contracts to provide agreement on diversion of Sacramento River water and CVP water. Using jointly conducted studies, the parties negotiated to arrive at mutually agreed amounts of Base Supply and Project Water. ''Base Supply'' is water the Settlement Contractor's divert free of charge in recognition of their un-quantified water rights, which existed prior to the construction of the CVP. In addition, Reclamation agreed to provide the Settlement Contractors with certain designated monthly quantities of CVP water, referred to as ''Project Water'', primarily in the months of July, August, and/or September. Project Water is subject to all of the pricing and other requirements of Federal Reclamation Law. The term of the initial Sacramento River Settlement Contracts was not to exceed 40 years, and the contracts were set to expire on March 31, 2004; however, Congress has granted a two-year extension of the contracts.

The Draft EIS addresses impacts related to the proposed March 2005 renewal of up to 145 Sacramento River Settlement Contracts to continue delivery of supplemental Project Water for agricultural and municipal and industrial (M&I) uses. Water would continue to be delivered through existing CVP facilities, with no new construction required. With the exception of Sutter Mutual Water Company and the Anderson-Cottonwood Irrigation District, the proposed contracts provide for the continued delivery of the same quantities of Project Water provided for under the expiring Settlement Contracts. Under the proposed action, the Sacramento River Settlement Contractors would divert approximately 1.8 million acre-feet of Base Supply per year from the Sacramento River, and approximately 380,000 acre-feet of Project Water per year from the Sacramento River. Twenty of the 145 Settlement Contractors account for approximately 94 percent of the total Settlement Contract amount. The proposed contract-renewal amounts range in size from 10 to 825,000 acre-feet per year. Contracts would be renewed for a 40-year term. The renewal of contracts provides for continued delivery of CVP water to the same lands and for the same purposes of use, with the exception of Natomas Central Mutual Water Company which has requested a change from agricultural use to M&I use in the Metro Air Park portion of its service area. The Draft EIS describes and analyzes the effects of the proposed contract-renewals on fish resources, vegetation and wildlife, hydrology and water quality, recreation, cultural resources, land use, geology and soils, and air quality.

Copies of the Draft EIS are available for public viewing at the following locations:

- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225–0007, 303–445–2072;
- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898 (Sacramento County), 916–978–5100;
- Bureau of Reclamation, Northern California Area Office, 16349 Shasta Dam Boulevard, Shasta Lake CA 96019–8400 (Shasta County), 530–275–1554;
- Bureau of Reclamation, Mid Pacific Construction Office, 1140 West Wood Street, Willows, CA 95988–0988 (Glenn County), 530–934–7066.
- Bureau of Reclamation, Red Bluff Field Office, 22500 Altube Road, Red Bluff, CA 96080 (Tehama County), 530–529–3890.

It is Reclamation's practice to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that Reclamation withhold their home address from public disclosure, which Reclamation will honor to the extent allowed by law. There also may be circumstances in which Reclamation would withhold a respondent's identity from public disclosure, as allowed by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. Reclamation will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Special Services: Persons requiring any special services at the October 27, 2004, public meeting should contact Sammie Cervantes at (916) 978–5104. Please notify Ms. Cervantes as far in advance of the particular meeting as possible, but no later than 3 working days prior to the meeting to enable Reclamation to secure the services. If a request cannot be honored, the requester will be notified.

Dated: September 20, 2004.

John F. Davis,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 04–22048 Filed 9–30–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–494]

In the Matter of Certain Automotive Measuring Devices, Products Containing Same, and Bezels for Such Devices; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation as to Respondent American Products Company, Inc. on the Basis of a Settlement Agreement and Consent Order; Issuance of the Consent Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation as to respondent American Products Co., Inc. on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 20, 2003, based on a complaint filed by Auto Meter Products, Inc. (''Auto Meter'') of Sycamore, Illinois. 68 FR 37023. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain automotive measuring devices, products containing same, and bezels for such devices, by reason of infringement of U.S. Registered Trademark Nos. 1,732,643 and 1,497,472, and U.S. Supplemental Register No. 1,903908, and infringement of the complainant's trade dress. Subsequently, seven more firms were added as respondents based on two separate motions filed by complainant Auto Meter. The investigation was terminated as to nine respondents on the basis of consent orders. Six respondents were found to be in default.

On June 4, 2004, Auto Meter and respondent American Products Co., Inc. (''APC'') filed a joint motion to terminate based on a settlement agreement between Auto Meter and APC and a consent order stipulation with a proposed consent order.

On September 1, 2004, the ALJ issued an ID (Order No. 36) terminating the investigation as to respondent APC on the basis of a settlement agreement and consent order. The Commission investigative attorneys filed a response in support of the joint motion. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: September 27, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–22032 Filed 9–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–494]

In the Matter of Certain Automotive Measuring Devices, Products Containing Same, and Bezels for Such Devices; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation as to Respondent American Products Company, Inc. on the Basis of a Settlement Agreement and Consent Order; Issuance of the Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation as to respondent American Products Co., Inc. on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

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The authority for the Commission's determination is contained in section

337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: September 27, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–22033 Filed 9–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–432 (Second Review)]

Drafting Machines From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on drafting machines from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on drafting machines from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 22, 2004. Comments on the adequacy of responses may be filed with the Commission by December 14, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective date:* October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer ((202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1989, the Department of Commerce issued an antidumping duty order on imports of drafting machines from Japan (54 FR 53671). Following five-year reviews by Commerce and the Commission, effective November 24, 1999, Commerce issued a continuation of the antidumping duty order on imports of drafting machines from Japan (64 FR 66166). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited five-year review determination, the Commission found one *Domestic Like Product,* drafting machines, and drafting machine parts, excluding portable drafting machines.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the *Domestic Industry* as all producers of drafting machines, and drafting machine parts, excluding portable drafting machines.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–098, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 22, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 14, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response To This Notice of Institution

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1998.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of

Subject Merchandise imported from the *Subject Country.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 23, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–22133 Filed 9–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–249 and 731–TA–262, 263 and 265 (Second Review)]

Certain Iron Construction Castings From Brazil, Canada, and China

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty order on heavy iron construction castings from Brazil, the antidumping duty order on heavy iron construction castings from Canada, and the antidumping duty orders on iron construction castings from Brazil and China.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on heavy iron construction castings from Brazil, the antidumping duty order on heavy iron construction castings from Canada, and/or the revocation of the antidumping duty orders on iron construction castings from Brazil and China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 22, 2004. Comments on the adequacy of responses may be filed with the Commission by December 14, 2004. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background—The Department of Commerce issued antidumping duty orders on imports of certain iron construction castings from Canada on March 5, 1986 (51 FR 7600) and from Brazil and China on May 9, 1986 (51 FR 17220). On May 15, 1986, the Department of Commerce issued a countervailing duty order on imports of certain heavy iron construction castings from Brazil (51 FR 17786). Following five-year reviews by Commerce and the Commission, effective November 12, 1999, Commerce issued a continuation of the countervailing duty order on heavy iron construction castings from Brazil, a continuation of the antidumping duty order on heavy iron construction castings from Canada, and a continuation of the antidumping duty orders on iron construction castings from Brazil and China (64 FR 61590–61592). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–099, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Brazil, Canada, and China.

(3) *The Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations concerning iron construction castings from Brazil, Canada, and China, the Commission found two separate Domestic Like Products: ''heavy'' and ''light'' iron construction castings. One Commissioner defined the Domestic Like Products differently. On September 23, 1998, the Department of Commerce issued the final results of a changed circumstance review concerning iron construction castings from Canada, in which the antidumping duty order with respect to ''light'' castings was revoked (63 FR 50881). In its full five-year review determinations, the Commission found, with respect to Canada, one Domestic Like Product consisting of all ''heavy'' construction castings and, with respect to Brazil and China, two separate Domestic Like Products consisting of all ''heavy'' iron construction castings and all ''light'' iron construction castings.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations and its full five-year review determinations, the Commission defined the Domestic Industries as all producers of ''heavy'' iron construction castings and all producers of ''light'' iron construction castings.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 22, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 14, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: Please provide the requested information separately for each Domestic Like Product, as defined by the Commission in its original and first five-year review determinations, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/

worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty order and antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries after 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from any Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firms'(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in any Subject Country, provide the following information on your firms's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firms's(s') production; and

(b) The quantity and value of your firms's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firms's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in each Subject Country after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in each Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 23, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–22131 Filed 9–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–125 (Second Review)]

Potassium Permanganate From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on potassium permanganate from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on potassium permanganate from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is November 22, 2004. Comments on the adequacy of responses may be filed with the Commission by December 14, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background—On January 31, 1984, the Department of Commerce issued an antidumping duty order on imports of potassium permanganate from China (49 FR 3897). Following five-year reviews by Commerce and the Commission, effective November 24, 1999, Commerce issued a continuation of the antidumping duty order on imports of potassium permanganate from China (64 FR 66166). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination and its full five-year review determination, the Commission determined that there was one Domestic Like Product, potassium permanganate.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and its full five-year review determination, the Commission defined the Domestic Industry as all domestic producers of potassium permanganate.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–100, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 22, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is December 14, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject

Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 23, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–22132 Filed 9–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–339 and 340–B–I (Second Review)]

Solid Urea From Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan [1]

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on solid urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on solid urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [2] to be assured of consideration, the deadline for responses is November 22, 2004. Comments on the adequacy of responses may be filed with the Commission by December 14, 2004. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—The Department of Commerce published antidumping duty orders on solid urea from the Union of Soviet Socialist Republics (U.S.S.R.) and Romania on July 14, 1987 (52 FR 26367). In December 1991, the U.S.S.R. divided into 15 independent states. To conform to these changes, the Department of Commerce changed the name and case number of the original U.S.S.R. antidumping duty order into 15 orders applicable to each independent state of the former U.S.S.R. (57 FR 28828, (June 29, 1992)). Following five-year reviews by Commerce and the Commission, effective November 17, 1999, Commerce issued a continuation of the antidumping duty orders on imports of solid urea from Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan (64 FR 62653). The Commission is now conducting second reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Belarus, Estonia, Lithuania, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations and its expedited five-year review determinations, the Commission defined the Domestic Like Product as solid urea consistent with Commerce's scope of subject merchandise.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations and its expedited five-year review

[1] The investigation numbers are as follows: Romania is 731–TA–339 (Second Review) and Belarus, Estonia, Lithuania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan are, respectively, 731–TA–340–B through 340–I (Second Review).

[2] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–101, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

determinations, the Commission defined the Domestic Industry as all domestic producers of solid urea.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is November 22, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is December 14, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response To This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section

771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from any Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in any Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in each Subject Country after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in each Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: September 23, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–22130 Filed 9–30–04; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: January 15, 2005.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Clift Hotel, 495 Geary Street, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: September 23, 2004.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 04–22095 Filed 9–30–04; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 04–9]

Gabriel Sagun Orzame, M.D. Revocation of Registration

On October 7, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Gabriel Sagun Orzame, M.D. (Respondent) notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AO1690367, under 21 U.S.C. 824(a)(3) and (a)(4), and deny any pending applications for renewal or modification of that registration. Specifically, the Order to Show Cause alleged in relevant part, the following:

1. Effective November 17, 2002, the State of Michigan, Department of Consumer and Industry Services, Board of Medicine Disciplinary Subcommittee (Board), revoked the Respondent's

medical licensure privileges in that state.

2. This revocation of license was based upon the Respondent's conviction for altered records (one count of recklessly placing false information in the medical chart) in violation of MCL 750.492(a)(I)(b), a misdemeanor. Appeals of the Board's revocation order have been denied up through the Michigan Supreme Court.

3. A criminal complaint from which the above charge stems is based upon a Michigan State Police investigation for which the Respondent was charged with one count of conspiracy, three counts of delivery and thirty-two counts of delivery of a controlled substance prescription form. Four undercover officers made undercover visits to the Respondent's office and he never performed examinations on them. Nevertheless, the Respondent provided prescriptions for controlled substances for the undercover officers and for other persons who were not there.

4. As a result of the actions taken by the Board, the Respondent is currently without authority to handle controlled substances in the State of Michigan, the state in which he is registered with DEA.

By letter dated October 24, 2003, the Respondent, through his legal counsel, timely requested a hearing in this matter. As part of his hearing request, the Respondent further asserted that he ''* * * still has a license to practice medicine, and is licensed by the State of New York to prescribe medication.'' On October 31, 2003, the presiding Administrative Law Judge Gail A. Randall (Judge Randall) issued to counsel for DEA as well as the Respondent an Order for Prehearing Statements.

On November 19, 2003, counsel for DEA filed Government's Prehearing Statement and Motion for Summary Disposition. In its motion, the Government recited, among other things, an allegation outlined in the Order to Show Cause regarding the November 17, 2002, revocation of the Respondent's Michigan medical license. With regard to this allegation, the Government argued in relevant part that the Respondent is currently without authority to handle controlled substances in the State of Michigan. The Government further argued that the Respondent's licensure status in New York is of no consequence since he is not registered with DEA in that state. Therefore, the Government requested that the Administrative Law Judge grant its Motion for Summary Disposition and recommend that Respondent's DEA Certificate of Registration be revoked based on his lack of state authorization to handle controlled substances in Michigan.

On December 11, 2003, the Respondent filed his Response to Government's Motion for Summary Disposition. In his response, the Respondent argued that his medical license was suspended in the State of Michigan because of a mistaken guilty plea to a state misdemeanor charge related to the prohibition on health care providers placing inaccurate information in a patient file. The Respondent reiterated that he remains licensed to practice medicine in New York, and further requested that the DEA proceedings be stayed for 90 days so that he can establish professional residency in New York.

Following a Government response objecting to the Respondent's request for stay, on February 4, 2004, Judge Randall issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Randall granted the Government's Motion for Summary Disposition and found that the Respondent lacked authorization to handle controlled substances in Michigan, the jurisdiction in which he is registered with DEA. In granting the Government's motion, Judge Randall also recommended that the Respondent's DEA registration be revoked and any pending applications for modification or renewal be denied. No exceptions were filed by either party to Judge Randall's Opinion and Recommended Decision, and on March 15, 2004, the record of these proceedings was transmitted to the Office of the DEA Deputy Administer.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that the Respondent currently possesses DEA Certificate of Registration AO1690367, and is registered to handle controlled substances at a location in Benton Harbor, Michigan. The Deputy Administrator further finds that effective November 17, 2002, the Board revoked Respondent's license to practice medicine in Michigan. While the Respondent has presented evidence of his medical license in New York, there is no evidence before the Deputy Administrator that the Respondent has applied for, or has been granted resinstatement of his Michigan medical license, the state where he holds a DEA registration. Accordingly, the Deputy Administrator also finds it reasonable to infer that Respondent is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See Kanwaljit S. Serai, M.D.,* 68 FR 48943 (2003); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Here, it is clear that the Respondent is not currently licensed to handle controlled substances in Michigan. Therefore, he is not entitled to maintain that registration. Because the Respondent is not entitled to a DEA registration in Michigan due to his lack of state authorization to handle controlled substances, the Deputy Administrator concludes that it is unnecessary to address whether his registration should be revoked based upon the other grounds asserted in the Order to Show Cause. *See Cordell Clark, M.D.,* 68 FR 48942 (2003); *Nathaniel-Aikens-Afful, M.D.,* FR 16871 (1997); *Sam F. Moore, D.V.M.,* 58 FR 14428 (1993).

In further support of his continued registration with DEA, Respondent argues that consideration should be given to his state licensure to practice medicine in New York. The Deputy Administrator agrees with Judge Randall that the Respondent's status as a practitioner is a state other than Michigan has no bearing on this matter. The Deputy Administrator also agrees with the argument forwarded by the Government that Respondent's assertions regarding his licensure status in New York are without merit ''and ultimately irrelevant'' since Respondent's DEA Certificate of Registration is for a Michigan address, and he is currently not authorized to handle controlled substances in that state, *See, Layfe Robert Anthony, M.D.,* 67 FR 35582 (2002).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AO1690367, issued to Gabriel Sagun Orzame, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any

pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective November 1, 2004.

Dated: September 8, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–21964 Filed 9–30–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Supplemental Guidance for Labor Certification Process for Temporary Employment of Nonimmigrant Workers in the United States (H–2B Workers); Fiscal Year (FY) 2005

AGENCY: Employment and Training Administration (ETA), Department of Labor (DOL).

ACTION: Notice.

SUMMARY: On March 10, 2004, the United States Citizenship and Immigration Services (CIS) announced receiving sufficient H–2B petitions to reach the FY 2004 Congressionally mandated cap of 66,000. In light of CIS' announcement, ETA published a **Federal Register** notice on May 13, 2004 to provide guidance to the public regarding ETA's processing of H–2B applications that will count against the FY 2005 cap. ETA is publishing this notice to provide additional guidance due to the number of inquiries and questions that have arisen. This notice is intended to minimize confusion and burden to employers who use the H–2B program.

DATES: This notice is effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: William Carlson, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, Room C–4312, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: DOL has continued to process alien labor certification applications since March 10, 2004, and many employers are in possession of a valid labor certification that has not been accepted by CIS for processing. CIS has advised that their practice has been to accept the H–2B labor certifications with periods of employment that cross fiscal years so long as some portion of the employment period remains. Employers with a valid H–2B labor certification with a date of need *prior to October 1, 2004,* but that includes periods of planned employment after October 1, 2004, are encouraged to file H–2B labor certifications with CIS if some portion of the employment period remains.

ETA will continue to process new H–2B applications with dates of need within FY 2005 (that is, starting October 1, 2004 or later). For these new applications, employers must continue to follow existing filing rules, including regarding the timing of filing with the State Workforce Agency (SWA). Thus, employers must file a new H–2B application with the appropriate SWA no earlier than 120 days before the date of need and at least 60 days before the date of need.

The procedures described in this notice relate only to H–2B applications for nonimmigrant workers subject to the numerical limitation (cap) for FY 2005 and who will be engaged in temporary work to commence on or after October 1, 2004.

Signed at Washington, DC, this 28th day of September, 2004.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 04–22059 Filed 9–30–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 23 day of September 2004.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–21744 Filed 9–30–04; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Solicitation for Grant Applications for Veterans' Workforce Investment Program Grants for Program Year 2004

Announcement Type: Initial Announcement.

Funding Opportunity Number: #04–11.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.802.

Key Dates: Applications are to be submitted by no later than November 1, 2004.

Delivery Address: U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Mitchell, Reference SGA #04–11, Room N5416, 200 Constitution Ave., NW., Washington, DC 20210.

Executive Summary: The U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS) announces a competition for the balance of the Veterans' Workforce

Investment Program (VWIP) grant funds for Program Year (PY) 2004, as authorized under Section 168 of the Workforce Investment Act (WIA) of 1998. This Solicitation for Grant Applications (SGA) notice contains all of the necessary information and forms needed to apply for grant funding. Selected programs will assist eligible veterans by providing employment, training, support services, credentialing, networking information, and/or other assistance. Under this SGA, VETS anticipates that up to $3,800,000 in PY 2004 funds will be available for grant awards. The awards will be in the form of 6-month grants. It is anticipated that funds will be made available under this solicitation beginning January 1, 2005, and must be obligated no later than June 30, 2005. The VWIP programs are designed to be flexible in addressing the universal as well as local or regional problems that may have had a negative impact on veterans as they adapt to the competitive challenges of the 21st Century workforce. VETS, through this SGA, is seeking applications that take one of two approaches—either providing direct services to veterans that result in jobs and job training or credentialing opportunities, or providing outreach and public information activities that result in jobs and job training or credentialing opportunities for veterans.

I. Funding Opportunity Description

Section 168 of the Workforce Investment Act of 1998 (WIA) amended the training programs made available to veterans. *See* Sec. 168, Pub. L. 105–220, 112 Stat. 1027 (29 U.S.C. 2913). Section 168 authorizes the Department of Labor to make grants to meet the needs for workforce investment activities of veterans with service-connected disabilities, veterans who have significant barriers to employment, veterans who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized, and recently separated veterans within 48 months of discharge. Priority of service for veterans in Department of Labor training programs is established in Chapter 42, Section 4215 of Title 38 U.S.C.

The Department of Labor is authorized to make grants to public agencies and private non-profit organizations (including faith-based and community-based organizations) that are determined to have an understanding of the unemployment problems of veterans, familiarity with the area to be served, and the capability to administer a program of workforce investment activities for such veterans effectively.

The VWIP grants under Section 168 of the WIA of 1998 are intended to address one or more of the following three objectives:

- To provide the One-Stop Career Center system with new and creative service delivery strategies that address the complex employment problems facing veterans.
- To provide services to assist in integrating veterans into meaningful employment within the labor force; and/or
- To provide outreach efforts such as communication strategies or conferences designed to address systemic problems with diverse agencies sharing information or to sponsor conferences designed to bring systemic change in skills development recognition that are barriers to veterans entering the workforce.

This SGA seeks to fund programs that are flexible, creative, innovative, and non-duplicative in addressing local or regional problems that have kept veterans from the workforce. Of particular interest are those addressing barriers created by non-recognition of military training relevant to high growth industries where a license or certification is involved and programs addressing the improvement of employment and retention of veterans.

The project design may provide for one of the following two options:

1. Employment and training services such as basic skills instruction, training necessary to fill gaps in academic or experiential requirements necessary for a license or professional certification, remedial education activities, job search activities including job search workshops, job counseling, job preparatory training including résumé writing and interviewing skills, subsidized trial employment, on-the-job training, classroom training, placement follow-up services, and other services provided under WIA. These services should focus on emerging high growth industries and target occupations where documented shortages exist. Some examples might include health care professions, information technology, biotechnology, advanced manufacturing, financial services, or other occupations where a license or certification is either required or desirable.

2. Outreach activities such as local or regional newsletters or other communications devices that convey important information to all entities involved in providing employment and training services to veterans, or regional or national conferences. For example, conferences might bring together interested parties from within and outside the public workforce investment system in order to share important information on strategies for removing credentialing barriers facing veterans with viable but unrecognized skills or to develop plans with a specified employer base for using veterans to fill existing job openings where a license or certification is required. Proposals focused on outreach activities must show how the activity to be undertaken will materially and positively affect the employment status of veterans in the geographic area where the activity is to occur. The positive effect should be measurable in terms of veterans placed and retained in careers where a license or certification is either required or desirable.

No model is mandatory but the applicant must design a program that meets the needs of the changing workforce, is unique, creative, innovative and non-duplicative, and will carry out the objectives of the program to successfully integrate eligible veterans into the workforce. Under the Government Performance and Results Act, Pub. L. 103–62, 107 Stat. 285 (31 U.S.C. 1101 *et seq.*), Congress and the public are looking for program results rather than program processes.

If the grantee contemplates training and placement activity, coordination with the Disabled Veterans Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff at the One-Stop Career Center office in their jurisdiction is required. DVOP and LVER staff members are an integral part of the One-Stop Career Centers. Additionally, wherever possible, DVOP and LVER staff should be utilized for job development and placement activities for veterans who are ready to enter employment *and/or* who are in need of intensive case management services. Many of these staff members have received training in case management at the National Veterans Training Institute and have a priority of focus on assisting those veterans most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

II. Award Information

Awards will be made in the form of six-month grants. The total amount of funds available for this solicitation is $3,800,000. Awards are expected to range from $75,000 to a maximum of $375,000. The Department of Labor reserves the right to negotiate the amounts to be awarded under this

competition. Requests exceeding $375,000 will be considered non-responsive.

The period of performance will be for six (6) months beginning January 1, 2005, unless modified by the Grant Officer. It is expected that successful applicants will commence program operations under this solicitation no later than thirty (30) days after funds become available.

All program funds must be obligated within six (6) months of the grant award, but no later than June 30, 2005. In addition, funds may be obligated for limited activities after that date including participant follow-up activities and grant closeout.

Successful awardees may be considered for funding for an additional twelve-month program year, if performance for the first quarter of the initial grant period is deemed satisfactory by USDOL VETS. Grant modifications for this additional twelve-month program year are also subject to the availability of congressional appropriated funds. Further, *no* additional funding will be considered beyond June 30, 2006 under this grant award.

III. Eligibility Information

1. *Eligible Applicants.* Under Section 168(a)(2) of the Workforce Investment Act, grants may be made to public agencies and private non-profit organizations (including community based organizations, faith-based organizations and those covered by Executive Orders 13256 and 13270; *see http://www.whitehouse.gov/search*) that DOL determines have familiarity with the area and population to be served and can administer an effective program. *Eligible applicants will fall into one of the following categories:*

- State and Local Workforce Investment Boards established under Sections 111 and 117 of the Workforce Investment Act.
- States and State agencies. A State agency may propose in its application to serve one or more of the political subdivisions in its State. As noted below, this does not preclude a city or county agency from submitting an application to serve its own jurisdiction.
- Local public agencies, meaning any public agency of a general purpose political subdivision of a State that has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties.)
- Private non-profit organizations, including faith-based and community organizations, that have a capacity to manage grants and have or will provide the necessary linkages with other service providers. Note that entities organized under Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this announcement. Section 18 of the Lobbying Disclosure Act of 1995, Pub. L. 104–65, 109 Stat. 691 (2 U.S.C. 1611) prohibits instituting an award, grant, or loan of Federal funds to 501 (c)(4) entities that engage in lobbying.

Applicants for VWIP must satisfy a ''responsibility review'' that demonstrates an ability to administer Federal funds. *See* 20 CFR 667.170.

In accordance with 29 CFR Part 98, entities that are debarred or suspended shall be excluded from Federal financial assistance and are ineligible to receive a VWIP grant.

2. *Cost Sharing or Matching.* Although VETS encourages applicants to use cost sharing and matching funds, Veterans Workforce Investment Grants do *not* require grantees to share costs or provide matching funds. However, up to ten (10) additional scoring points may be added to the review panel score, if significant matching funds are made available to the grant. (*See* Section V (1) below).

3. *Other Eligibility Criteria.* To be eligible for participation in a training program administered under VWIP, an individual must be a veteran who falls within one of the following categories: ''* * * veterans with service-connected disabilities, veterans who have significant barriers to employment, veterans who served on active duty in the armed forces during a war or in a campaign or expedition for which a campaign badge has been authorized, and recently separated veterans [those within 48 months of discharge].'' *See* Section 168 (a)(1) of the Workforce Investment Act.

IV. Application and Submission Information

1. Address to Request Application Package: This SGA, together with its attachments, includes all information needed to apply. Additional application packages may be obtained from the VETS Web site at *http://www.dol.gov/vets,* at *http://www.fedgrants.gov,* and from the **Federal Register**, which may be obtained from your nearest government office or library. If additional copies of the standard forms are needed, they can be downloaded from *http://www.whitehouse.gov/omb/grants/grants_forms.html.* Additional copies of this announcement or accompanying forms will not be mailed by DOL.

To receive any amendments to this solicitation (please reference SGA 04–11), all applicants must register their name and address in writing with the Grant Officer at the following address: U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Ave., NW., Washington, DC 20210.

2. Content and Form of Application: The grant application must not exceed a total of 75 one-sided pages, including attachments and exhibits and must consist of three (3) separate and distinct sections: the Executive Summary, the Technical Proposal, and the Cost Proposal. The information provided in these three (3) sections is essential to gain an understanding of the programmatic and fiscal contents of the grant proposal. A complete grant application package must include:

- An original blue ink-signed and two (2) copies of the cover letter.
- An original and two (2) copies of the Executive Summary (see below).
- An original and two (2) copies of the Technical Proposal (see below) that includes a completed Technical Performance Goals Form (Appendix D).
- An original and two (2) copies of the Cost Proposal (see below) that includes an original blue ink-signed Application for Federal Assistance, SF–424 (Appendix A), a Budget Narrative, Budget Information Sheet SF–424A (Appendix B), an original blue ink-signed and Assurances and Certifications Signature Page (Appendix C), a Direct Cost Description for Applicants and Sub-applicants (Appendix E), and a completed Survey on Ensuring Equal Opportunity for Applicants (Appendix F).

SECTION 1—The Executive Summary consists of a one to two page ''Executive Summary'' reflecting the grantee's proposed overall strategy, timeline, and outcomes to be achieved. The executive summary should include:

- The proposed area to be served through the activities of this grant.
- The grantee's experience in serving the residents in the proposed service area.
- Proposed projects and activities that will expedite the reintegration of veterans into the workforce.
- Summary of anticipated outcomes, benefits, and value added by the project.

SECTION 2—The Technical Proposal consists of a narrative proposal that demonstrates: the need for this particular grant program; the services and activities proposed to obtain successful outcomes for the veterans to be served; and the applicant's capability to accomplish the expected outcomes of the proposed project design. Applicants

must be responsive to the Rating Criteria contained in Section V (1) and address all of the rating factors as thoroughly as possible in the narrative.

The technical proposal narrative must not exceed fifteen (15) pages (not including forms, appendices, executive summary or other documentation) double-spaced, font size no less than 11 pt., and typewritten on one side of the paper only. The applicant also must complete the forms, *i.e.*, the Technical Performance Goals chart provided in the SGA, or some other matrix designed to show performance goals (see Appendix D).

In order to facilitate the review process, the following format for the technical proposal is strongly recommended:

• *Need for the program.* The applicant must: identify the geographic area to be served; estimate the number of eligible veterans and their needs; indicate poverty and unemployment rates in the area; and identify the gaps in the local community infrastructure that contribute to the employment and other barriers faced by the targeted veterans including regulations or other restrictions on the recognition of relevant military training by civilian licensing or certification authorities. Include Labor Market Information (LMI) on the outlook for job opportunities in the service area. If the applications proposes outreach activities, the need for communications strategies such as Web sites, newsletters, or conferences must be fully explained.

• *Approach or strategy to obtain successful outcomes for veterans.* The applicant must identify which of the two approaches it proposes to take to produce positive outcomes for veterans—direct services, or outreach and public information activities. This section of the proposal should discuss how direct services to veterans will meet the needs of eligible veterans, or how the outreach effort will implement the communications strategies described in the ''need for the program'' section. Regardless of which approach is proposed, this section should include identification of how the applicant's proposed approach or strategy will increase and/or solidify cooperation, coordination, and sharing of information between agencies in the community, the region, and/or in the nation.

• *Applicant's capabilities.* The applicant must provide evidence that it has the capability and knowledge to accomplish the goals in the application.

SECTION 3—The Cost Proposal consists of a completed Standard Form (SF) 424 ''Application for Federal Assistance'', SF 424A ''Budget Information Sheet'', a detailed cost breakdown of each line item on the SF 424A, and supporting materials. Copies of all required forms, with instructions for completion, are included as appendices to this SGA. Applicants can expect that the cost proposal will be reviewed for allowability, how the money is allocated, and reasonableness of placement and enrollment costs. DOL reserves the right to have a VETS representative review and verify applicant data. The cost proposal must include the following items:

(i) The Standard Form (SF) 424, ''Application for Federal Assistance'' (original signed in blue-ink). Please note that, beginning October 1, 2003, all applicants for Federal grant and funding opportunities are required to include a Dun and Bradstreet (DUNS) number with their application. *See* OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). The DUNS number is a nine-digit identification number that uniquely identifies business entities. There is no charge for obtaining a DUNS number (although it may take 14–30 days). To obtain a DUNS number, access the following Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711. Requests for exemption from the DUNS number requirement must be made to OMB. The Dun and Bradstreet Number of the applicant should be entered in the ''Organizational Unit'' section of block 5 of SF 424.

The Catalog of Federal Domestic Assistance number for this program is 17.802 and it must be entered on the SF 424, Block 10.

(ii) Standard Form (SF) 424A ''Budget Information Sheet'' in Appendix B.

(iii) A detailed cost breakout of each line item on the Budget Information Sheet, which should be labeled as ''Budget Narrative.'' Please ensure that costs reported on the SF 424A correspond accurately with the Budget Narrative. The budget narrative must include the following information at a minimum:

• A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including sub-awardees);

• An explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.*, rates exceeding 35% of salaries and wages);

• An explanation of the purpose and composition of, and method used to derive the costs of, each of the following: travel, equipment, supplies, sub-awards/contracts, and any other costs. The applicant must include costs of any required travel described in this solicitation. Mileage charges may not exceed *37.5* cents per mile or the current federally approved rate;

• A description/specification of and justification for equipment purchases, if any. Tangible, non-expendable personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified and approved by the Grant Officer.

• Matching funds, leveraged funds, and in-kind services are not required for VWIP grants. However, if matching funds, leveraged funds or in-kind services are to be used, an identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind services must be provided. When resources such as matching funds, leveraged funds and/or the value of in-kind contributions are made available, please show in Section B of the Budget Information Sheet.

(iv) Assurance and Certification signature page, Appendix C.

(v) All applicants must submit evidence of satisfactory financial management capability, which must include recent (within 18 months) financial and/or audit statements.

(vi) All applicants must include, as a separate appendix, a list of all employment and training grants and contracts that it has had in the past three (3) years, including grant/contract officer contact information.

(vii) Documentation of indirect cost rates, as described in Section IV (5) below.

(viii) Direct Cost Descriptions for Applicants and Sub-Applicants (*see* Appendix E.)

(ix) Survey on Ensuring Equal Opportunity for Applicants (*see* Appendix F.)

3. Submission Dates and Times: The grant application package must be received at the designated location by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 p.m. ET, November 1, 2004, will not be considered unless it is received before an award is made and:

• It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; and/or

• It was sent by registered or certified mail not later than the fifth calendar day before the closing date of this announcement; or

• It was sent by U.S. Postal Service Express Mail Next Day Service-Post

Office to Addressee, not later than 5 p.m. at the location of mailing two (2) working days, excluding weekends and Federal holidays, prior to the closing date of this announcement.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence of receipt maintained by that office.

Applications sent by other delivery services, such as Federal Express, UPS, etc., will also be accepted.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to security. All applicants must take this into consideration when preparing to meet the application deadline, as you assume the risk for ensuring a timely submission.

4. *Intergovernmental Review:* This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs'' [*see* SF 424, Block #16].

5. *Funding Restrictions:* Rules relating to allowable costs are addressed in 20 CFR 667.200 through 667.220. Under 20 CFR 667.210(b), limits on administrative costs will be negotiated with the grantee and identified in the grant award documents. Construction costs (as opposed to maintenance and/or repair costs) are generally not allowed under WIA. While there are no specific limits on indirect costs, the amount of indirect cost charged to the grant is subject to the overall limitation on administrative costs as negotiated in the grant agreement.

Indirect costs claimed by the applicant must be based on a Federally approved rate. *If indirect costs are indicated in the grant application, a copy of the approved and signed indirect cost negotiation agreement must be submitted with the application.* If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination or cognizant agency within 90 days of grant award. (*See http://www.dol.gov/oasam/programs/boc/append5.htm.*) Rates that can be tracked through the State Workforce Agency's Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in grants to State Workforce Agencies.

6. *Other Submission Requirements:* As detailed in Section IV (2) above, applications may be submitted by registered or certified mail, U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, U.S. Postal Service First Class Mail, other delivery services (UPS, FEDEX, etc.), or hand delivery. Applications will not be accepted by e-mail or facsimile machine.

V. Application Review Information

1. Panel Review Criteria

Applications will be reviewed based upon the following criteria, up to a maximum of 110 points:

A. Need for the Project: 30 points

Applications will be scored on the documented extent of need for this project, as demonstrated by: (i) The potential number or concentration of veterans in the proposed project area relative to other similar areas; (ii) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; (iii) the extent of gaps in the local infrastructure that create employment barriers that hinder the target population; (iv) the number of service members separating from the armed forces at local military bases; (v) problems with coordination between service providers; and (vi) identification of credentialing barriers that need to be addressed.

B. Overall Strategy To Enhance Services Provided to Veterans, To Initiate Actions To Provide Employment and Training Services for Veterans Not Otherwise Served, or To Provide Outreach and Public Information Activities To Develop and Promote Maximum Job and Job Training Opportunities for Eligible Veterans: 40 points

The application must include a description of the proposed approach to address one of the permissible—strategies, either providing direct services to veterans that result in job and job training or credentialing opportunities, or providing outreach and public information activities that result in job and job training or credentialing opportunities for veterans. Applicants should demonstrate how the activities will be tailored or will be responsive to the needs of veterans and the local employers seeking to hire veterans.

All applications will be scored on the extent to which they demonstrate the following:

(i) *Is the project Unique*—Has any other service provider tried the same approach?

(ii) *Is the project Creative*—What will this project do that other projects won't do or haven't done?

(iii) *Is the project Innovative*—Will the project equip veterans to adapt to the competitive challenges of the 21st Century workforce?

(iv) As part of an outreach or service proposal, is the project integrated and coordinated with other job training and employment programs in order to maximize resources and minimize duplication of effort and will it provide appropriate awareness, information sharing, and orientation activities on veterans and their needs to the following: Federal, State, and local entitlement services such as the Social Security Administration (SSA), Department of Veterans Affairs (DVA), State Workforce Agencies (SWAs) and their local job service offices or one-stop career centers, including service programs such as Disabled Veterans' Outreach Program (DVOP) and Local Veterans' Employment Representatives (LVER) staff (which integrate WIA, labor exchange, and other employment and social services), etc.; civic and private groups and especially Veterans' Service Organizations such as The American Legion, Disabled American Veterans,

Veterans of Foreign Wars, and American Veterans (AMVETS); Family Service Centers on local military bases and local managers of Transition Assistance Program classes (this might be accomplished by the publication of an assistance guide or other periodical with information about these services); and faith-based and community-based organizations?

(v) Additionally, where the project design focuses on improved coordination/cooperation, community outreach, conferences and public information, has the narrative described a comprehensive plan for meeting the challenges and solving the problems associated with getting disparate groups talking to each other and/or getting relevant information to eligible veterans in a cogent, logical, and efficient manner on a regular basis?

C. Demonstrated Capability in Providing Required Program Services: 30 points

The applicant must describe its relevant prior experience in either operating a public information or community outreach effort or operating employment and training programs and providing services to participants targeted by this solicitation or participants similar to those which are targeted under this solicitation. Specific outcomes of the applicant's prior experience must be described, including percentage of enrolled participants placed into employment and cost per entered employment or, in the case of outreach activities, number of relevant parties reached or conference attendees.

The applicant must also address its ability to provide a timely startup of the program. The applicant should delineate its staff capability to manage the programmatic and financial aspects of a grant program. Note that a recent (within the last 18 months) financial statement or audit must be submitted as part of the cost proposal (*see* Section IV (2) above. Final or most recent technical performance VWIP reports or other relevant programs serving the targeted population (or a similar population) must be submitted. Because prior VWIP grant experience is not a requirement to receiving funding under this SGA, some applicants may not have any VWIP technical reports to submit.

D. Matching or Leveraged Funds: 10 Points

The applicant must describe the type, amount, and source of matching or leveraged funds that will be available, if a grant is awarded.

2. Review and Selection Process

The Grant Officer, with the assistance of VETS staff, will conduct an initial screening to determine responsiveness, timeliness, completeness, and eligibility of the applicant. Following the initial screening, the review panel using the point scoring system specified above in Section V(1) will review those applications determined to have satisfied the initial screening. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The Government reserves the right to ask for clarification from applicants, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, program and administrative costs *e.g.*, cost per enrollment and placement and geographic service areas. While points will not be awarded for cost issues other than matching or leveraged funds, cost per entered employment will be given serious consideration in the selection of awardees. The Grant Officer's determination for award under SGA 04–11 is the final agency action. *The submission of the same proposal from any prior year VWIP and/or USDOL VETS competition does not guarantee an award under this solicitation.*

VI. Award Administration

1. Award Notices

The Grant Officer will notify successful applicants of their awards. The notification letter will contain instructions on when performance under the terms of the award may begin. No activity associated with a grant application is authorized prior to official notification of an award by the Grant Officer. Before the actual grant award, the Grant Officer, in consultation with VETS staff, may enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal. The Grant Officer will notify unsuccessful applicants of their appeal rights by mail.

2. Administrative and National Policy Requirements

Grantees must comply with the provisions of WIA and its regulations, as applicable. All successful grantees will also be subject to the following administrative standards and provisions, if applicable to the particular grantees:

- 20 CFR Part 667—Administrative provisions for programs including VWIP, under Title I of WIA.
- 29 CFR Part 2, Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.
- 29 CFR Parts 30, 31, 32, 33, 35, 36, and 37—Equal Employment Opportunity in Apprenticeship and Training; Nondiscrimination in Federally Assisted Programs of the Department of Labor, Effectuation of Title VI of the Civil Rights Act of 1964; Nondiscrimination on the Basis of Handicap in Programs and Activities; Nondiscrimination on the basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor; Non discrimination on the Basis of Sex in Education Programs Receiving Federal Financial Assistance; and Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1988.
- 29 CFR Part 93—Lobbying.
- 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, and with Commercial Organizations.
- 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.
- 29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local governments.
- 29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants).
- 29 CFR Part 99—Audit of States, Local Governments, and Non-profit Organizations.
- In accordance with WIA Section 195(6), programs funded under this SGA may not involve political activities. Additionally, in accordance with Section 18 of the Lobbying Disclosure

Act of 1995, Public Law 104–65 (2 U.S.C. 1611), non profit entities incorporated under 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

• Requirements for priority of service for veterans in Department of Labor training programs are identified in 38 U.S.C. 4215.

3. Reporting

Successful grant award recipients will submit the reports and documents listed below:

A. Quarterly Financial Reports

No later than 30 days after the end of each Federal fiscal quarter (*i.e.,* for this grant period, reports are due April 30 and July 30), the grantee must report outlays, program income, and other financial information on a Federal fiscal quarterly basis using SF–269A, Financial Status Report, Short Form, and submit a copy of the HHS/PMS 272 draw down report. These reports must cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET).

B. Quarterly Program Reports

No later than 30 days after the end of each Federal fiscal quarter, grantees also must submit a Quarterly Technical Performance Report to the DVET that contains the following:

(1) A comparison of actual accomplishments to planned goals for the reporting period and any findings related to monitoring efforts;

(2) An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: identification of corrective action that will be taken to meet the planned goals and a timetable for accomplishment of the corrective action.

C. 90-Day Follow-Up Report

No later than 120 days after the grant performance expiration date, the grantee must submit a follow-up report showing results and performance as of the 90th day after the grant period, and containing the following:

(1) Final Financial Status Report SF–269A Short Form (that zeros out all unliquidated obligations); and

(2) Technical Performance Report including an updated goals chart.

D. 180-Day Follow-Up Report

No later than 210 days after the grant performance expiration date, the grantee must submit a follow-up report showing results and performance as of the 180th day after the grant period, and containing the following:

(1) Final Financial Status Report SF–269A Short Form (if not previously submitted); and

(2) For a Grant Involving Employment and Training Activities, a Final Narrative Report identifying:

(a) The total combined (directed/assisted) number of veterans placed into employment during the entire grant period;

(b) The number of veterans still employed after the 180-day follow-up period;

(c) If the veterans are still employed at the same or similar job, and if not, what are the reason(s);

(d) Whether training received was applicable to jobs held;

(e) Wages at placement and during follow-up period;

(f) An explanation regarding why those veterans placed during the grant, but not employed at the end of the follow-up period, are not so employed; and

(g) Any recommendations to improve the program.

(3) For a Grant Involving Outreach Activities, a Final Narrative identifying:

(a) Circulation data on newsletters or newspapers including number of distribution points and readership;

(b) Number of conferences held with attendance figures on each conference;

(c) Approximate number of veterans placed in employment due to outreach activities.

VII. Agency Contacts

For answers to questions or help with problems prior to the application submission deadline, please contact Cassandra Mitchell, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll free number). Please note that in order to ensure a fair and open competition, USDOL VETS staff are *not* authorized to provide technical assistance to any potential grantee while this funding opportunity period is open. Individuals with hearing impairments may call (800) 670–7008 (TTY/TDD).

VIII. Other Information

Unless specifically provided in the grant agreement, DOL's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require and an entity's procurement procedures must provide that all procurement transactions will be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition.

Resources for the Applicant: Applicants may review ''VETS' Guide to Competitive and Discretionary Grants'' located at *http://www.dol.gov/vets/grants/Final_VETS_Guide-linked.pdf.*

Applicants may also find these resources useful: America's Service locator *http://www.servicelocator.org/* provides a directory of our Nation's One-Stop Career Centers; the National Association of Workforce Boards maintains an Internet site at *http://www.nawb.org/asp/wibdir.asp* that contains contact information for the State and local Workforce Investment Boards; and the home page for the Department of Labor Center for Faith-Based and Community Initiatives maintains a Web site at *http://www.dol.gov/cfbci.*

For Further Information Contact: For further information concerning this SGA and confirmation of receipt of a grant application, please contact Cassandra Mitchell, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570, prior to the closing deadline and reference SGA #04–11. (This is not a toll-free number.)

Signed in Washington, DC, this 27th day of September, 2004.

Johnny A. Arnold, II,

Acting Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF 424
Appendix B: Budget Information Sheet SF 424A
Appendix C: Assurances and Certifications Signature Page
Appendix D: Recommended Technical Performance Goals Form
Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants
Appendix F: Survey on Ensuring Equal Opportunity for Applicants
Appendix G: The Glossary of Terms

BILLING CODE 4510–79–P

APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

1. TYPE OF SUBMISSION: Application ☐ **Construction** ☐ **Non-Construction**	Pre-application ☐ **Construction** ☐ **Non-Construction**	**2. DATE SUBMITTED**	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	**Organizational Unit:** Department:
Organizational DUNS:	Division:
Address: Street:	**Name and telephone number of person to be contacted on matters involving this application (give area code)** Prefix: First Name:
City:	Middle Name
County:	Last Name
State: Zip Code	Suffix:
Country:	Email:
6. EMPLOYER IDENTIFICATION NUMBER *(EIN):* ☐☐-☐☐☐☐☐☐☐	Phone Number (give area code) Fax Number (give area code)
8. TYPE OF APPLICATION: ☐ **New** ☐ **Continuation** ☐ **Revision** If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	**7. TYPE OF APPLICANT:** (See back of form for Application Types) Other (specify)
	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*	
13. PROPOSED PROJECT Start Date: Ending Date:	**14. CONGRESSIONAL DISTRICTS OF:** a. Applicant b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**
a. Federal	$ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
e. Other	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative		
Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

APPENDIX B

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

APPENDIX C

CERTIFICATIONS AND ASSURANCES

ASSURANCES AND CERTIFICATIONS SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Certification Regarding Lobbying, Debarment, Suspension, Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace,

B. Certification of Release of Information

C. Assurances - Non-Construction Programs

D. Applicant is not a 501(c)(4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instruction shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.

APPENDIX D

Recommended Format for Planned Quarterly Technical Performance Goals

(Enter All Data Cumulatively)

Grant Name: _____ **Program Year:** _____

QUARTERS

Performance Goals:	1	2	3	4	90 DAY FINAL	180 F/U
Assessments						
Participants Enrolled						
Number Placed into Employment						
Cost Per Placement						
Number Retaining Jobs for 90 days						
Number Retaining Jobs for 180 days						
Placement Rate						
Average Wage at Placement						

Training Activities:	1	2	3	4	90 DAY FINAL
Class Room Training					
On-the-Job Training					
Remedial Education					
Literacy and Bilingual Training					
Institutional Skills Training					
Occupational Skills Training					
On-Site Industry Specific Training					
Customized Training					
Apprenticeship Training					
Upgrading and Retraining					
Life Skills and Money Management					
Other specify:					

Ancillary Services:	1	2	3	4	90 DAY FINAL
Case Management					
Job Search Assistance					
Counseling/Vocational Guidance					
Job Club Workshops					
Unpaid Work Experience					
Compensated Work Therapy					
Tools/Fees/Specific Work Clothing, Various Supportive Services, etc.					
Other specify:					

Planned Expenditures	1	2	3	4	90 DAY FINAL
Total Expenditures					
Administrative Costs					
* Participant Services					

* Participant Services includes participant training and supportive services expenditures.

APPENDIX E

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

Sub-Total

	Administration	Program
Fringe Benefits For All Positions		
Contractual		
Travel		
Indirect Costs		
Equipment		
Supplies		

Total Costs ----------

	Administration	Program

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

APPENDIX F

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

☐ 3 or Fewer ☐ 15-50
☐ 4-5 ☐ 51-100
☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

☐ Less Than $150,000
☐ $150,000 - $299,999
☐ $300,000 - $499,999
☐ $500,000 - $999,999
☐ $1,000,000 - $4,999,999
☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1225-0083**. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

BILLING CODE 4510–79–C

Appendix G—Glossary of Terms

Adequate Employment—See Unsubsidized Employment.

Administrative Costs—Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs

shall include the administrative costs, both direct and indirect, of sub-recipients and contractors.

Adult Basic Education—Education for adults whose inability to speak, read, or write the English language or to effectively reason mathematically, constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, which is designed to help eliminate such inability and raise the level, of education of such individuals with a view to making them less likely to become dependent on others, to improve their ability to benefit from occupational training and otherwise increase their opportunities for more productive and profitable employment, and to make them better able to meet their adult responsibilities.

Ancillary Services—Employment and training related activities other than core training that may enhance a participant's employability.

Apprenticeship Training—A formal occupational training program that combines on-the-job training and related instruction and in which workers learn the practical and conceptual skills required for a skilled occupation, craft, or trade. It may be registered or unregistered.

Assessment/Intake—A process for screening individual applicants for program eligibility making the level of need determinations; making an initial determination what services or programs can best benefit the applicants; providing information about services, program eligibility, and the availability of those services, and the routing or selecting individual applicants for particular service delivery or program participation.

Assisted Placements Into Unsubsidized Employment—Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the homeless veteran was referred to.

Average Hourly Wage at Placement—The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

Assurance and Certifications—The act of signifying intent to comply with applicable federal and State laws and regulations as a condition for receiving and expanding USDOL grant funds.

Barriers to Employment—Characteristics that may hinder an individual's hiring promotion or participation in the labor force. Identification of these barriers will vary by location and labor market. Some examples of individuals who may face barriers to employment include: Single parents, women, displaced homemakers, youth, public assistance recipients, older workers, substance abusers, teenage parents, certain veterans, ethnic minorities, and those with limited English speaking ability or a criminal record or with a lack of education, work experience, credential, child care arrangements, transportation or alternative working parents.

Campaign Badge Veteran—A veteran who served on active duty during the war (*e.g.*, WWII), action (*e.g.*, Korea, Vietnam), in a campaign, or an expedition for which a campaign badge of an expeditionary medal has been authorized (*e.g.* Afganistan, Bosnia, Grenada, Haiti, Iraq, Panama, Southeast Asia, (Iraq and Afghanistan), and Somalia, etc.).

Case Management—A client centered approach in the delivery of intensive services, designed to prepare and coordinate comprehensive employment plans for participants, to assure access to the necessary training and supportive services, and to provide support during program participation and after job placement.

Case Manager—One who coordinates, facilitates or provides direct services to a client or trainee from application through placement, post placement follow-up, or other case closing, exclusively, through periodic contact and the provision of appropriate assistance.

Classroom Training—Any training of the type normally conducted in an institutional setting, including vocational education, which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, throughout the provision of courses such as remedial education, training in the primary language of persons with limited English language proficiency, or English as a second language training.

Close Out—Grant close out is the process by which the Federal grantor agency (in the case of VETS grants, Department of Labor) determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

Cognizant Federal Agency—The Federal agency that is assigned audit or indirect cost rate approval responsibility for a particular recipient organization by the Office of Management and Budget (OMB Circular A–87 and A–102 [20 CFR, Part 97]).

Community Based Organization—Means a private non-profit organization that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce investment. Faith-Based organizations are considered a subset.

Cost per Placement—The cost per placement into unsubsidized employment is obtained by dividing the total funds expended by the total of direct placements plus assisted placements.

Counseling—A form of assistance which provides guidance in the development of a participant's vocational goals and the means to achieve those goals; and/or assist a participant with the solution to one or more individual problems which may pose a barrier(s) to sustained employment.

Counselor—(Employment/Vocational): A trained and qualified professional authorized to provide direct assistance (beyond advising and informing) through planning, testing, training and otherwise readying an individual for sustained employment.

Customized Training—A training program designed to meet the special requirements of an employer who has entered into an agreement with a Service Delivery Area to hire individuals who are trained to the employer's specifications. The training may occur at the employer's site or may be provided by a training vendor able to meet the employer's requirements. Such training usually requires a commitment from the employer to hire a specified number of trainees who satisfactorily complete the training.

Direct Placements Into Unsubsidized Employment—A direct placement into unsubsidized employment must be a placement made directly by staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

Disabled Veteran—A veteran who is entitled to compensation under laws administered by the Veterans Administration; or an individual who was medically discharged or otherwise released from active duty, due to service-connected disability.

Disallowed Costs—Disallowed costs are those charges to a grant that the grantor agency (or its representative) determines to be unallowable in accordance with the applicable Federal Cost Principles or other conditions in the grant.

Disabled Veterans' Outreach Program (DVOP)—A program of Federal assistance through grants to States to staff and support in accordance with 38 U.S.C. 4103A, appointed to perform a number of duties chief among which are direct employer contact, particularly with Federal contractors, Federal employers using individualized job development techniques, and with veterans (particularly with disabled veterans) using a case management approach to client-centered services.

Economically Disadvantaged—An individual who (a) receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program; (b) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673 (2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), or (ii) 70 percent of the lower living standard income level; (c) is receiving (or has been determined within the 6-month period prior to the application for program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977; (d) qualifies as a homeless individual under section 103 of the Stewart B. McKinney Homeless Assistance Act; (e) is a foster child on behalf of whom State or local government payments are made; or (f) in cases permitted by regulations of the Secretary, is an individual with a disability whose income meets the requirements of clause (a) or (b), but who is a member of a

family whose income does not meet such requirements.

Eligible—Meeting the minimum requisite qualifications to be considered for the provision of services or entry into a position under a funded program or as required by law.

Employability Development Services (EDS)—This includes services and activities that will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a Sub-grantee, contractor or another source such as the local Workforce Investment Act program or the DVOP personnel or LVERs. Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

Employment Development Plan (EDP)—An individualized written plan or intervention strategy for serving an individual which, as a result of an assessment of the veteran's economic needs, vocational interests, aptitudes, work history, etc., defines a reasonable vocational or employment goal and the developmental services or steps required to reach the goal and which documents the accomplishments made by the individual.

Employment Service—The State level organization or public labor exchange system affiliated with the Department of Labor's United States Employment Service.

Enlistments—Individuals who have expressed an interest, signed up for a workshop or enrollment in the program.

Entered Employment—Applicants for service who were placed in jobs or otherwise obtained employment as a result of services used or received.

Entered Employment Rate—This is a method used to determine the percentage of participants who become employed. The percentage is calculated by dividing the number of total participants who were enrolled in the program by the number of participants who were placed or entered employment through the program.

Enrolled Veteran—Shall be synonymous with the term participant. A veteran who has been determined eligible for services at intake and who is receiving or scheduled to receive core training.

Faith-Based Organization—See ''community-based organization''.

Follow-up—The tracking of clients for a period of time up to 180 days after initial placement, last referral date for services or completion of training programs to determine current status, outcome or whether to offer additional services (such as additional referral, job retention advisement, etc.).

Full-Time Equivalent (FTE)—A personnel charge to the grant equal to 2,080 hours per year.

FY—Fiscal Year. For Federal government purposes, any twelve month period beginning on October 1 and ending on September 30.

General Equivalency Diploma (GED)—A high school equivalency diploma that is obtained by passing the General Educational Diploma Equivalency Test that measures the application of skills and knowledge generally associated with four (4) years of traditional high school instruction.

Grant Officer's Technical Representative (GOTR)—An individual (usually the DVET) serving on behalf of the Grant Officer who maintains and ensures the integrity of the approved grant agreement by reviewing and making recommendations regarding technical matters not involving a change in scope, cost, or conditions.

Homeless or Homeless Individual—Includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. [Reference 42 U.S.C., Section 11302 (a)].

Indirect Cost—A cost that is incurred for a common or joint purpose benefiting more than one cost objective and that is not readily assignable to the cost objective specifically benefited.

In-kind Services—Property or services which benefit federally assisted project or program and which are contributed without charge to the grantee.

Institutional Skills Training—Training conducted in an institutional setting and designed to ensure that individuals acquire the skills, knowledge, and abilities necessary to perform a job or group of jobs in an occupation for which there is a demand.

Intake—A process for screening individual applicants for eligibility; making an initial determination whether the program can benefit the applicants; providing information about the program, its services and the availability of those services; and selecting individual applicants for participation in the program.

Intensive Services—The provision of concentrated staff services to clients who indicate the need for facilitation or interventions to secure lasting employment. The case management approach to service delivery is a viable model for successfully providing such services and obtaining the clients goals.

Job Club Activities—A form of job search assistance provided in a group setting. Usually job clubs provide instruction and assistance in completing job applications and developing resumes and focus on maximizing employment opportunities in the labor market and developing job leads. Many job clubs use telephone banks and provide group support to participants before and after they interview for job openings.

Job Development—The process of marketing a program participant to employers, including informing employers about what the participant can do and soliciting a job interview for that individual with the employer (targeted job development); and the development of one or more job openings or training opportunities with one or more employers using a variety of techniques and means of contact.

Job Placement Services—Job placement services are geared towards placing participants in jobs and may involve activities such as job search assistance, training, or job development. These services are initiated to enhance and expedite participants' transition from training to employment.

Job Search Assistance—An activity, which focuses on building practical skills and knowledge to identify and initiate employer contact and conduct successful interview with employers. Various approaches may be used to include participation in a job club, receive instruction in identifying personal strengths and goals, resume application preparation, learn interview techniques, and receive labor market information. Job search assistance is often self-service activity in which individuals obtain information about specific job openings or general jobs or occupational information.

Labor Exchange—Refers to the services provided to job seekers and employers by the State Employment Services Agencies, or other designated entities. Preparatory services to job seekers may include assessment, testing, counseling, provision of labor market information, targeted job development, resulting in job referral and follow-up with former applicants and prospective employers. Employer-oriented services may include accepting job orders, screening applicants, referring qualified applicants and providing follow-up to foster job retention and develop additional job openings or training opportunities.

Labor Exchange Delivery System (LEDS)—Describes the system of matching jobs and training opportunities with applicants operating with Federal employment and job training funds.

Labor Force—The sum of all civilians classified as employed and unemployed and members of the Armed Forces stationed in the United States. [Bureau of Labor Statistics Bulletin 2175].

Labor Market Area—An economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence.

Literacy and Bilingual Training—See Adult Basic Education.

Local Veterans' Employment Representative (LVER) Program—A program of Federal assistance through grants to States to staff in accordance with 38 U.S.C. 4104 to perform a number of duties, chief among which are the provision of intensive (case management) services to targeted eligible veterans with emphasis on VA, VR&E, and to functionally supervise without necessarily exercising line supervisor authority over the provision of services to veterans by SDP staff.

Minimum Economic Need—The level of wages paid to a program participant that will enable that participant to become economically self-sufficient.

Minority Veterans—For the purposes of the HVRP and VWIP programs, veterans who are Workforce Investment Act (WIA) eligible and are members of the following ethnic categories: African American, Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander.

National Veterans' Training Institute (NVTI)—An agency contracted with USDOL/VETS to develop and provide skills development and enhancement training to individuals who are determined by the Assistant Secretary for Veterans' Employment and Training and who deliver or monitor the provision of employment and training services to veterans (38 U.S.C. 4109).

Number Retaining Job for 90 Days—To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

Number Retaining Job for 180 Days—To be counted as retaining a job for 180 days, continuous employment with one or more employers for at least 180 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 180 days as long as the client has been steadily employed for that length of time.

Occupational Skills Training—Includes both (1) vocational education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs, and (2) on-the-job training.

Offender—Any adult or juvenile who has been subject to any stage of the criminal justice process for whom services under this program may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

On-the-Job Training (OJT)—Means training by an employer that is provided to a paid participant while engaged in productive work in a job that: (a) Provides knowledge or skill essential to the full and adequate performance of the job; (b) provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate. Usually in the OJT agreement, there is a promise on the part of the employer to hire the trainee upon successful completion of the training.

On-Site Industry-Specific Training—This is training which is specifically tailored to the needs of a particular employer and/or industry. Participants may be trained according to specifications developed by an employer for an occupation or group of occupations at a job site. Such training is usually presented to a group of participants in an environment or job site representative of the actual job/occupation, and there is often an obligation on the part of the employer to hire a certain number of participants who successfully complete the training.

Outreach—An active effort by program staff to encourage individuals in the designated service delivery area to avail themselves of program services.

Outside Funds—Resources pledged to the grant program that have a quantified dollar value. Such resources may include training funds from programs such as WIA Title I that are put aside for the exclusive use by participants enrolled in a program. Outside funds do not include in-kind services.

Participant—Means an individual who has been determined to be eligible to participate in and who is receiving services (except follow-up services) under the program. Participation shall be deemed to commence on the first day, following determination of eligibility, on which the individual began receiving subsidized employment, training, or other services provided under the program. An individual who receives only outreach and/or intake assessment services does not meet this definition.

Participants Enrolled—A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, and/or employment has been received through the program. This should be an unduplicated count over the year, *i.e.*, each participant is recorded only once, regardless of the number of times she or he receives assistance.

Participants Services—This cost includes supportive, training, or social rehabilitation services, which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

Placed Into Transitional or Permanent Housing—A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

Placement—The act of securing unsubsidized employment for or by a participant.

Placement Rate—This is a method used to determine the percentage of participants who become employed. The figure is calculated by dividing the number of total participants who were registered for services or enrolled in the program by the number of applicants or program participants who were placed or otherwise entered employment.

Pre-apprenticeship Training—Any training designed to increase or upgrade specific academic, or cognitive, or physical skills required as a prerequisite for entry into a specific trade or occupation.

Pre-enrollment Assessment—The process of determining the employability and training needs of individuals before enrolling them into the program. Individual factors usually addressed during pre-enrollment assessment include: an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, and personal circumstances.

Preference—The application of priorities in the consideration and selection through appointment or assignment of staff to funded positions, or in the provision of direct services and order of referral to listed openings in the order designated by statute regulation, and grant agreement.

Program Resources—Includes the total of both program or grant and outside funds.

Program Year (PY)—The 12-month period beginning July 1 in the fiscal year for which the appropriation is made, and ending on the following June 30.

Qualified—An individual who has been determined to possess the requisite knowledge, skills, and abilities for positions within the context of the selection process used to identify and rank persons possessing those attributes.

Rate of Placement Into Unsubsidized Employment—The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment, plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

Recently Separated Veteran—Refers to an individual who applies for program participation or assistance within 48 months of separation from active U.S. military service [29 U.S.C. 1503 (27) (c)].

Remedial Education—Education instruction, particularly in basic skills, to raise an individual's general competency level in order to succeed in vocational education or skill training programs, or employment.

Service Connected Disabled—Refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs, or (2) an individual who was discharged or released from active duty because of a service-connected disability (38 U.S.C. 4211 (3); 29 U.S.C., Chapter 19, section 1503 (27) (C)).

Service Delivery Point (SDP)—Includes offices of the public employment delivery system operated directly or by contract with the State Workforce Agency as grantee within a State and may include One ''Stop Career Centers, local employment service offices, and any satellite or itinerant offices at which labor exchange services are available.

Solicitation for Grant Applications (SGA)—A document which provides the requirements and instructions for the submission by eligible applicants identified in the document's text of requests for Federal domestic assistance (funds) for one or more programs or grants-in-aid.

State Workforce Agency (SWA)—The State level organization, as affiliated with the former United States Employment Service.

Subgrant—An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee.

Subgrantee—The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Suitable Employment—See ''Unsubsidized Employment''.

Substance Abuser—An individual dependent on alcohol or drugs, especially narcotics, whose dependency constitutes or results in a substantial barrier to employment.

Supportive Services—Means services which are necessary to enable an individual eligible for training, but who cannot afford to pay for such services, to participate in a training program funded under the grant. Such supportive services may include transportation, health care, financial assistance (except as a post-termination service), drug and alcohol abuse counseling and referral, individual and family counseling, special services and materials for individuals with disabilities, job coaches, child care and dependent care, temporary shelter, financial counseling, and other reasonable expenses required for participation in the training program and may be provided in-kind or through cash assistance.

Targeted Job Development—The identification and marketing of a group of qualified applicants with similar occupations or employment barriers requiring personal visitation/phone contact with those employers likely to employ these individuals.

Total Planned Expenditures—Identified forecasted financial needs to accomplish programmatic objectives broken down into fiscal quarters.

Unsubsidized Employment—Employment not financed from funds provided under the grant. In the grant program the term ''adequate'' or ''suitable'' employment is also used to mean placement in unsubsidized employment which pays an income adequate to accommodate the participants' *minimum* economic needs.

Upgrading or Retraining—Training given to an individual who needs such training to advance above an entry level or dead-end position. This training shall include assisting veterans in acquiring needed State certification to be employed in the same field as they were trained in the military (*i.e.*, Commercial Truck Driving License (CDL), Emergency Medical Technician (EMT), Airframe & Power Plant (A&P), Teaching Certificate, etc.).

Veteran—An individual who served in the United States active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable (29 U.S.C. Chapter 19, section 1503 (27) (A) [for WIA, Section 168 (VWIP) and WIA, Title I training/services]).

Veterans' Workforce Investment Program (VWIP)—Competitively awarded employment and training grants to meet the needs of veterans with significant barriers to employment; with service-connected disabilities; who served on active duty in the armed forces during a campaign or expedition for which a campaign badge has been authorized; and recently separated veterans. The U.S. Department of Labor, Veterans' Employment and Training Service awards VWIP grants as authorized under the Workforce Investment Act (WIA), Section 168.

Vocational Exploration Training—Through assessments such as interest inventories and/or counseling, a process of identifying occupations or occupational areas in which a person may find satisfaction and potential, and for which his or her aptitudes and other qualifications may be appropriate.

Vocational Guidance—The provision of information, suggestions, and advice through discussion with individuals who are considering a geographical or vocational choice or change, relating to their career decision.

Wartime Veteran—See ''campaign veteran above.''

Welfare and/or Public Assistance Recipient—An individual who, during the course of the program year, receives or is a member of a family who receives cash welfare or public assistance payments under a Federal, State, or local welfare program.

Workforce Investment Act (WIA)—The purpose of this Act is to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals, including veterans, who face serious barriers to employment and who are in need of such training to obtain prospective employment. The Act requires the Assistant Secretary for Veterans' Employment and Training to consult with the Secretary of the Department of Veterans Affairs to ensure that programs funded under VWIP of this Act meet the employment and training needs of service-connected disabled, Campaign, and recently separated veterans and are coordinated, to the maximum extent feasible, with related programs and activities.

Work Experience—A temporary activity (six months or less) which provides an individual with the opportunity to acquire the skills and knowledge necessary to perform a job, including appropriate work habits and behaviors, and which may be combined with classroom or other training. When wages are paid to a participant on work experience and when such wage are wholly paid for under WIA, the participant *may not* receive this training under a private, for profit employer.

Youth—An individual between 20 and 24 years of age.

[FR Doc. 04–22060 Filed 9–30–04; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 9, 2004, the National Science Foundation published a notice in the **Federal Register** of a Waste Management permit application received. A Waste Management permit was issued on September 24, 2004 to the following applicant: Tom Yelvington, Raytheon Polar Services Company, Permit No.: 2005 WM–001.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 04–22152 Filed 9–30–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Company; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has denied a portion of an amendment request by the Carolina Power & Light Company (the licensee) for an amendment to Renewed Facility Operating License No. DPR–23 issued to the licensee for operation of the H. B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina. The Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 1, 2003 (68 FR 15758).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to fully implement the alternative source term (AST).

The NRC staff has concluded that the portion of the licensee's request regarding use of the AST for loss-of-coolant accidents cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated September 24, 2004.

By 30 days from the date of publication of this notice in the **Federal Register**, the licensee may demand a hearing with respect to the denial described above. Any person whose

interest may be affected by this proceeding may file a written petition for leave to intervene pursuant to the requirements of 10 CFR 2.309.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery to mail to U.S. Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to the U.S. Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of any petitions should also be sent to Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 10, 2002, and supplemental letters dated March 12, 2003, April 10, 2003, March 5, 2004, and July 22, 2004, and (2) the Commission's letter to the licensee dated September 24, 2004.

Documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System's Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of September 2004.

For the Nuclear Regulatory Commission.

Edwin M. Hackett,

Director, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–22047 Filed 9–30–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

DATE: Week of October 4, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

ADDITIONAL MATTER TO BE CONSIDERED:

Week of October 4, 2004

Thursday, October 7, 2004

9:25 a.m.—Affirmation Session (Public Meeting) (Tentative)

d. Citizen's Awareness Network's (CAN) Motion to Dismiss the Yankee Rowe License Termination Proceeding or to Re-Notice It (Tentative)

e. Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2); Licensing Board's certification of its ruling on ''need to know'' during discovery (Tentative)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: September 28, 2004.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 04–22199 Filed 9–29–04; 9:46 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 4, 2004:

Closed meetings will be held on Monday, October 4, 2004 at 10 a.m., and Thursday, October 7, 2004 at 2:15 p.m. An open meeting will be held on Wednesday, October 6 at 10 a.m. in Room 6600.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meetings in closed session and that no earlier notice thereof was possible.

The subject matter of the closed meeting scheduled for Monday, October 4, 2004 will be:

Institution and settlement of injunctive action; and

Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, October 6, 2004 will be:

The Commission will hear oral argument in an appeal by Michael Batterman, an investment adviser, and by Randall B. Batterman III from an initial decision of an administrative law judge. On motion for summary disposition, the law judge found that the Battermans had been permanently

enjoined from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b–5, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. The law judge barred the Battermans from association with any investment adviser.

Among the issues likely to be considered are:

1. Whether Federal Rule of Civil Procedure 36(b) provides that the district court injunction may not be used as a basis for this proceeding where the district court deemed that the Battermans had admitted certain allegations in Requests for Admissions filed by the Commission based on their failure to deny properly those allegations;

2. Whether the doctrine of collateral estoppel precludes the Battermans' challenge to the district court's findings;

3. Whether Randall Batterman was ''a person associated with an investment adviser'' within the meaning of the Advisers Act; and

4. Whether sanctions are appropriate in the public interest.

The subject matter of the closed meeting scheduled for Thursday, October 7, 2004 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and an

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: September 29, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–22284 Filed 9–29–04; 4:00 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50449; File No. SR–NYSE–2004–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Arbitration

September 24, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an extension, until March 31, 2005, of NYSE Rule 600(g), relating to arbitration.

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 NYSE 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 proposed rule change is intended to extend until March 31, 2005, NYSE Rule 600(g), a pilot program that was most recently extended for a six-month period ending September 30, 2004.[5]

NYSE Rule 600(g) states:

This paragraph applies to the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations promulgated by the Judicial Council of California (the ''California Standards''), which, were they to have effect in connection with arbitrations conducted pursuant to this Code, would conflict with this Code. In light of this conflict, the affected customer(s) or an associated person of a member or member organization who asserts a claim against the member or member organization with which she or he is associated may:

- Request the Director to appoint arbitrators and schedule a hearing outside California, or
- Waive the California Standards and request the Director to appoint arbitrators and schedule a hearing in California. A written waiver by a customer or associated person who asserts a claim against the member or member organization with which he or she is associated on a form provided by the Director of Arbitration under this Code shall also constitute and operate as a waiver for all other parties to the arbitration who are members, allied members, member organizations, and/or associated persons of a member or member organization.

According to the NYSE, Rule 600(g) was adopted by the Exchange in response to the purported imposition of California state law on arbitrations conducted under the auspices of the Exchange and pursuant to a set of nationally-applied rules approved by the Commission.[6] The Exchange states that on July 1, 2002, as a result of the purported application of the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations (the ''California Standards'') to Exchange arbitrations and arbitrators, the Exchange suspended the appointment of arbitrators for cases pending in California. The Exchange and NASD Dispute Resolution, Inc., sought a declaratory judgment that the California Standards are pre-empted by federal law. On November 12, 2002, Judge Samuel Conti dismissed the action on Eleventh Amendment grounds.[7] A Notice of Appeal from Judge Conti's decision has been filed with the United States Court of Appeals for the Ninth Circuit.[8] The Exchange has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Release No. 34–49521 (April 2, 2004), 69 FR 18661 (April 8, 2004) (SR–NYSE–2004–18).

[6] Release No. 34–46816 (November 12, 2002); 67 FR 69793 (November 19, 2002) (SR–NYSE–2002–56).

[7] *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California,* No. C 02 3485 (N.D. Cal.).

[8] In another district court decision, *Mayo* v. *Dean Witter Reynolds, Inc., Morgan Stanley Dean Witter & Co. dba Morgan Stanley Dean Witter, and Does 1–50,* No. C–01–20336 JF, 2003 WL 1922963 (N.D. Cal. Apr. 22, 2003), Judge Jeremy Fogel held that application of the California Standards to the Exchange and other self-regulatory organizations (''SROs'') is preempted by the Act, the comprehensive system of federal regulation of the securities industry established pursuant to the Act, and the Federal Arbitration Act (''FAA''). The *Mayo* decision was not appealed. Since the decision in *Mayo*, the question of the applicability of the California Standards to SROs has been presented in another case in federal court in California, *Credit Suisse First Boston Corp.* v. *Grunwald*, No. C 02–2051 SBA (N.D. Cal. Mar. 31, 2003). The *Grunwald* court concluded that the California Standards cannot apply to SRO-appointed arbitrators because such arbitrators do not fall within the statutory

Continued

determined that, in the absence of a final judicial determination or legislative resolution of the pre-emption issue, there is a continuing need for the waiver option provided by Rule 600(g).

2. Statutory Basis

The Exchange states that the proposed changes are consistent with Section 6(b)(5) of the Act[9] in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has stated that because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[12] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the SRO must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[13] Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to inform aggrieved parties about their options regarding mechanisms that are available for resolving disputes with broker-dealers. During the period of this extension, the Commission and NYSE will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–50 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–50. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–50 and should be submitted on or before October 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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definition of ''neutral arbitrators.'' The appeal in *Grunwald* has been fully briefed and argued, and the Ninth Circuit is considering it on an expedited basis. The Commission and the Judicial Council submitted *amicus* briefs in the Ninth Circuit, and NASD Dispute Resolution and the Exchange were permitted to submit an *amicus* brief. The appeal from Judge Conti's decision in *NASD Dispute Resolution, Inc., and New York Stock Exchange, Inc.* v. *Judicial Council of California* is currently stayed pending a decision in *Grunwald*. NASD Dispute Resolution and the Exchange also submitted an *amicus* brief in *Jevne* v. *Superior Court*, 6 Cal. Rptr. 3d 542, 113 Cal. App. 4th 486 (2d Dist. 2003), in which the California Court of Appeal held that the Judicial Council acted within its authority in drafting the California Standards, that the California Standards are not pre-empted by the FAA, but that they are pre-empted by the Act. On March 17, 2004, the California Supreme Court granted review in *Jevne*, and NASD Dispute Resolution and the Exchange have moved to intervene on appeal or, in the alternative, for leave to file an *amicus* brief with the California Supreme Court, and the California Supreme Court granted their motion to intervene. Principle briefing before the California Supreme Court has been completed, but the parties expect an additional *amicus* brief to be filed in August 2004 and that the case will not be set for oral argument until some time thereafter.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50452; File No. SR–NYSE–2004–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Procedures for Companies That Fail To File Annual Reports in a Timely Manner

September 27, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II, III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Exchange's Listed Company Manual to include procedures applicable to companies that fail to file annual reports with the Commission in a timely manner. The text of the proposed rule change is set forth below. Additions are in italics.

Listed Company Manual

* * * * *

802.01E SEC Annual Report Timely Filing Criteria

A company that fails to file its annual report (Forms 10–K, 10–KSB, 20–F, 40–F or N–CSR) with the SEC in a timely manner will be subject to the following procedures:

Once the Exchange identifies that a company has failed to file a timely periodic annual report with the SEC by the later of (a) the date that the annual report was required to be filed with the SEC by the applicable form or (b) if a Form 12b–25 was timely filed with the SEC, the extended filing due date for the annual report, the Exchange will notify the company in writing of its status. For purposes of this Para. 802.01E, the later of these two dates will be referred to as the ''Filing Due Date.''

Within five days of receipt of this notification, the company will be required to (a) contact the Exchange to discuss the status of the annual report filing, and (b) if it has not already done so, issue a press release disclosing the status of the filing. If the company fails to issue this press release in a timely manner, the Exchange will itself issue a press release stating that the company has failed to timely file its annual report with the SEC.

During the nine-month period from the Filing Due Date, the Exchange will monitor the company and the status of the filing, including through contact with the company, until the annual report is filed. If the company fails to file the annual report within nine months from the Filing Due Date, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional three-month trading period depending on the company's specific circumstances. If the Exchange determines that an additional trading period of up to three months is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Para. 804.00 of the Listed Company Manual. A company is not eligible to follow the procedures outlined in Paras. 802.02 and 802.03 with respect to this criteria.

In determining whether an additional up to three-month trading period is appropriate, the Exchange will consider the likelihood that the filing can be made during the additional period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body. The Exchange strongly encourages companies to provide ongoing disclosure on the status of the annual report filing to the market through press releases, and will also take the frequency and detail of such information into account in determining whether an additional three-month trading period is appropriate.

If the Exchange determines that an additional up to three-month trading period is appropriate and the company fails to file its periodic annual report by the end of the additional period, suspension and delisting procedures will commence in accordance with the procedures set out in Para. 804.00.

Note that if, at any time, the Exchange deems it necessary or appropriate in the public interest or for the protection of investors, trading in any security can be suspended immediately, and, in accordance with the procedures set out in Para. 804.00, application made to the SEC to delist the security.

* * * * *

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 NYSE 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 and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to codify existing procedures followed where companies fail to satisfy the Commission's filing requirements for annual reports on Forms 10–K, 10–KSB, 20–F, 40–F, or N–CSR in a timely manner.

The Exchange closely monitors whether listed companies have filed their annual reports with the Commission as part of its continued listing program. At any given point over the past four years, no more than approximately two dozen NYSE-listed companies failed to file their annual reports with the Commission by the later of the date the filing was required to be made or, if the company filed a Form 12b–25 in a timely manner, by the extended due date. Most of these companies subsequently filed the required annual report within three to four months of the filing due date, and the vast majority of the remaining companies complied within six months of the filing due date. Cumulatively, approximately 13 companies took more than six months to make their filings over the past four years.

In all cases where a company failed to file its annual report by the filing due date, Exchange staff held regular discussions and meetings with each company's management, directors, regulators and advisors to monitor the status of the annual report filing and to determine whether to allow the company to continue to trade despite the continued failure to file an annual report with the Commission. In several of these situations, the Exchange ultimately moved to suspend the company's trading and delist its securities due to the length of time that passed without the company providing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240–19b–4.

audited financial statements to the marketplace.

In order to formalize the process that the Exchange currently follows when a company has failed to file its annual report on a timely basis, the Exchange proposes to amend Section 802.01 of the Listed Company Manual as described below.

Proposed Section 802.01E

A company that fails to file its annual report (Forms 10–K, 10–KSB, 20–F, 40–F or N–CSR) with the Commission in a timely manner will be subject to the following procedures:

Once the Exchange identifies that a company has failed to file a timely periodic annual report with the Commission by the later of (a) the date that the annual report was required to be filed with the Commission by the applicable form or (b) if a Form 12b–25 was timely filed with the Commission, the extended filing due date for the annual report, the Exchange would notify the company in writing of its status. The later of these two dates would be referred to as the ''Filing Due Date.''

Within five days of receipt of this notification, the company would be required to (a) contact the Exchange to discuss the status of the annual report filing, and (b) if it has not already done so, issue a press release disclosing the status of the filing. If the company fails to issue this press release in a timely manner, the Exchange would itself issue a press release stating that the company has failed to timely file its annual report with the Commission.

During the nine-month period from the Filing Due Date, the Exchange would monitor the company and the status of the filing, including through contact with the company, until the annual report is filed. If the company fails to file the annual report within nine months from the Filing Due Date, the Exchange would be permitted, in its sole discretion, to allow the company's securities to be traded for up to an additional three-month trading period depending on the company's specific circumstances. If the Exchange determines that an additional trading period of up to three months is not appropriate, suspension and delisting procedures would commence in accordance with the procedures set out in Para. 804.00 of the Listed Company Manual. A company would not be eligible to follow the procedures outlined in Paras. 802.02 and 802.03 with respect to this criteria.

In determining whether an additional up to three-month trading period is appropriate, the Exchange would consider the likelihood that the filing could be made during the additional period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the Commission and any other regulatory body. The Exchange strongly encourages companies to provide ongoing disclosure on the status of the annual report filing to the market through press releases, and would also take the frequency and detail of such information into account in determining whether an additional three-month trading period is appropriate.

If the Exchange determined that an additional up to three-month trading period was appropriate and the company failed to file its periodic annual report by the end of the additional period, suspension and delisting procedures would commence in accordance with the procedures set out in Para. 804.00.

Note that if, at any time, the Exchange deemed it necessary or appropriate in the public interest or for the protection of investors, trading in any security could be suspended immediately, and, in accordance with the procedures set out in Para. 804.00, application made to the Commission to delist the security.

2. Statutory Basis

The Exchange believes that the basis for this proposed rule change is the requirement under Section 6(b)(5) [3] of the Act that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[3] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–49. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the NYSE. All comments received will be posted

without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–49 and should be submitted on or before October 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2450 Filed 9–30–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50448; File No. SR–PCX–2004–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by Pacific Exchange, Inc. Relating to Proposed Listing Fee Schedule for Structured Products

September 24, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 2004 the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its subsidiary, PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCXE. On August 9, 2004, the Commission received Amendment No. 1 to the proposed rule change.[3] On August 23, 2004, the Commission received Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The PCX is proposing to amend its Schedule of Fees and Charges (''Schedule'') in order to adopt new listing fees for listing structured products on the PCXE and traded on the Archipelago Exchange (''ArcaEx''), a facility of the PCXE. The PCX proposes to implement these fees retroactive for listings and listing applications pending as of April 1, 2004. The PCX also proposes to add a definition of structured product in PCXE Rule 5.1(b)17. The text of the proposed rule change is available at the Office of the Secretary of the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX, through its wholly owned subsidiary, PCXE, proposes to adopt new listing fees specifically for structured products listed on the PCXE and traded on ArcaEx.[5] The proposed fees include a non-refundable application processing fee, a one-time initial listing fee, and an annual maintenance fee based on the number of products listed with PCXE.[6]

The PCX believes there are several reasons to adopt a fee schedule specifically for structured products. First, PCXE's current listing fees do not explicitly provide for fees to list these types of securities. Accordingly, the amended Schedule would provide guidance and clarity to issuers and the public regarding the applicable fees. Second, in many cases, depending on the number of products listed, the proposed listing fees would substantially reduce the fees paid by issuers of structured products, enabling ArcaEx to compete more effectively for listings with other marketplaces.[7]

Summary of Current and Proposed Fee Changes

(a) Application Processing Fees

Currently, issuers are charged a $500 application processing fee. This fee is non-refundable, although upon approval for listing, it is credited towards the initial listing fee. PCX proposes to retain an application processing fee, but proposes to charge either $500 or the initial listing fee, whichever is less.

(b) Initial Listing Fees

Currently, the general one-time initial listing fees are based on whether the issue is also listed on the New York Stock Exchange, American Stock Exchange, or Nasdaq National Market. If an issue is dually listed, the initial listing fee is $10,000 per product; otherwise, the initial listing fee is $20,000 per product. These fees apply to each product listed, regardless of the number of products listed by the issuer.

PCX proposes to adopt a one-time initial listing fee for structured products as follows: For the first initial public offering, the initial listing fee would be fixed at $20,000. For subsequent initial public offerings of structured products from the same issuer, the initial listing fee would be $1,000 for each additional listed issue, regardless of the number of products listed or if prior products remained listed. For structured products which are already listed on another exchange or marketplace, or are quoted on an inter-dealer quotation system, PCX proposes a fixed initial listing fee of $5,000 for the first structured product listed by the issuer. For subsequent structured products listed by the same issuer that are already listed on another exchange or marketplace, or are quoted on an inter-dealer quotation system, PCX proposes to base the listing fee on

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Tania Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 5, 2004 (''Amendment No. 1''). Amendment No. 1 replaced and superseded the original filing in its entirety. In Amendment No. 1, PCX added a definition of ''structured products'' to the proposal and made other clarifying changes.

[4] *See* letter from Tania Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 20, 2004 (''Amendment No. 2''). In Amendment No. 2, made a minor typographical correction to its proposed rule text.

[5] Structured products are derived from and/or based on a single security or securities, a basket of stocks, an index, a commodity, debt issuance and/or a foreign currency, among other things. Structured products include index and equity linked notes, term notes and units comprised of equity and/or debt securities.

[6] The remaining portions of the current listing fees (Company Name Change Fee, Change in Par Value Fee, Substitute Initial Listing Fee, and Additional Shares Listing Fee) will continue to apply to structured products. Telephone conversation between Leah Mesfin, Special Counsel, Division, Commission, and Tania J. Blanford, Staff Attorney, Regulatory Policy, PCX, on September 16, 2004.

[7] In addition to the described substantive changes, the Exchange also proposes to replace the '*' used reference the footnotes in the Schedule of Fees and Charges with sequential numbers for clarity.

the number of products listed, as follows:

Number of products	Fee
Two through 10	$1,000
11 through 100	500
101+	100

This schedule would apply regardless of whether these products remain listed elsewhere.

(c) Annual Maintenance Fees

Currently, the annual maintenance fees are fixed and based on whether the issue is also listed on the New York Stock Exchange, American Stock Exchange, or Nasdaq National Market. If dually listed, the maintenance fee is $1,000 per product; otherwise, the maintenance fee is $2,000 per product. These fees apply regardless of the number of products listed by the issuer. Annual maintenance fees are payable beginning in the first full calendar year of listing.

The PCX proposes to adopt a fee schedule for annual maintenance fees specific to structured products as follows: $5,000 for the first product listed by an issuer, regardless of whether the product is listed elsewhere. For all additional structured products listed by the same issuer, the PCX proposes to base the annual maintenance fee on the number of products listed, as follows:

Number of products	Annual maintenance fee
Two through 10	$1,000
11 through 100	500
101+	100

This schedule would apply regardless of whether these products remain listed elsewhere.

(d) Implementation

The PCX proposes that these modifications become effective retroactive for all listings and listing applications pending as of April 1, 2004.

(e) Definition of Structured Products

Finally, the PCX proposes to include a definition of structured products in PCXE Rule 5.1(b)(17). Structured products are derived from and/or based on a single security or securities, a basket of stocks, an index, a commodity, debt issuance and/or a foreign currency, among other things. Structured products include index and equity linked notes, term notes and units comprised of equity and/or debt securities. The PCX believes that providing a definition of structure products is appropriate to alleviate any confusion for issuers regarding the listing fees for structured products.

2. Statutory Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,[8] in general, and Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B.Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C.Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–43 and should be submitted on or before October 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Text of the Proposed Rule Change [11]

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 17 CFR 200.30–3(a)(12).

[11] New text is *italicized*; deleted text is in [brackets].

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

[PCX equities: listing fees]

Administrative Listing Fees:	
Application Processing Fee [1][*]	$500.00
Application Processing Fee for	*$500.00 or the initial Structured Products[1] listing fee, whichever is less.*
Company Name Change	$250.00.
Change in Par Value	$250.00.
Initial [Original] Listing Fees[2][*]:	
Common Stock, dually listed with the NYSE, AMEX or Nasdaq NM	$10,000.00.
Common Stock, not dually listed	$20,000.00.
Additional Classes of Common Stock	$2,500.00.
Preferred Stock, Warrants, Debit Instruments, Purchase Rights, Units	$2,500.00.
Initial Listing Fees for Structured Products:	
Initial Public Offerings	*$20,000.00.*
Additional IPOs listed by the same issuer or "family" of fund	*$1,000.00.*
Structured Products multiply listed on another marketplace or quoted on an inter-dealer quotation system	*$5,000.00.*

[1][*] This is a non-refundable, fixed charge for review of listing applications. Issues approved for listing will have this charge credited towards the *Initial* [Original] Listing fee.

[2][*] The *Initial* [Original] Listing fees are fixed and are not charged by the number of shares listed.

Additional Structured Products listed by same issuer:

Number of structured products	Fee
2 through 10	*$1,000*
11 through 100	*500*
101+	*100*

Substitute *Initial* [Original] Listing Fee[3][*]:	
Per Application (fixed charge)	$2,500.00
Additional Shares Listing Fee:	
Per share	.0025
Minimum charge (per application)	500.00
Maximum charge (per application)	7500.00
Maximum charge (per year)	15,000.00
Annual Listing Maintenance Fee (Payable January of each year following listing):	
For one issue, dually listed with the NYSE, AMEX or Nasdaq NM	1,000.00
For one issue, not dually listed	2,000.00
For each additional issue	500.00
Minimum (per year)	1,000.00
Maximum (per year)	5,000.00
For one Structured Product	*5,000.00*

[3][*] A Substitute *Initial* [Original] Listing would occur as a result of a change in state of incorporation, reincorporation under the laws of same state, reverse stock split, recapitalization, or similar events affecting the nature of a listed security.

For each additional Structured Product listed by the same issuer:

Number of structured products	Annual maintenance fee
2 through 10	*$1,000*
11 through 100	*500*
101+	*100*

Rules of PCX Equities, Inc.

Rule 5 Listings

Section 1. General Provisions and Definitions

* * * * *

Rule 5.1(a)—No change.

Rule 5.1(b)(1)–(16)—No change.

(17) The term "Structured Products" means products that are derived from and/or based on a single security or securities, a basket of stocks, an index, a commodity, debt issuance and/or a foreign currency, among other things. Structured Products include index and equity linked notes, term notes and units comprised of equity and/or debt securities.

* * * * *

[FR Doc. E4–2449 Filed 9–30–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3626]

State of Louisiana; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 17, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 13, 2004, and continuing through September 17, 2004.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is November 15, 2004 and for economic injury the deadline is June 15, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 23, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22096 Filed 9–30–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3625]

State of Mississippi; Amendment #2

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 20, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 13, 2004, and continuing through September 20, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 15, 2004 and for economic injury the deadline is June 15, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 23, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22127 Filed 9–30–04; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3631]

State of Ohio; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 21, 2004, the above numbered declaration is hereby amended to reestablish the incident period for this disaster as beginning August 27, 2004, and continuing.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 18, 2004 and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 23, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–22128 Filed 9–30–04; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.875 (4⅞) percent for the October–December quarter of FY 2005.

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. 04–22097 Filed 9–30–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region III Regulatory Fairness Board

The Small Business Administration Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Thursday, October 14, 2004 at 9 a.m. at 405 Capitol Street, 4th Floor Conference Room, Charleston, WV 25301, phone (304) 347–5220, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact David Manley in writing or by fax, in order to be put on the agenda. David Manley, Loan Specialist, SBA West Virginia District Office, 320 West Pike Street, Suite 330, Clarksburg, WV 26301, phone (304) 623–5631 ext. 233, fax (304) 623–0023, e-mail: *david.manley@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Dated: September 24, 2004.

Peter Sorum,

Senior Advisor, Office of the National Ombudsman.

[FR Doc. 04–22027 Filed 9–30–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–07–C–00–DSM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Des Moines International Airport, Des Moines, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Des Moines International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before November 1, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Michael R. Salamone, Deputy Director Aviation Finance and Administration, Des Moines International Airport, 5800 Fleur Drive, Des Moines, IA 50321.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Des Moines under section 158.23 or Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna K. Sandridge, PFC Program Manager, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Des Moines International Airport under the provisions of the 49 U.S.C. 40117 and

Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 23, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Des Moines was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 25, 2004.

The following is a brief overview of the application.

Proposed charge effective date: January 1, 2008.

Proposed charge expiration date: January 1, 2009.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $3,957,500.

Brief description of proposed project(s): Snow removal equipment and an aircraft rescue fire fighting vehicle.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi/Commercial Operators (ATCO). Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 901 Locust, Kansas City, MO 64106.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Des Moines International Airport.

Issued in Kansas City, Missouri on September 24, 2004.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 04–22142 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fort Lauderdale-Hollywood International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 1, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400; Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tom Jargiello, Director of Aviation for the Broward County Aviation Department at the following address: 320 Terminal Drive, Fort Lauderdale, Florida 33315.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Broward County Aviation Department under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Miguel A. Martinez, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400; Orlando, Florida 32822, (407) 812–6331, extension 123. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fort Lauderdale-Hollywood International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 23, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Broward County Aviation Department was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 7, 2005.

The following is a brief overview of the application.

PFC Application No.: 04–06–00–FLL.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2012.

Proposed charge expiration date: October 1, 2012.

Total estimated net PFC revenue: $49,460,781.

Brief description of proposed project(s):

Exit Roadways—Final Design/Construction.

Terminal 4 Construction.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31 (Air Taxi/Commercial Operators).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Broward County Aviation Department.

Issued in Orlando, Florida on September 23, 2004.

Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 04–22023 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–05–C–00–PIB To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Hattiesburg-Laurel Regional Airport, Hattiesburg, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hattiesburg-Laurel Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 1, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208-2307. In addition one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas E. Heanue, Executive Director of the Hattiesburg-Laurel Regional Airport Authority at the following address: 1002 Terminal Drive, Moselle, MS 39459.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Hattiesburg-

Laurel Regional Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick D. Vaught, Program Manager, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9900. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Hattiesburg-Laurel Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 22, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Hattiesburg-Laurel Regional Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 7, 2005.

The following is a brief overview of the application.

Proposed charge effective date: October 1, 2004.

Proposed charge expiration date: November 1, 2007.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $216,155.00.

Brief description of proposed project(s): Acquire new telescoping walkway and expand existing telescoping walkway.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Hattiesburg-Laurel Regional Airport Authority.

Issued in Jackson, Mississippi on September 23, 2004.

Rans D. Black,

Manager, Jackson Airports District Office.

[FR Doc. 04–22022 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–04–C–00–ROA To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Roanoke Regional Airport, Roanoke, VA

AGENCY: Federal aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Roanoke Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 1, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Jacqueline L. Shuck, Executive Director, Roanoke Regional Airport of the Roanoke Regional Airport Commission at the following address:

Roanoke Regional Airport Commission, 5202 Aviation Drive, Roanoke, Virginia 24012–1148.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Roanoke Regional Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Terry J. Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166. Telephone: 703–661–1354.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Roanoke Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 31, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Roanoke Regional Airport Commission was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 28, 2004.

The following is a brief overview of the application.

Proposed charge effective date: January 1, 2005.

Proposed charge expiration date: November 1, 2011.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $8,473,680 requested for impose and use.

Brief description of proposed project(s):

1. General Aviation Rehabilitation Phase 1 & 1B (Construct Taxiway and Tie Down).
2. Rehabilitate and Construct Taxiway A, North and Middle Segments.
3. Multi-User Flight Information Display System.
4. Construct Passenger Elevator.
5. Demolish Buildings 13, 14 and 15.
6. Update Noise Exposure Maps.
7. Install Precision Approach Path Indicator (PAPI), Runway 33.
8. Construct Taxiway A—South.
9. Sinkhole Repair on Airfield.
10. Construct Entrance Road and Utilities for General Aviation Area.
11. Purchase Runway Snow Blower.
12. Purchase Rubber Wheel Snow Loader.
13. Rehabilitate Runway 6/24 & Relocate Taxiway E; Rehabilitate Taxiways L, P, G and K.
14. Acquire Passenger Boarding Device.
15. Rehabilitate Terminal Building Facade.
16. Construct Passenger Baggage Ramp.
17. Acquire Land in Runway 24 Runway Protection Zone.
18. Construct Perimeter Fencing and Gate.
19. Rehabilitate Terminal Exterior.
20. Rehabilitate Runway 24 Roadway Tunnel—Phase 2.
21. Acquire Land for Airport Expansion.
22. Acquire Land for Navigational Aid Critical Area.
23. Construct Overhead Directional Signage at Terminal.
24. Install Regional Jet Adapter for Loading Bridge.
25. Relocate Taxiway A & G—Design and Demolish (Phases 1 & 2).
26 Rehabilitate Runway 15/33—Phases 1 & 2 and Construct Runway Safety Area.
27. Install Engineered Arresting Material System (EMAS) for Runway 15/33.
28. Noise Abatement Program Phases 2, 3, 4 (Acquisition of Easements).
29. PFC Program Formulation and Administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Operations by Air Taxi and Commercial Operators including: Air Lexington, Inc., Florida Jet Service, Inc., Buxmont Aviation Services, Inc., Piedmont Hawthorne Aviation, Inc.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, New York 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Roanoke Regional Airport Commission.

Issued in Dulles, Virginia, on September 23, 2004.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 04–22024 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory 2004–04; Effect of Sleep Disorders on Safety of Railroad Operations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing Safety Advisory 2004–04 to alert the railroad community, and especially those employees occupying safety-sensitive positions, to the danger associated with degradation of performance resulting from sleep disorders that are undiagnosed or not successfully treated. Alertness (vigilance) and unimpaired cognitive functions are important to the safety of railroad operations. Of particular concern to FRA are those employees who dispatch or operate trains or who inspect and maintain signal systems. Many of these employees work unpredictable schedules and long hours, making it difficult for them to achieve adequate rest even if otherwise healthy. This advisory contains suggested measures that railroads and employees should utilize to prevent work-related errors and on-the-job accidents as a result of sleep disorders.

FOR FURTHER INFORMATION CONTACT: A. Scott Kaye, Office of Safety, RRS–4, Mail Stop 25, Federal Railroad Administration, U.S. Department of Transportation, 1120 Vermont Avenue, NW., Washington, DC 20590. Telephone 202–493–6303.

SUPPLEMENTARY INFORMATION:

Factual Background

On November 15, 2001, Canadian National Railway Company/Illinois Central Railroad Company (CN/IC) southbound Train 533 and northbound Train 243 collided near Clarkston, Michigan. Both crewmembers of Train 243 were fatally injured, and both crewmembers of Train 533 sustained serious injuries. The track and equipment damaged in the accident was valued at approximately $1.4 million. The National Transportation Safety Board (NTSB) determined that the probable cause of the accident was crewmembers' fatigue, which was primarily due to the engineer's untreated, and the conductor's insufficiently treated, obstructive sleep apnea. NTSB Report No. RAR/02/04. Sleep apnea is a sleep disorder characterized by cessations of breathing during sleep, and therefore partial awakenings during a sleep period.

Sleep disorders represent a serious health problem in American society and a significant economic concern. Moreover, untreated sleep disorders can result in impaired work performance, including possible loss of alertness and situational awareness, which could in turn present an imminent threat to transportation safety. In general terms, sleep disorders range from fairly common disorders, such as insomnia (the inability to initiate or maintain sleep) to relatively rare sleep disorders such as narcolepsy (inappropriate and uncontrollable sleep episodes). Railroad employees who typically work on-call are especially vulnerable to sleep disorders such as circadian rhythm disorders,[1] and shift work sleep disorder,[2] a relatively recent addition to sleep disorders listed in the Diagnostic and Statistical Manual of Mental Disorders published in 1994 by the American Psychiatric Association (better known as the DSM IV), which cuts across all types of shift work jobs. Studies of on-call work schedules that lead to alterations in the timing or duration of sleep and the sleep-wake cycle have also been shown to lead to significant sleep and circadian rhythm disturbances in railroad workers.[3]

One of the more common sleep disorders is sleep apnea, affecting as many as 18 million Americans. Researchers estimate that the prevalence of sleep apnea in the general population is between 8–12%, depending on the measure used (mild, moderate or severe). Some researchers have also estimated the prevalence of severe sleep apnea in the general population between 3–5%, about 90% of whom are still undiagnosed, clearly demonstrating a significant problem. Obstructive sleep apnea, circadian rhythm disorders, and rotating shifts, have been found to be significant predictors of work-related accidents.[4] Although severe sleep apnea is considered one of the more debilitating sleep disorders and is a significant risk factor for on-the-job accidents, it is also one of the most easily diagnosed and treated of all sleep disorders.

According to the National Sleep Foundation, untreated sleep disorder sufferers are three times more likely to have automobile accidents. The National Highway Traffic Safety Administration estimates that more than 100,000 auto crashes annually may be fatigue-related. These incidents result in an estimated 1,500 deaths and tens of thousands of injuries and lasting disabilities. Sleep disorders also tend to be more prevalent in an aging population. The average age for a railroad operating employee is now approaching 50.

While the impact of sleep disorders is unique to each individual and can be related to a variety of other factors and medical conditions such as obesity, depression, age and gender, evidence is clear that significant risks exist for those with undiagnosed and untreated sleep disorders. Some of these risks include excessive daytime sleepiness, greater risk of cardiovascular disease, memory loss, and increased risk of accidents to name a few. For these and other reasons, the NTSB has been concerned about the impact of sleep disorders and other medical conditions on railroad safety.

Following its investigation into the collision near Clarkston, Michigan, the NTSB issued three recommendations to FRA:

[1] Elshaug, A. Reid, K. and Damson, D. 1998, The circadian effects of irregular work schedules on sleep. In W.P. Colquhoun (ed.), Aspects of Human Efficiency (London: English Universities), 273–282.

[2] 2004, National Sleep Foundation Workshop on Shift Work Sleep Disorder, March 4–5, Washington, DC.

[3] Pilcher, J. and Coplen, M. 2000, Work/Rest Cycles in railroad operations: effects of shorter than 24-hour shift work schedules and on-call schedules on sleep. Ergonomics, Vol. 43, No. 5, 573–588.

[4] Ohayton, M, Lermoine, P., Arnaud-Briant, V., and Dreyfus, M., 2002, Prevalence and consequences of sleep disorders in a shift worker population. Journal of Psychosomatic Research, 53, 577–583.

''Develop a standard medical examination form that includes questions regarding sleep problems and requires that the form be used, pursuant to 49 CFR part 240, to determine the medical fitness of locomotive engineers; the form should also be available for use to determine the medical fitness of other employees in safety-sensitive positions.'' (R–02–24).

''Require that any medical condition that could incapacitate, or seriously impair the performance of, an employee in a safety-sensitive position be reported to the railroad in a timely manner.'' (R–02–25).

''Require that, when a railroad becomes aware that an employee in a safety-sensitive position has a potentially incapacitating or performance-impairing medical condition, the railroad prohibit that employee from performing any safety-sensitive duties until the railroad's designated physician determines that the employee can continue to work safely in a safety-sensitive position.'' (R–02–26).

FRA agrees with the safety concerns as expressed by the NTSB. This Safety Advisory, which has been developed after consultation with industry parties participating in the North American Rail Alertness Partnership, is an initial step in addressing the concerns identified by the NTSB.

However, in evaluating the recommendations, FRA has noted the importance of addressing these needs within a proper framework of accountability, scientific credibility, professional discipline, and fairness. Further, FRA notes that conditions that could threaten employee fitness for duty are not limited to sleep disorders. Accordingly, in the fall of 2003, FRA awarded a contract for a comprehensive study to determine the need for, and options for implementing, medical standards for railroad employees in safety-critical occupations. Upon receipt of a final report from that study, FRA will evaluate the appropriate framework for addressing in greater detail the NTSB's recommendations.

While FRA has regulations that address the fitness of employees, the regulations are limited to hearing and vision requirements for locomotive engineers (49 CFR part 240) and the control of alcohol/drug use (49 CFR part 219). FRA also enforces the hours of service law (49 U.S.C. 21101–21108), which specifies the maximum hours of duty and minimum periods of release for certain safety-critical employees.[5]

Need for Action Now

The FRA and NTSB have investigated numerous human factor accidents that were the result of errors caused by loss of alertness or loss of situational awareness. While there are no existing data to justify the inference that undetected or untreated sleep disorders were a causal factor, several factors, including the Clarkston, Michigan collision, data extrapolated from other modes of transportation, and the prevalence of sleep disorders within the general population, clearly demonstrate that there is a threat to railroad operations from undiagnosed or incompletely treated sleep disorders.

This threat exists, not only in train operations, train dispatching, and signal maintenance, but also in the operation of motor vehicles, on-track equipment, and other machinery. Approximately 35% of all train accidents reported to FRA are attributed to human factors, of which fatigue, and more particularly, sleep disorders, play an undetermined role. Most employee casualties in train incidents and non-train incidents also involve a human factor component.

Recommended Actions

Therefore, FRA recommends that railroads and representatives of employees, working together, take the following actions to promote the fitness of employees in safety-sensitive positions:

(1) Establish training and educational programs to inform employees of the potential for performance impairment as a result of fatigue, sleep loss, sleep deprivation, inadequate sleep quality, and working at odd hours, and document when employees have received the training. Incorporate elements that encourage self-assessment, peer-to-peer communication, and co-worker identification accompanied by policies consistent with these recommendations.

(2) Ensure that employees' medical examinations include assessment and screening for possible sleep disorders and other associated medical conditions (including use of appropriate checklists and records). Develop standardized screening tools, or a good practices guide, for the diagnosis, referral and treatment of sleep disorders (especially sleep apnea) and other related medical conditions to be used by company paid or recommended physicians during routine medical examinations; and provide an appropriate list of certified sleep disorder centers and related specialists for referral when necessary.

(3) Develop and implement rules that request employees in safety-sensitive positions to voluntarily report any sleep disorder that could incapacitate, or seriously impair, their performance.

(4) Develop and implement policies such that, when a railroad becomes aware that an employee in a safety-sensitive position has an incapacitating or performance-impairing medical condition related to sleep, the railroad prohibits that employee from performing any safety-sensitive duties until that medical condition appropriately responds to treatment.

(5) Implement policies, procedures, and any necessary agreements to—

(a) Promote self-reporting of sleep-related medical conditions by protecting the medical confidentiality of that information and protecting the employment relationship, provided that the employee complies with the recommended course of treatment;

(b) Encourage employees with diagnosed sleep disorders to participate in recommended evaluation and treatment; and

(c) Establish dispute resolution mechanisms that rapidly resolve any issues regarding the current fitness of employees who have reported sleep-related medical conditions and have cooperated in evaluation and prescribed treatment.

FRA acknowledges that some of the above recommendations may have already been institutionalized in one form or another by various segments of the industry; in this case, FRA suggests a review of current policies and procedures for relevancy.

FRA believes that the recommendations set forth above, if implemented by industry parties, could advance the successful management of sleep disorders. Taken together with the results of FRA's broader study of potentially impairing medical conditions, lessons learned could provide a sound foundation for more formal action by industry, government, or both.

Issued in Washington, DC, on September 21, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–22025 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–06–P

[5] The hours of service law is an important defense against excessively long hours of work. However, it was enacted prior to completion of the major body of fatigue research. Although FRA may not vary the terms of the statute, FRA is empowered to authorize pilot projects directed at fatigue mitigation upon joint petition of the railroad and employees affected. FRA continues to encourage development of approaches to fatigue prevention and mitigation, especially with regard to providing predictable work schedules that do not induce fatigue and that offer ample opportunity for rest.

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2004–19219]

Agency Information Collection Activity Undre OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on June 1, 2004.

DATES: Comments must be submitted before November 1, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION: *Title:* 49 CFR Part 611 Major Capital Investment Projects (*OMB Number: 2132–0561*).

Abstract: On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) was enacted. Section 3009(e)(5) of TEA–21 requires FTA to issue regulations on the manner in which candidate projects for capital investment grants and loans for new fixed guideway systems and extensions to existing systems (''New Starts'') will be evaluated and rated for purposes of the FTA Capital Investment Grants and Loans program for New Starts under 49 USC Section 5309.

The Notice of Proposed Rulemaking (NPRM) for this regulation was issued on April 7, 1999, (64 FR 17062). The Final Rule was issued on December 7, 2000, (67 FR 76864). In the **Federal Register** of October 30, 2001, FTA announced OMB's approval of the collection of information for the Final Rule.

It is important to note that while the New Starts project evaluation and rating regulation was new when FTA first requested approval for this information collection, the requirements for project evaluation and data collection for the New Starts program are not. FTA's requirement to evaluate proposed New Starts against a prescribed set of statutory criteria is longstanding. The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) established in law a set of criteria for proposed projects to become eligible for federal funding. The requirement for summary project ratings has been in place since 1998.

In general, the information used by FTA for New Starts project evaluation and rating purposes should arise as a part of the normal planning process. Prior to this Rule, FTA collected project evaluation information from project sponsors under a Paperwork Reduction Act request (OMB No. 2132–0529) approved under the joint FTA/FHWA planning regulations. However, as the project evaluation criteria expanded under TEA–21, it became aparent that some information required under this Rule might be beyond the scope of ordinary planning activities. Further, whlie FTA has long required the reporting of information for project evaluations, there has never been a regulatory requirement until TEA–21. Finally, this Rule added a new requirement for before-and-after data collection for purposes of Government Performance and Results Act reporting as a condition of obtaining a Full Funding Grant Agreement (FFGA). It is also important to note that since this is a new regulatory requirement, the burden estimates include all data collection efforts required by this Rule, regardless of whether the same data would have been required under the previous, policy statement-driven process. Thus, the total burden estimate includes items that would have been required whether this regulation had been issued or not. These estimates were also provided in the preamble to the Final Rule dated December 7, 2000.

Estimated Total Annual Burden: 32,920 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility, the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: September 27, 2004.

Ann M. Linnertz,

Deputy Associate Administrator for Administrator.

[FR Doc. 04–22143 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement on Transit Improvements Between Ann Arbor and Downtown Detroit, MI

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The FTA is issuing this notice to advise agencies and the public that, in accordance with the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) is being prepared for a proposed transit improvement in Southeast Michigan, between Ann Arbor and Detroit. Located in Wayne and Washtenaw Counties, the proposed transit project would extend from west of Ann Arbor to downtown Detroit, by way of the Detroit Metro Airport. The corridor is situated along I–94 and the Norfolk Southern Railroad. The study area boundaries are generally defined as the corridor formed by the City of Chelsea on the west, Detroit Metro Airport on the south, and downtown Detroit on the east. The study area is located within the metropolitan area represented by the Southeast Michigan Council of Governments (SEMCOG), the project sponsor. FTA and SEMCOG will also seek the cooperation of the Federal Railroad Administration (FRA), the Federal Highway Administration (FHWA), and the Federal Aviation Administration (FAA) in conducting this review.

DATES: Comment Due Date: Written comments on the scope of the EIS, including the alternatives and impacts to be considered, should be sent to Carmine Palombo of SEMCOG at the SEMCOG address given in **ADDRESSES** below by October 30, 2004. Scoping Meetings: SEMCOG will conduct three (3) public scoping meetings and an agency scoping meeting. The public scoping meetings will be held at the following locations:

- Tuesday, October 19, 2004, 4–8 p.m.; Washtenaw Community College, Morris Lawrence Building, Room ML103/123, 4800 E. Huron River Drive, Ann Arbor;

• Wednesday, October 20, 2004, 4–8 p.m.; SEMCOG offices, SEMCOG Ambassador Room, Buhl Building, 535 Griswold Street, Suite 300, Detroit;

• Thursday, October 21, 2004, 4–8 p.m.; Henry Ford Community and Performing Arts Center, Room W (West Rooms), 15801 Michigan Avenue, Dearborn, MI

The locations of the scoping meetings will be accessible to persons with disabilities and open to all members of the community. Any individual with a disability who requires special assistance, such as a sign language interpreter, to participate in the scoping meetings should contact Alex Bourgeau, at SEMCOG (313) 961–4266 by October 18, 2004.

ADDRESSES: Written comments on the scope of the EIS should be sent to Carmine Palombo at SEMCOG, 535 Griswold, Suite 300, Detroit, MI 48226 within 30 days of this notice. To be added to the mailing list or to receive a copy of the Scoping Information Booklet, please contact Alex Bourgeau, at SEMCOG, 535 Griswold Street, Suite 300, Detroit, MI 48226. Phone (313) 961–4266. Scoping information is also available on the project website at *http://www.annarbortodetroitrapidtransitstudy.com*). The dates and addresses of the scoping meetings are given in the **DATES** section above.

FOR FURTHER INFORMATION CONTACT: Mr. David Werner, Federal Transit Administration, Region V, 200 West Adams Street, Suite 320, Chicago, IL 60606. Phone (312) 353–2789, or Mr. Carmine Palombo, Director of Transportation, Southeast Michigan Council of Governments (SEMCOG), 535 Griswold, Suite 300, Detroit, MI 48226. Phone (313) 961–4266.

SUPPLEMENTARY INFORMATION:

I. Scoping

The Federal Transit Administration (FTA), in cooperation with the Southeast Michigan Council of Governments (SEMCOG), will prepare an Environmental Impact Statement (EIS) to examine alternative improvement strategies to enhance transit access and mobility in the study area, respond to projected growth and increased traffic congestion, and address regional air quality issues. A Project Steering Committee, representing local jurisdictions, the State of Michigan, and key community leaders will provide guidance to SEMCOG on local decisions. Input received during the scoping meetings will be summarized and provided to the Steering Committee and to FTA to inform decisions on the alternatives to be evaluated and the impacts to be assessed.

Scoping activities will include public meetings and an agency scoping meeting during the month of October 2004, and correspondence and discussions with interested persons, organizations, and federal, state and local agencies. FTA and SEMCOG invite all interested individuals and organizations, and federal, state, regional and local agencies and host railroads to provide comments on the scope of the study. During the scoping process, comments should focus on identifying specific social, economic, or environmental issues to be evaluated and on suggesting alternatives that may be less costly or have less environmental impact, while achieving similar transportation objectives. A Scoping Information Booklet will be circulated to all federal, state, and local agencies having jurisdiction in the project areas and all interested parties currently on the Southeast Michigan Rapid Transit Study mailing list. The Scoping Information Booklet will be available at the meetings or in advance of the meetings by contacting Carmine Palombo at SEMCOG, as indicated in **ADDRESSES** above.

During scoping, comments should focus on the alternatives and impacts to be studied and not on stating a preference for a particular alternative. Individual preferences for alternatives should be communicated during the comment period for the Draft EIS. Scoping comments may be made at the public scoping meetings listed in the **DATES** section of this notice, or in writing as described in the **ADDRESSES** section above.

II. Description of Study Area and Project Needs

The study area extends approximately 55-miles from west of Ann Arbor east to Detroit. The area encompasses many established communities, and includes factories, offices, institutional facilities, research parks, and visitor and recreational venues. Some of Michigan's largest employers, universities and colleges, and cultural attractions are located within the study corridor.

Several trends contribute to the need for improved transit and transportation options in the Southeast Michigan corridor, including: continued population growth; economic development and employment growth; increasing travel demand and limited capacity improvements on existing highways; limited inter-city passenger service and transportation options; need for improved access to major universities; mandated improvements in air quality; and consistency with transit-supportive land use plans and policies. A projected consequence of this rapid growth in travel is markedly higher traffic volumes on highways and streets throughout the corridor. Roadways in the corridor are projected to operate with moderate to severe congestion (level of service C, D, and F) in 2026.

The purpose of the project is to identify a transportation solution that provides additional choices for travelers within and through the corridor. The proposed transit improvements seek to expand travel options between Ann Arbor, Ypsilanti, Westland/Merriman Road, Dearborn, New Center, Detroit's central business district (CBD) and Detroit Metro Airport; to improve mobility for individuals who cannot or choose not to drive personal vehicles; to improve and expand connectivity to major activity areas including universities, commercial areas, urban and suburban employment centers and residential areas; to provide opportunities for additional economic growth and ''smart'' growth resulting from corridor mobility improvements; to assist in reducing present and projected traffic congestion throughout the study corridor; to reduce the need for highway expansion in the short-term; and to improve air quality.

III. Alternatives

A brief description of the initial alternatives proposed for study is provided below:

No Build Alternative. The future No-Build Alternative consists of the highway and transit system existing as of 2004, plus transportation projects included in the long range Metropolitan Transportation Plan adopted by SEMCOG, excluding the proposed project but with a continuation of existing transit service policies in its place.

Transportation Systems Management (TSM) Alternative. This Alternative consists of reasonable cost-effective (low-cost, operationally oriented) transit improvements, that go beyond the existing service policies and plan by attempting to providing the best possible transit service in the corridor without a major investment. This consists of major enhancements of the scheduled intercity bus service between Ann Arbor and Detroit, with intermediate stops in Ypsilanti, Merriman Road/Westland, Dearborn and New Center.

Transit Build Alternatives. One or more Transit Build Alternatives providing service between Ann Arbor and Detroit will be evaluated. The Transit Build Alternatives may include

bus rapid transit, light rail transit, or commuter rail. Ancillary facilities, such as a maintenance facilities, layover and maintenance yards, and parking facilities will be considered, as appropriate, for the Transit Build Alternatives.

These alternatives are expected to be defined more precisely through the scoping process. Any additional reasonable alternatives emerging from the scoping process will also be considered.

IV. Probable Impacts for Analysis

The purpose of the EIS process is to fully disclose the environmental consequences associated with each of the alternatives being evaluated and to develop alternatives to avoid, minimize and mitigate those impacts while still satisfying the need for the action. The FTA and SEMCOG will assess all social, economic, and environmental impacts of all reasonable alternatives. Impacts may include the following: land use, zoning, and economic development; secondary development; cumulative impacts; land acquisition, displacements, and relocation of existing uses; historic, archaeological, and cultural resources; parklands and recreational areas; visual and aesthetic qualities; neighborhoods and communities; environmental justice; air quality; noise and vibration; hazardous materials; ecosystems; water resources; energy; construction impacts; safety and security; utilities; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to avoid, minimize or mitigate adverse impacts will be identified.

V. FTA Procedures

In accordance with FTA's environmental regulation (23 CFR part 771), FTA and SEMCOG will comply with NEPA and all related environmental laws, regulations, and executive orders, including but not limited to Section 106 of the National Historic Preservation Act, Section 4(f) of the DOT Act, the project-level conformity requirements of the Clean Air Act, and the executive orders on wetlands protection, floodplain management, and environmental justice, during the NEPA process, to the maximum extent possible.

The Draft EIS will also constitute the Alternatives Analysis required by FTA's New Starts regulation (49 CFR Part 611) and will satisfy the FTA requirements for an Alternatives Analysis. Upon completion, the Alternatives Analysis/Draft EIS will be available for public and agency review and comment. Public hearing(s) on the Alternatives Analysis/Draft EIS will be held within the study area. On the basis of the Alternatives Analysis/Draft EIS and the public and agency comments received, a Locally Preferred Alternative (LPA) will be selected and, with FTA approval, will be advanced into preliminary engineering and a more detailed evaluation in the Final EIS.

Issued on: September 28, 2004.

Joel P. Ettinger,

Region V Administrator.

[FR Doc. 04–22144 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 7, 2004. No comments were received.

DATES: Comments must be submitted on or before November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mitch Hudson, Maritime Administration, 400 7th Street SW., Washington, DC 20590. Telephone: 202–366–9373; FAX: 202–366–7485; or E:MAIL: *mitch.hudson@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Requirements for Establishing U.S. Citizenship.

OMB Control Number: 2133–0012.

Type of Request: Extension of currently approved collection.

Affected Public: Shipowners, charterers, equity owners, ship managers.

Forms: Special Format.

Abstract: In accordance with 46 CFR Part 355, shipowners, charterers, equity owners, ship managers, etc., seeking benefits provided by statute are required to provide on an annual basis, an Affidavit of U.S. Citizenship to the Maritime Administration (MARAD) for analysis. The Affidavits of U.S. Citizenship filed with MARAD will be reviewed to determine if the applicants are eligible to participate in the programs offered by the agency.

Annual Estimated Burden Hours: 1500 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC, on September 27, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–22036 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34536]

Indiana & Ohio Central Railroad, Inc.—Acquisition and Operation Exemption—CSX Transportation, Inc.

Indiana & Ohio Central Railroad, Inc. (IOCR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate, pursuant to an agreement with CSX Transportation, Inc. (CSXT), approximately 107 miles of rail line consisting of the Cincinnati Terminal Subdivision between NA Tower, OH, milepost BB 7.5 and Oakley, OH, milepost BB 12.4, and the Midland Subdivision between Oakley, milepost

BB 12.4, and Columbus, OH, milepost BR 114.6.[1]

Because IOCR's projected annual revenues will exceed $5 million, IOCR certified to the Board on August 12, 2004, that it sent the required notice of the transaction on August 12, 2004, to the national offices of all labor unions representing employees on the line and posted a copy of the notice at the workplace of the employees on the affected lines on August 12, 2004. *See* 49 CFR 1150.42(e).

The transaction is scheduled to be consummated on October 16, 2004, which is 60 days after IOCR's certification to the Board that it has complied with the Board's rule at 49 CFR 1150.42(e).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.[2]

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34536, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Gary A. Laakso, IOCR Vice President Regulatory Counsel, 5300 Broken Sound Boulevard, NW., Boca Raton, FL 33487; and Louis E. Gitomer, Ball Janik LLP, 1455 F Street. NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 24, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–21982 Filed 9–30–04; 8:45 am]

BILLING CODE 4915–01–P

[1] IOCR will lease the right-of-way from CSXT.

[2] On September 13, 2004, the Brotherhood of Locomotive Engineers & Trainmen (BLET) filed a protest asking the Board to reject IOCR's notice and a notice to be filed in STB Finance Docket No. 34540, *Columbus & Ohio River Railroad—Acquisition Exemption—Lines of CSX Transportation, Inc.,* for another shortline carrier to operate through lease and/or purchase approximately 114 miles of CSXT's rail line between Columbus and Cambridge and Newark and Mt. Vernon, Ohio. On September 15, 2004, the United Transportation Union (UTU) filed a pleading titled as a petition to revoke, seeking relief identical to that sought by BLET.

On September 24, 2004, an amended petition to revoke was filed by UTU, and the notice of exemption was filed in STB Finance Docket No. 34540. The Board will address the filings by BLET and UTU in a subsequent decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34546]

Western Rail Switching, Incorporated—Operation Exemption—Rail Line of Spokane County, WA

Western Rail Switching, Incorporated (WRS), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate, pursuant to an agreement with the county of Spokane, WA (the County), 4.93 miles of a line of railroad known as the Geiger Spur. The line extends from a point of connection with The Burlington Northern and Santa Fe Railway Company's (BNSF) line at milepost 0.00 near Fairchild Air Force Base (also known as milepost 1493.95 on BNSF's Columbia River Subdivision) to milepost 4.93 on the Geiger Spur line near Airway Heights, in Spokane County, WA.

The transaction was scheduled to be consummated on or after September 10, 2004.

This transaction is related to STB Finance Docket No. 34541, *Spokane County—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company,* wherein the County has filed a verified notice of exemption for its acquisition of the 4.93-mile line of railroad from BNSF.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34546, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web-site at *''http://www.stb.dot.gov.''*

Decided: September 24, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–22092 Filed 9–30–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 220X)]

Union Pacific Railroad Company—Abandonment Exemption–in Brown and Doniphan Counties, KS

On September 13, 2004, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the St. Joseph Industrial Lead, extending from milepost 2.52 near Elwood to milepost 33.60 near Robinson, a distance of 30.98 miles in Brown and Doniphan Counties, KS (13.9 = 14.0).[1] The line traverses United States Postal Service ZIP Codes 66024, 66087, 66090, 66434, and 66532, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 30, 2004.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under

[1] On September 22, 2004, UP submitted a clarification to the milepost equation. UP states that, prior to 1934, the Chicago Pacific Rock Island Railroad (RIRR) and the St. Joseph and Grand Island Railway (SJ&GI), a subsidiary of UP, shared the rail line running from St. Joseph, MO, crossing the Missouri River, and extending through Wathena, KS. UP indicates that west of Wathena, at milepost 7.4, the two railroads split. In 1934, UP ceased using its line between milepost 7.4 and Troy, KS, as a separate route, and substituted via trackage rights the route over the RIRR. UP then returned to its own rail line and, rather than re-milepost the entire balance of the SJ&GI, UP did an equation so it could retain the rest of the SJ&GI mileposts as they were. UP further states that to correct for the milepost shift, UP placed the milepost equation at Troy, and then the traditional SJ&GI mileposts ran from that point.

49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 21, 2004. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 220X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, and (2) Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the UP petition are due on or before October 21, 2004.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 24, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–21983 Filed 9–30–04; 8:45 am]

BILLING CODE 4915–01–P

Corrections

Federal Register

Vol. 69, No. 190

Friday, October 1, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Yaudat Mustafa Talyl, a.k.a. Joseph Talyi

Correction

In notice document 04–21558 beginning on page 57672, in the issue of Monday September 27, 2004, make the following correction:

On page 57672, in the third column, after the subject heading, in the first paragraph, in the fourth line, ''5600'' should read ''5060''.

[FR Doc. C4–21558 Filed 9–30–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
October 1, 2004

Part II

Department of Housing and Urban Development

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2005; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4937–N–02]

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2005

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of final fiscal year (FY) 2005 fair market rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted 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 payment (HAP) contracts in the Moderate Rehabilitation Single Room Occupancy program. Other programs may require use of FMRs for other purposes. Today's notice provides for all areas final FY2005 FMRs that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2005.

Proposed FY2005 FMRs were published in the **Federal Register** on August 6, 2004. The proposed FMRs were calculated for the first time using 2000 Census data and new Office of Management and Budget (OMB) metropolitan area definitions. Both changes in how FMRs were calculated had significant impacts. A number of public comments from public housing agencies (PHAs) and major interest groups raised concerns about the magnitude of FMR changes experienced by many areas. HUD is required by law to utilize the most recent available data in calculating FMRs, and all federal agencies are instructed to use current OMB metropolitan area definitions unless there are strong program reasons to use alternative definitions. As a result of public comments and further consideration of the proposed FMRs, HUD determined that there was sufficient reason to not use the new OMB metropolitan area definitions in calculating the final FY2005 FMRs. The final FY2005 FMRs provided in this publication are therefore based on the most recent available data but use the same FMR area definitions used in the FY2004 FMR publication, which were based on old OMB metropolitan area definitions.

EFFECTIVE DATE: The FMRs published in this notice are effective on October 1, 2004.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop fair market rents or a listing of all fair market rents, please call the HUD USER information line at 800–245–2691 or access the information on HUD's Web site, *http://www.huduser.org/datasets/fmr.html*. Any questions related to use of FMRs or voucher payment standards should be directed to HUD's local program staff for the area in question. Questions on how to conduct FMR surveys or further methodological inquiries may be addressed to Marie L. Lihn or Lynn A. Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–708–0590. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting safe and decent housing. Housing assistance payments are limited to FMRs established by HUD for different areas. In the Housing Choice Voucher program, the FMR is the basis for determining 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. In addition, all rents subsidized under the Housing Choice Voucher program must meet reasonable rent standards. The interim rule published on October 2, 2000 (65 FR 58870), established 50th percentile FMRs for certain areas.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD news page: *http://www.hudclips.org*. **Federal Register** notices also are available electronically from the U.S. Government Printing Office website, *http://www.gpoaccess.gov/fr/index.html*

II. Procedures for the Development of FMRs

Section 8(c) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. Section 8(c) states in part as follows:

Proposed fair market rentals for an area shall be published in the **Federal Register** with reasonable time for public comment and shall become effective upon the date of publication in final form in the **Federal Register**. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in this section.

The Department's regulations at 24 CFR part 888 provide that HUD will develop proposed FMRs, publish them for public comment, provide a public comment period of at least 30 days, analyze the comments, and publish final FMRs. (See 24 CFR 888.115.) Final FY2005 FMRs are published on or before October 1, 2004, as required by section 8(c)(1) of the USHA.

III. Proposed FY2005 FMRs

On August 6, 2004 (69 FR 48040), HUD published proposed FY2005 FMRs. As noted in the preamble to the proposed FMRs, the FMRs for FY2005 were based on two significant changes to the statistical methodology used to compute FMRs.

The first change was the introduction of 2000 Census data as a benchmark for FMRs. The 2004 FMRs were based on updated 1990 Census data except in areas where Random Digit Dialing (RDD) surveys or American Housing Surveys (AHS) had been conducted. Census 2000 data only recently became available in the level of detail (recent mover, standard-quality unit rents by number of bedrooms) necessary to calculate FMRs. The Department refers to the use of new decennial census data to revise FMRs as ''rebenchmarking.'' This process involves replacing the base year FMR estimates with those developed from new Census data and then updating the Census-based estimates from the date of the Census to the midpoint of the program year during which the FMRs will be in effect.

The second change was the use of new metropolitan area definitions issued by OMB to define FMR areas. As part of the 2000 Census process, OMB released new metropolitan area

definitions on June 7, 2003, and updated them on February 18, 2004. These new metropolitan area definitions contain substantial changes from the old metropolitan area definitions because they incorporate the 2000 Census data and a substantially revised standard for defining metropolitan areas.

In response to the August 6, 2004, proposed FMRs, HUD received 370 public comments. The majority of the commenters were opposed to the proposed FMRs and cited various reasons. The primary reason given was that the proposed FY2005 FMRs were significantly different from the FY2004 FMRs and additional time was needed to examine the proposed FMRs. Many commenters asked HUD to delay issuing FY2005 FMRs.

As noted in Section II of this preamble, HUD is required to issue FMRs to be effective October 1, and the FMRs to be issued by HUD must be based on the most recent available data trended to the mid-point of the year in which they will be used. While HUD cannot delay issuance of the FY2005 FMRs, HUD has made changes to the proposed FY2005 FMRs announced in this notice in response to the public comments. (The public comments are discussed in more detail in Section V of this preamble.)

IV. Final FY2005 FMRs and FY2005 FMR Procedures

In setting the final FY2005 FMRs, HUD took into consideration a large number of comments objecting to the magnitude of changes caused by use of new OMB metropolitan area definitions and the inadequate time given to evaluate and respond to the proposed changes. While HUD is required by statute to use the most recent available data in setting FMRs, and by regulation to use current OMB metropolitan area definitions, HUD's regulations allow HUD to make exceptions to the use of the most current OMB metropolitan area definitions. Therefore, HUD is not obligated to use the new OMB metropolitan area definitions, and has determined to use the old OMB metropolitan area definitions, that is, the 2004 FMR area definitions, in calculating the final FY2005 FMRs. Use of the 2004 FMR area definitions generally produce fewer and smaller differences between the FY2004 FMRs and the FY2005 FMRs set forth in this notice for two reasons. The first is that the geographic area over which the 40th (or 50th) percentile rent is determined is unchanged, eliminating FMR differences resulting from changes in geography. The second reason is that some areas retained post-2000 Census RDD survey-based increases by reverting to the old definitions, whereas these increases could not be applied to the proposed FY2005 FMRs because the new areas differed too much from the old areas. Therefore, the FY2005 FMR schedules contained in this notice are based on 2000 Census and, when available, more current data, but were calculated for the same geographic areas used in preparing the FY2004 FMRs. Schedule B(1) lists Fair Market Rents for each area by state. FMRs that are at the 50th percentile, or median rent, are denoted by an asterisk. For informational purposes, Schedule B(2) shows what the 40th percentile FMRs would have been for the 39 areas where the FMR is set at the 50th percentile.

A. 2000 Census-Based FMRs

For areas where the base-year estimates were developed from the 2000 Census, the 40th and, where appropriate, 50th percentile gross rents for standard-quality units occupied by recent movers were calculated for differing numbers of bedrooms. The rent distributions were modified to eliminate public housing and other units with similarly low rents, so that only market-rent units would be considered. FMRs are calculated for all metropolitan areas and non-metropolitan counties.

FMR estimates are calculated for two-bedroom units, which are the most common rental units. Rent relationships between two-bedroom and other unit sizes are then calculated using local unit size rent relationships to the extent statistically feasible. For the past several years, bedroom ratios have been based on 1990 Census data. The FY2005 FMRs are the first to make use of 2000 Census data to more closely reflect market rent differentials between units with differing numbers of bedrooms. The rents for three-bedroom and larger units continue to reflect HUD's policy to set higher rents for these units than would result from using normal market rents. This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. The FMRs for single-room occupancy units are 0.75 times the zero-bedroom (efficiency) FMR.

A further adjustment is made for areas with local bedroom-size intervals above or below what are considered to be reasonable ranges or where sample sizes are inadequate to accurately measure bedroom rent differentials. Experience has shown that highly unusual bedroom ratios typically reflect inadequate sample sizes or peculiar local circumstances that HUD would not want to utilize in setting FMRs (*e.g.*, luxury efficiency apartments in New York City that rent for more than typical one-bedroom units). Bedroom interval ranges were established based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations. The final ranges used were as follows: efficiency units are constrained to fall between 0.65 and 0.83 of the two-bedroom FMR, one-bedroom units must be between 0.76 and 0.90 of the two-bedroom unit, three-bedroom units must be between 1.10 and 1.34 of the two-bedroom unit and four-bedroom units must be between 1.14 and 1.63 of the two-bedroom unit. Bedroom rents for a given FMR area were then adjusted if the differentials between bedroom-size FMRs were inconsistent with normally observed patterns (*e.g.*, efficiency rents were not allowed to be higher than one-bedroom rents and four bedroom rents were set at a minimum of three percent higher than three-bedroom rents).

For low-population, non-metropolitan counties with small Census recent-mover rent samples, Census-defined county group data were used in determining rents for each bedroom size. This adjustment was made to protect against unrealistically high or low FMRs resulting from insufficient sample sizes. The areas covered by this new estimation method have fewer than 33 two-bedroom Census sample observations.

After base 2000 Census estimates were established for each FMR area and bedroom size, they were updated from the estimated Census date of April 1, 2000, to April 1, 2005 (the midpoint of FY2005). Update factors for the 2000 through end of 2003 period were based either on the area-specific Consumer Price Index (CPI) survey data that were available for the largest metropolitan areas or on HUD regional RDD survey data.

For areas with local CPI surveys, CPI annual data on rents and utilities were used to update the Census rent estimates. Three-quarters of the 2000 CPI change factor was used to bring the FMR estimates forward from April to

December of 2000. Annual CPI survey data could then be used for calendar years 2001, 2002, and 2003. Trending to cover the period from January 1, 2004, to April 1, 2005, was then needed. An annual trending factor of three percent, based on the average annual increase in the median Census gross rent between 1990 and 2000, was used to update estimates from the end of 2003 (*i.e.*, the last date for which CPI data were available) until the midpoint of the fiscal year in which the estimates were used. The 15-month trending factor was 3.75 percent (3 percent times 15/12).

For areas without local CPI surveys, the same process was used except that regional RDD survey data were substituted for CPI data. Regional RDD surveys were done for 20 areas—the metropolitan and nonmetropolitan part of each of the 10 HUD regions. Areas covered by CPI metropolitan surveys were excluded from the RDD metropolitan regional surveys.

B. FMRs Based on Post-2000 Census Surveys

There are a number of areas where AHS and RDD telephone surveys of rents have been conducted since the 2000 Census. Both the AHS and RDD surveys have been proven to provide statistically reliable results within the limits of their stated confidence intervals.

The RDD technique involves use of large, randomly selected samples to obtain data on current rents paid for one- and two-bedroom rental units occupied by recent movers. RDD surveys exclude public housing units, newly built units and non-cash rental units. They do not exclude substandard units because there is no practical way to determine housing quality from telephone interviews. These surveys, however, also exclude units without a telephone, and past analysis has shown that the slightly downward rent estimate bias caused by including some substandard units is almost exactly offset by the slightly upward bias that results from only surveying units with telephones. This relationship held true across a variety of areas.

RDD surveys that meet HUD criteria have a high degree of statistical accuracy. There is a 95 percent likelihood that the 40th or 50th percentile recent mover contract rent estimates developed using this approach are within three to four percent of the actual 40th or 50th percentile. Virtually all survey estimates of contract rent will be within five percent of the actual 40th or 50th percentile value.

A number of RDD surveys were conducted after the 2000 Census. The results of RDD surveys conducted in 2001 and 2002 were used in the FY2004 FMRs and were evaluated for use in the final FY2005 FMRs. RDD surveys are used to provide a rebenchmarked FMR in lieu of updating the previous year's FMR when there is a statistically significant difference. RDD estimates are updated using the same types of data used to update Census estimates.

RDDs covering 24 areas were conducted in August 2004 and completed in time for use in this publication. The first column of the following table identifies the RDD survey area. The second column shows the final FY2005 FMRs that would have been published based on updated Census and 2001–2002 AHS and RDD surveys. The third column shows the August 2004 RDD results, trended to the middle of FY2005. The fourth column shows whether or not the RDD results were statistically different enough to justify replacing the Census or other survey estimates with the RDD results. The survey results were as follows:

Area definition	FY2005 FMR without RDD	FY2005 FMR with RDD	RDD result
Baltimore, MD	915	847	Decrease.
Boston, MA	1442	1266	Decrease.
Chicago, IL	979	906	Decrease.
Cleveland-Lorain-Elyria, OH	703	703	No Change.
Detroit, MI	848	805	Decrease.
Dutchess County, NY	901	942	Increase.
Fort Worth-Arlington, TX	799	732	Decrease.
Indianapolis, IN	655	655	No Change.
Kansas City, MO–KS	741	691	Decrease.
Los Angeles-Long Beach, CA	1011	1124	Increase.
Nassau-Suffolk, NY	1225	1225	No Change.
Newburgh, NY–PA	913	954	Increase.
Oakland, CA	1342	1342	No Change.
Orange County, CA	1403	1317	Decrease.
Portland-Vancouver, OR–WA	717	717	No Change.
Providence-Fall River-Warwick, RI–MA	663	845	Increase.
Sacramento, CA	971	971	No Change.
San Antonio, TX	716	716	No Change.
San Francisco, CA	1792	1539	Decrease.
San Jose, CA	1748	1313	Decrease.
Seattle-Bellevue-Everett, WA	943	834	Decrease.
Ventura, CA	1257	1382	Increase.
Washington, DC–VA–MD–WV	1250	1187	Decrease.
Westchester County, NY	1174	1259	Increase.

HUD is directed by statute to use the most recent available data in its FMR publications. The RDD survey results are being implemented in the final FY2005 FMR publication consistent with that requirement.

HUD uses AHS data to calculate rents from the distributions of two-bedroom units occupied by recent movers. Public housing units, newly constructed units, and units that fail a housing quality test are excluded from the rental housing distributions before the FMRs are calculated. Thirteen areas were covered by AHS surveys conducted in 2002. Two surveys did not have enough recent mover cases to provide reliable estimates. More current AHS results were used to replace FMR estimates based on Census or RDD survey data if the Census- or RDD-based estimate was outside the 95 percent confidence interval of the AHS estimate. The AHS results produced statistically different

FMR estimates and were used to rebenchmark FMRs for the following areas in Schedule B(1):

Orange County, CA, Portland-Vancouver, OR-WA, and Riverside-San Bernardino, CA. As noted in the proposed FY2005 publication, the AHS reduced the Portland FMR. The subsequent 2004 RDD survey confirmed this result. Orange County and Riverside-San Bernardino had increases as a result of the AHS. All three of these areas are 50th percentile FMR areas.

C. Impacts of New Data on Final FY2005 FMRs

The use of the 2000 Census rent data corrects for estimation errors that have accumulated during the past decade, and results in a larger than usual number of FMR revisions this year. The availability of more detailed local information on public housing, which is excluded from FMR estimates, also improved these estimates. Post-2000 AHS and RDD surveys provide more current estimates of market rents than those available from the Census, and serve to document the need for FMR changes in areas where recent mover rents do not follow regional or CPI rent trends. New AHS and RDD survey results were incorporated into this publication. The following table shows the distribution of impacts resulting from use of the 2000 Census and the AHS and RDD surveys used in this publication:

Final FY2005 FMRs as % of FY2004 FMRs	Percent of vouchers	Number of FMR areas
Less than 80% of FY04 FMR	1.1	14
80–89.9% of FY04 FMR	4.0	109
90–99.9% of FY04 FMR	34.0	403
100–110% of FY04 FMR	45.9	1,053
110.1–120% of FY04 FMR	12.1	734
More than 120% of FY04 FMR	2.9	345

There are an additional 22 areas in the country where HUD has begun RDD surveys that could not be completed in time for this publication. Additionally, seven areas will be surveyed beginning in October 2004. Because the FY2005 FMRs for these areas will not have the benefit of a completed RDD survey by the date of submission of this document for publication in the **Federal Register**, and thus not have the benefit of the most recent rental data, HUD is allowing PHAs in those areas to wait, if they so choose, for completion of the RDD surveys and issuance of a notice that contains revised final FY2005 FMRs that reflect the completed RDD surveys. The notice of revised final FY2005 FMRs for these areas will reflect the RDD survey data and, at that point, housing authorities must use these published FMRs. Areas where HUD is currently conducting RDD surveys are:

State	August and September 2004 survey starts	Area	October 2004 Survey Starts
NY	Albany-Schenectady-Troy, NY	PR	Aguadilla, PR.
NM	Albuquerque, NM	PR	Arecibo, PR.
GA	Atlanta, GA	PR	Caguas, PR.
NJ	Bergen-Passaic, NJ	PR	Mayaguez, PR.
OH	Cincinnati, OH–KY–IN	PR	Ponce, PR.
OH	Columbus, OH	PR	San Juan-Bayamon, PR.
OH	Dayton-Springfield, OH	PR	Nonmetropolitan areas.
CO	Denver, CO.		
CT	Hartford, CT.		
HI	Honolulu, HI.		
TX	Houston, TX.		
HI	Kauai and Maui, HI.		
KY	Louisville, KY–IN.		
TX	McAllen-Edinburg-Mission, TX.		
TN	Nashville, TN.		
NJ	Newark, NJ.		
NY	New York, NY.		
NE	Omaha, NE–IA.		
PA	Philadelphia, PA–NJ.		
MA	Springfield, MA.		
OK	Tulsa, OK.		
AZ	Tucson, AZ.		

D. Regulatory Procedures for Exceptions to Established FMRs

For housing authorities in areas that are not undergoing RDD surveys but continue to have concerns with the FY2005 FMRs announced in this notice, HUD's regulations in 24 CFR 888.113 provide the procedures by which HUD may make exceptions to established FMRs.

E. Manufactured Home Space Rents

Manufactured home space rents are set at 40 percent of the two-bedroom rent. Exceptions to this rent are granted when justified by survey data. All approved exceptions to these rents that were in effect in FY2004 were updated to 2005 using the relevant update factor. If the result of this computation was higher than 40 percent of the rebenchmarked two-bedroom rent, the exception remains and is listed in Schedule D.

F. FMRs for Federal Disaster Areas

Under the authority granted in 24 CFR part 888, the Secretary of HUD finds good cause to waive and hereby waives the regulatory requirements that govern requests for geographic area exception FMRs for areas that are declared disaster areas by the Federal Emergency Management Agency (FEMA). HUD is prepared (1) to grant disaster-related FMR exceptions up to 10 percent above the applicable FMRs for those areas. HUD field offices are authorized to approve such exceptions for single-county FMR areas and for individual county parts of multi-county FMR areas that qualify as disaster areas under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if (2) the PHA certifies that damage to the rental housing stock as a result of the disaster is so substantial that it has increased the prevailing rent levels in the affected

area. Such exception FMRs must be requested in writing by the responsible PHAs. Exception FMRs approved by HUD during FY2005 will remain in effect until superseded by the publication of the final FY2007 FMRs, and replace lower, published FMR values.

V. Public Comments

In addition to the changes made in this notice for final FY2005 FMRs, HUD is continuing to accept public comments on FY2005 FMRs through November 5, 2004. HUD will consider these comments in determining revisions that may be needed to the FY2005 FMRs. Any such revisions will be announced in a subsequent FY2005 **Federal Register** notice.

In response to the August 6, 2004 proposed FMRs, HUD received 370 public comments covering 75 FMR areas during the initial comment period ending September 7, 2004. The majority of these comments concerned changes in the metropolitan area definitions that resulted in higher or lower FMRs. The New England region, where there was a proposed change away from the city-town designations previously used to define metropolitan areas to new OMB county-based metropolitan definitions, provided 148 comments. Many of the New England comments noted that the change in the geographic definitions was significant and had the impact of reducing FMRs in most metropolitan areas in New England. Some county parts shifted from one metropolitan area to another (*e.g.*, part of Brockton to Providence, part of Boston to Providence), and some non-metropolitan areas were added to metropolitan areas with substantial increases for the non-metropolitan area (Chelmsford to Cambridge) and significant decreases for the metro area. Some metropolitan areas were combined (Bridgeport and Stamford-Norwalk) with increases for one area and decreases for the other area. The change in geography prevented the use of some 2001 and 2002 HUD RDD surveys in the proposed FY2005 FMR publication, because the metropolitan area coverage for these areas had changed so much under the new OMB area definitions that it was not considered valid to apply survey results based on different area definitions. Returning to use of the old metropolitan area definitions has the effect of re-instating RDD-based increases for the following areas (that are either a Metropolitan Statistical Area (MSAs) or a Primary Metropolitan Statistical Areas (PMSA):

Boston, MA–NH MSA
Portland, ME MSA
Brockton, MA PMSA
Lawrence, MA–NH PMSA
Lowell, MA–NH PMSA
Worcester, MA–CT MSA

Though not all comments from the New England region discussed the new geography, most stated that the proposed reductions were inconsistent with recent rental market history. In general, however, Census and more current surveys correct for what can be several years of accumulated estimation errors, and should not be thought of as solely relating to the change in rents that occurred between FY 2004 and FY2005. Many national housing and legal aid organizations also provided comments opposing the use of the new county-based metropolitan designations for New England and other areas and cited fair housing concerns.

Comments for other parts of the country also expressed concerns about geographic definitional changes that resulted in significant increases and decreases in FMRs that could adversely affect local programs. The new OMB definitions combined the two large metropolitan areas of New York City and Bergen-Passaic to create the New York—Wayne-White Plains, NY–NJ Division. As a result, the rents for Bergen-Passaic declined significantly, and comments were received about this decline. Dutchess and Orange counties in New York, formerly both separate metropolitan areas, were combined under the new geographic definitions. The proposed FY2005 FMRs for this combined metropolitan area significantly lowered rents for Dutchess County. Counties that were formerly non-metropolitan were concerned that HUD's current voucher renewal policy meant that they would be unable to continue to assist all current voucher families if FMRs increased, because voucher assistance funding would be set at the previous year's expenditure level plus a modest inflation adjustment. This was the primary concern from counties added to the metropolitan areas of Clarksville, TN, Lafayette, IN, Jonesboro, AR, and Anchorage, AK. In other comments, objections were raised by counties that had previously been included in metropolitan areas that were removed and designated as micropolitan areas with their own, much lower FMRs. This category includes comments received from Lincoln County, NC (formerly in Charlotte), Richmond County, KY (formerly in Lexington), Genessee County, NY (formerly in Rochester, NY), and Webster Parish, LA (formerly in Shreveport). Warrenton County, NJ, had a large proposed FMR reduction because it was removed from the Newark metropolitan area and placed in the Allentown, PA, metropolitan area. Anderson County, SC, had a large FMR reduction because it was taken out of the Greenville metropolitan area and made a separate metropolitan area with its own, much lower FMR.

In Puerto Rico, the new OMB definitions, especially for San Juan, were considered a cause of the proposed FMR reduction because many lower rent metropolitan and non-metropolitan municipios were added to this metropolitan area. The main source of these reductions, however, was the 2000 Census. RDD surveys of all Puerto Rico FMR areas will be conducted starting in October 2004.

A form letter-writing campaign by landlords in the Lake County-Kenosha County, IL–WI Division, resulted in 134 comments. Taking Lake County out of the Chicago metropolitan area and merging it with Kenosha County resulted in a significant decline in the FMR for Lake County and a significant increase for Kenosha County.

Many commenters with no changes in geography expressed concern over reductions in their FMRs. This included Cheyenne, WY, Fargo, ND, and Knox County, IN, and all areas in Hawaii. In Johnstown, PA, the removal of Somerset County was noted as a possible cause of the reduction in the proposed FMR, although the primary cause of the reductions proposed for both parts of the old metropolitan area was related to the use of 2000 Census data. The change from the use of state minimums to Census-defined county groups produced FMR declines in areas such as Sumter County, FL, Evangeline Parish, LA, and Harlan and Knox counties in Kentucky. Concerns about the large changes in county rents in Texas, Georgia, and Oklahoma were noted in general comments by the Texas Tenants' Union, the Georgia Department of Community Affairs, and the Oklahoma City Housing Authority. Other commenters stated that the proposed FMRs resulted in too many significant changes and would hinder the application of the program. This included comments from the States of Georgia, New York, New Jersey, Massachusetts, Vermont, Rhode Island, and Puerto Rico.

The Louisville Metro Housing Authority commented that significantly higher utility costs in the past year warranted higher FMRs. Louisville is currently undergoing an RDD survey that was started in September 2004. The utilities used for the FMR come from the utility schedule of the PHA, so the

higher utility costs will be included in determining the RDD estimate.

Data of some form were provided to support comments made for 30 FMR areas. For the most part, the data consisted of rent reasonableness studies, data on local housing market conditions, newspaper ads for rental units, voucher rent data, and apartment rent data for projects. Only the data submitted with the comments of the Okanogan County Housing Authority met the minimum statistical requirement for acceptance. Accordingly, the FMRs for the County of Okanagon, WA, will be increased from the proposed FMR.

A group of major industry organizations (*e.g.*, CLPHA, NAHMA, NAHRO, NLIHC, and others) jointly submitted a set of comments which argued for more time to evaluate the impacts of the new OMB definitions, more time to permit RDD surveys (including HUD's) to be completed, and postponing implementation of decreases until all RDD results were available and sufficient time had been allowed to consider all public comments. They also recommended an analysis of the new OMB definitions with the objective of minimizing the impact of their implementation (*e.g.*, by allowing for submarket areas patterned after old area definitions when appropriate). HUD-conducted surveys of all areas with significant decreases in large-unit FMRs were proposed by commenters, as was the continued use of state minimum FMRs and the same minimum bedroom ratios used in the FY2004 FMRs. Concerns about large-unit FMR calculations were also expressed. The final FMRs address some but not all of these concerns. Use of old OMB definitions is the simplest way of addressing the concerns raised in many comments about use of the new definitions, and permits the impacts of use of new definitions to be distinguished from the impacts of new data. Many of the other requests were at odds with the requirement that HUD use the most recent available data in setting FMRs. PHAs continue to have the discretion to fund their own RDD surveys, but HUD's budget for this purpose has been and will continue to be limited.

HUD is permitting areas where HUD RDD surveys are being conducted to wait for issuance of updated final FY2005 FMRs for these areas that reflect completed RDD surveys. HUD will do as many RDD surveys in the future as available funding permits, and will continue to concentrate on areas with believe that use of local bedroom ratio data is appropriate in instances where there are large samples. The Census provides the best available measure of bedroom size rent relationships for most larger areas, and shows that small differentials, between bedroom sizes occur and are valid. In response to comments, however, HUD is using standard national ratios in instances where the statistical reliability of local ratios is questionable and has adjusted the calculation for the four-bedroom FMR to ensure that it is higher than the three-bedroom FMR by the minimum typical percentage differential even when Census data show no difference.

Both the increases and decreases in the bedroom ratios based on 2000 Census data reflect actual rent relationships, and HUD continues to add significant rent bonuses for units with more than two bedrooms. The decrease in the differentials between two-bedroom and larger rental units that occurs in some FMR areas is due to the availability of more current and reliable Census data. The same FMR bonuses for larger bedroom sizes used in the past were also applied in calculating the FY2005 FMRs.

VI. 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 two-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.

VII. 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 from 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 county-group 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 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 preferably should 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 24, 2004.

Alphonso Jackson,

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, but the current definitions from the June 6, 2003 publication have not yet been incorporated. Use of these new geographic definitions will be considered for use in future FMR publications. Schedule B FMRs are issued for the same metropolitan area definitions used by HUD in FY 2004 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 old 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 visiting 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	Clifton Falls, Covington.
Augusta	Staunton and Waynesboro.
Carroll	Galax.
Frederick	Winchester.
Greensville	Emporia.
Henry	Martinsville.
Montgomery	Radford.
Rockbridge	Buena Vista and Lexington.
Rockingham	Harrisonburg.
Southampton	Franklin.
Wise	Norton.

2. Bedroom Size Adjustments

Schedules B(1) and B(2) 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 th 0-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B(1) are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The metropolitan areas in Schedule B(2) are listed alphabetically by the state and metropolitan area for only those 39 areas currently at the 50th percentile for their FMR. 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 4210–32–P

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston, AL MSA	336	371	461	609	716	Calhoun
Auburn--Opelika, AL MSA	332	396	510	671	689	Lee
Birmingham, AL MSA	456	518	577	741	763	Blount, Jefferson, St. Clair, Shelby
Columbus, GA--AL MSA	443	466	534	713	845	Russell
Decatur, AL MSA	367	412	474	620	643	Lawrence, Morgan
Dothan, AL MSA	317	387	435	587	669	Dale, Houston
Florence, AL MSA	387	389	472	602	746	Colbert, Lauderdale
Gadsden, AL MSA	306	387	470	602	622	Etowah
Huntsville, AL MSA	407	443	523	716	786	Limestone, Madison
Mobile, AL MSA	464	488	561	736	872	Baldwin, Mobile
Montgomery, AL MSA	440	517	583	776	1020	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	384	442	571	740	763	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	353	354	425	526	542	Bibb	352	368	431	540	556
Bullock	313	354	434	520	560	Butler	313	354	434	520	560
Chambers	337	366	406	551	568	Cherokee	369	370	445	530	547
Chilton	290	401	446	560	642	Choctaw	325	343	392	497	664
Clarke	274	379	422	505	742	Clay	352	353	423	523	651
Cleburne	355	356	427	523	651	Coffee	338	386	437	598	767
Conecuh	325	343	392	497	664	Coosa	341	377	420	569	639
Covington	336	337	404	551	568	Crenshaw	313	354	434	520	560
Cullman	368	379	444	597	614	Dallas	281	390	433	546	586
DeKalb	314	334	421	560	576	Escambia	336	341	405	505	621
Fayette	235	272	358	522	630	Franklin	262	339	402	542	706
Geneva	341	364	412	545	689	Greene	346	368	417	540	555
Hale	346	368	417	540	555	Henry	262	361	401	479	494
Jackson	334	362	402	512	706	Lamar	258	320	385	514	675
Lowndes	325	343	392	497	664	Macon	315	339	437	583	602
Marengo	346	368	417	540	555	Marion	259	303	399	507	701
Marshall	374	401	452	610	672	Monroe	326	354	393	544	601
Perry	346	368	417	540	555	Pickens	258	320	385	514	675
Pike	314	338	394	506	522	Randolph	352	353	423	523	651
Sumter	258	329	385	514	675	Talladega	358	359	430	580	758
Tallapoosa	338	346	424	598	694	Walker	361	362	434	542	592
Washington	325	343	392	497	664	Wilcox	325	343	392	497	664
Winston	264	301	396	474	488						

ALASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	636	725	916	1314	1607	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	639	741	939	1161	1196	Aleutians West	639	741	939	1161	1196
Bethel	746	934	1134	1356	1991	Bristol Bay	639	741	939	1161	1196

ALASKA 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
Denali	550	679	848	1191	1341	Dillingham	639	741	939	1161	1196
Fairbanks North Star	522	628	803	1163	1228	Haines	550	679	848	1191	1341
Juneau	665	815	1025	1385	1726	Kenai Peninsula	492	562	684	937	1201
Ketchikan Gateway	587	749	900	1311	1580	Kodiak Island	628	735	967	1390	1471
Lake and Peninsula	639	741	939	1161	1196	Matanuska-Susitna	515	600	765	1088	1321
Nome	640	839	963	1162	1197	North Slope	672	786	1033	1235	1272
Northwest Arctic	639	741	939	1161	1196	Prince of Wales-Outer Ketch	639	741	939	1161	1196
Sitka	625	721	860	1253	1509	Skagway-Hoonah-Angoon	639	741	939	1161	1196
Southeast Fairbanks	550	679	848	1191	1341	Valdez-Cordova	550	679	848	1191	1341
Wade Hampton	639	741	939	1161	1196	Wrangell-Petersburg	639	741	939	1161	1196
Yakutat	639	741	939	1161	1196	Yukon-Koyukuk	639	741	939	1161	1196

ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ--UT MSA	653	777	878	1129	1424	Coconino
*Las Vegas, NV--AZ MSA	665	773	907	1234	1550	Mohave
*Phoenix--Mesa, AZ MSA	578	677	817	1190	1420	Maricopa, Pinal
Tucson, AZ MSA	472	554	712	1025	1083	Pima
Yuma, AZ MSA	461	544	650	922	1130	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	337	413	488	677	858	Cochise	397	460	577	797	979
Gila	433	507	667	916	943	Graham	451	486	544	752	865
Greenlee	412	458	575	790	894	La Paz	461	462	554	784	807
Navajo	404	432	570	768	910	Santa Cruz	475	476	603	879	905
Yavapai	534	551	696	1014	1045						

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	411	433	545	792	850	Benton, Washington
Fort Smith, AR--OK MSA	329	373	473	648	688	Crawford, Sebastian
Jonesboro, AR MSA	407	424	489	688	709	Craighead
Little Rock--North Little Rock, AR MSA	455	517	576	776	801	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN--AR--MS MSA	515	559	622	831	857	Crittenden
Pine Bluff, AR MSA	340	408	522	636	745	Jefferson
Texarkana, TX--Texarkana, AR MSA	410	414	510	622	677	Miller

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	319	336	418	607	624	Ashley	345	357	469	562	618
Baxter	341	396	479	644	812	Boone	375	376	452	579	650
Bradley	320	325	430	533	565	Calhoun	278	386	430	548	697
Carroll	389	390	468	590	822	Chicot	320	325	430	533	565
Clark	353	358	461	594	612	Clay	301	303	374	479	510
Cleburne	402	403	483	662	850	Cleveland	320	325	430	533	565

ARKANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Columbia	292	375	449	551	631
Cross	372	373	448	653	713
Desha	320	325	430	547	565
Franklin	270	353	415	526	642
Garland	348	432	537	670	691
Greene	287	400	443	648	667
Hot Spring	364	365	437	573	591
Independence	308	367	443	573	622
Jackson	247	324	367	518	534
Lafayette	350	400	460	550	658
Lee	299	338	421	561	652
Little River	350	400	460	561	658
Madison	371	373	447	577	648
Mississippi	313	349	457	603	727
Montgomery	343	401	505	635	654
Newton	371	373	447	577	648
Perry	351	366	450	596	615
Pike	350	400	460	550	658
Polk	335	363	403	524	637
Prairie	361	362	434	544	561
St. Francis	376	390	455	642	797
Searcy	371	373	447	577	648
Sharp	361	362	434	553	571
Union	379	399	456	591	767
White	380	381	458	622	640
Yell	347	366	420	576	594

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Conway	359	370	432	595	647
Dallas	278	386	430	548	697
Drew	268	344	413	519	724
Fulton	340	341	427	561	626
Grant	360	371	453	656	676
Hempstead	347	389	455	545	626
Howard	292	339	382	492	508
Izard	340	341	427	561	626
Johnson	282	387	435	580	693
Lawrence	258	316	396	487	644
Lincoln	320	325	430	533	565
Logan	260	336	400	572	640
Marion	342	343	412	542	597
Monroe	361	362	434	544	561
Nevada	350	400	460	550	658
Ouachita	246	342	380	523	613
Phillips	329	332	397	517	533
Poinsett	265	343	408	543	650
Pope	335	359	465	655	674
Randolph	275	344	423	506	742
Scott	310	311	373	516	654
Sevier	332	342	398	550	637
Stone	340	341	427	561	626
Van Buren	275	321	423	524	676
Woodruff	361	362	434	544	561

CALIFORNIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	470	507	604	873	1046	Kern
Chico--Paradise, CA MSA	457	544	656	925	1104	Butte
Fresno, CA MSA	474	519	616	897	952	Fresno, Madera
Los Angeles--Long Beach, CA PMSA	746	900	1124	1510	1816	Los Angeles
Merced, CA MSA	444	506	615	877	1024	Merced
Modesto, CA MSA	546	603	710	1018	1176	Stanislaus
*Oakland, CA PMSA	945	1132	1342	1870	2293	Alameda, Contra Costa
*Orange County, CA PMSA	979	1098	1317	1885	2165	Orange
Redding, CA MSA	449	523	636	928	1118	Shasta
Riverside--San Bernardino, CA PMSA	580	638	752	1058	1234	Riverside, San Bernardino
*Sacramento, CA PMSA	707	812	971	1403	1639	El Dorado, Placer, Sacramento
Salinas, CA MSA	801	901	1035	1462	1532	Monterey
*San Diego, CA MSA	854	975	1183	1725	2080	San Diego
San Francisco, CA PMSA	1000	1229	1539	2055	2172	Marin, San Francisco, San Mateo
*San Jose, CA PMSA	942	1107	1313	1779	1958	Santa Clara
San Luis Obispo--Atascadero--Paso Robles, CA MSA	620	733	893	1301	1339	San Luis Obispo
Santa Barbara--Santa Maria--Lompoc, CA MSA	801	895	1004	1322	1509	Santa Barbara
Santa Cruz--Watsonville, CA PMSA	876	1033	1347	1939	1998	Santa Cruz

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	751	914	1154	1638	1914	Sonoma
Stockton--Lodi, CA MSA	522	595	734	1008	1269	San Joaquin
Vallejo--Fairfield--Napa, CA PMSA	784	857	1006	1396	1707	Napa, Solano
*Ventura, CA PMSA	986	1093	1382	2011	2319	Ventura
Visalia--Tulare--Porterville, CA MSA	465	520	605	865	889	Tulare
Yolo, CA PMSA	658	696	851	1240	1319	Yolo
Yuba City, CA MSA	423	477	587	854	914	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	482	541	690	984	1013	Amador	519	609	799	1161	1196
Calaveras	530	531	638	930	1026	Colusa	484	486	632	816	1109
Del Norte	474	480	621	904	932	Glenn	414	425	559	727	747
Humboldt	440	515	678	972	1077	Imperial	456	516	636	875	1115
Inyo	435	456	593	864	1019	Kings	479	510	592	863	1040
Lake	435	510	664	962	1071	Lassen	423	496	652	948	977
Mariposa	482	541	690	984	1013	Mendocino	486	600	729	995	1279
Modoc	420	464	607	865	890	Mono	567	683	872	1195	1532
Nevada	545	636	838	1210	1472	Plumas	431	505	665	970	1168
San Benito	589	797	887	1257	1556	Sierra	510	595	785	1112	1377
Siskiyou	376	451	577	821	846	Tehama	394	448	585	850	1021
Trinity	427	448	588	807	895	Tuolumne	469	557	720	995	1025

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder--Longmont, CO PMSA	703	815	1022	1490	1786	Boulder
Colorado Springs, CO MSA	519	581	734	1047	1238	El Paso
*Denver, CO PMSA	674	768	973	1382	1612	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins--Loveland, CO MSA	516	619	750	1092	1273	Larimer
Grand Junction, CO MSA	468	469	563	820	991	Mesa
Greeley, CO PMSA	514	545	667	973	1148	Weld
Pueblo, CO MSA	441	464	610	799	904	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	345	427	474	644	833	Archuleta	467	555	698	849	1096
Baca	351	412	459	655	673	Bent	397	410	499	654	804
Chaffee	393	496	604	880	906	Cheyenne	397	410	499	654	804
Clear Creek	579	687	884	1208	1420	Conejos	351	412	459	655	673
Costilla	351	412	459	655	673	Crowley	397	410	499	654	804
Custer	420	491	647	906	1042	Delta	462	472	556	763	786
Dolores	468	555	642	850	1097	Eagle	781	912	1200	1509	2062
Elbert	397	410	499	654	804	Fremont	375	448	575	825	946
Garfield	599	682	756	933	961	Gilpin	579	687	884	1208	1420
Grand	469	536	681	991	1021	Gunnison	485	533	693	959	1217
Hinsdale	590	746	901	1122	1581	Huerfano	351	412	459	655	673
Jackson	492	607	674	869	934	Kiowa	397	410	499	654	804

SCHEDULE B(1) - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 5

COLORADO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kit Carson	397	410	499	654	804
La Plata	517	631	722	1013	1153
Lincoln	397	410	499	654	804
Mineral	590	746	901	1122	1581
Montezuma	413	483	558	666	890
Morgan	449	486	542	722	872
Ouray	590	746	901	1122	1581
Phillips	397	410	499	654	804
Prowers	345	405	450	610	791
Rio Grande	351	412	459	666	686
Saguache	351	412	459	655	673
San Miguel	636	763	975	1422	1464
Summit	684	804	1051	1497	1844
Washington	397	410	499	654	804

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lake	590	746	901	1122	1581
Las Animas	355	471	522	673	695
Logan	405	406	517	673	779
Moffat	380	415	521	683	915
Montrose	398	522	605	803	995
Otero	355	375	455	630	649
Park	533	622	819	979	1042
Pitkin	825	964	1269	1763	2228
Rio Blanco	492	607	674	869	934
Routt	609	721	937	1121	1645
San Juan	468	555	642	850	1097
Sedgwick	397	410	499	654	804
Teller	543	635	835	1216	1465
Yuma	397	410	499	654	804

CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	615	790	925	1105	1316	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	736	886	1109	1348	1592	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	593	710	873	1053	1214	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,

SCHEDULE B(1) - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 6

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	635	750	903	1080	1183	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	568	668	774	926	1035	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	944	1149	1437	1873	2262	Fairfield county towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
Waterbury, CT PMSA	491	640	755	904	937	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	592	701	840	1004	1043	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Hartford	534	642	806	967	1131	Hartland town
Litchfield	518	599	765	1015	1328	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	604	715	893	1182	1375	Chester town, Deep River town, Essex town, Westbrook town
New London	566	675	779	954	1034	Lyme town, Voluntown town

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CONNECTICUT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Tolland	651	695	806	1028	1085	Union town
Windham	466	542	689	871	907	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	511	556	616	806	1082	Kent
Wilmington--Newark, DE--MD PMSA	643	684	802	1061	1200	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	473	514	572	782	806

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	915	1045	1187	1537	2000	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	476	549	683	891	917	Flagler, Volusia
*Fort Lauderdale, FL PMSA	743	830	998	1380	1752	Broward
Fort Myers--Cape Coral, FL MSA	575	621	707	961	989	Lee
Fort Pierce--Port St. Lucie, FL MSA	540	541	686	907	934	Martin, St. Lucie
Fort Walton Beach, FL MSA	463	542	610	890	977	Okaloosa
Gainesville, FL MSA	484	534	614	896	923	Alachua
Jacksonville, FL MSA	550	625	732	918	1060	Clay, Duval, Nassau, St. Johns
Lakeland--Winter Haven, FL MSA	437	482	555	704	826	Polk
Melbourne--Titusville--Palm Bay, FL MSA	456	558	657	885	987	Brevard
*Miami, FL PMSA	682	775	929	1204	1419	Miami-Dade
Naples, FL MSA	649	743	837	1040	1083	Collier
Ocala, FL MSA	463	477	560	735	757	Marion
Orlando, FL MSA	675	733	838	1049	1235	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	478	504	577	797	886	Bay
Pensacola, FL MSA	466	507	563	816	987	Escambia, Santa Rosa
Punta Gorda, FL MSA	482	505	655	956	1151	Charlotte
Sarasota--Bradenton, FL MSA	554	616	746	917	1046	Manatee, Sarasota
Tallahassee, FL MSA	488	542	677	900	926	Gadsden, Leon
*Tampa--St. Petersburg--Clearwater, FL MSA	597	669	805	1037	1264	Hernando, Hillsborough, Pasco, Pinellas
*West Palm Beach--Boca Raton, FL MSA	649	761	898	1270	1308	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	266	368	409	598	614	Bradford	299	415	460	570	588
Calhoun	385	386	462	582	664	Citrus	413	449	497	721	868

FLORIDA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Columbia	360	416	492	614	863
Dixie	335	366	406	488	565
Gilchrist	334	412	461	552	568
Gulf	385	386	462	582	664
Hardee	407	442	490	601	618
Highlands	438	440	527	682	815
Indian River	446	538	686	854	879
Jefferson	385	386	462	582	664
Levy	359	385	433	553	569
Madison	385	386	462	582	664
Okeechobee	436	451	525	707	728
Sumter	346	376	418	549	734
Taylor	394	427	475	568	584
Wakulla	458	497	553	727	750
Washington	277	315	416	596	613

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
DeSoto	407	417	490	591	608
Franklin	386	387	464	584	665
Glades	427	455	517	631	674
Hamilton	335	366	406	488	565
Hendry	387	463	516	620	765
Holmes	369	392	445	579	597
Jackson	294	377	420	520	607
Lafayette	335	366	406	488	565
Liberty	385	386	462	582	664
Monroe	646	787	969	1410	1510
Putnam	365	396	440	528	544
Suwannee	270	367	407	513	562
Union	359	413	464	614	633
Walton	432	445	521	644	663

GEORGIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	416	464	527	705	761	Dougherty, Lee
Athens, GA MSA	445	495	622	829	855	Clarke, Madison, Oconee
*Atlanta, GA MSA	769	834	928	1150	1295	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	446	487	548	740	777	Columbia, McDuffie, Richmond
Chattanooga, TN--GA MSA	454	483	569	701	830	Catoosa, Dade, Walker
Columbus, GA--AL MSA	443	466	534	713	845	Chattahoochee, Harris, Muscogee
Macon, GA MSA	449	487	543	722	744	Bibb, Houston, Jones, Peach, Twiggs
Savannah, GA MSA	545	590	657	872	900	Bryan, Chatham, Effingham

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Appling	359	390	433	528	544
Bacon	334	346	402	512	583
Baldwin	345	416	516	616	635
Ben Hill	291	375	448	542	557
Bleckley	292	341	416	515	575
Brooks	433	436	522	707	728
Burke	290	320	421	529	570
Calhoun	323	350	389	499	613
Candler	359	390	433	528	544
Chattooga	279	341	428	513	747
Clinch	334	346	402	512	583
Colquitt	351	379	422	505	635
Crawford	420	431	507	606	877
Dawson	544	590	655	909	937
Dodge	292	293	370	495	509

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Atkinson	334	346	402	512	583
Baker	323	350	389	499	613
Banks	383	415	460	559	794
Berrien	346	347	422	523	539
Brantley	334	346	402	512	583
Bulloch	409	423	501	601	617
Butts	352	470	543	792	943
Camden	457	458	552	803	969
Charlton	334	346	402	512	583
Clay	323	350	389	499	613
Coffee	342	354	413	514	629
Cook	332	339	400	544	703
Crisp	341	344	411	519	535
Decatur	329	383	504	603	670
Dooly	354	366	426	537	725

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GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Early	323	350	389	499	613
Elbert	363	379	437	549	566
Evans	359	390	433	528	544
Floyd	402	409	528	648	669
Gilmer	433	469	523	690	833
Glynn	439	477	528	741	928
Grady	249	344	383	531	549
Habersham	437	439	526	630	923
Hancock	363	379	437	549	566
Hart	364	394	438	523	768
Irwin	354	375	426	540	659
Jasper	334	409	456	589	615
Jefferson	291	324	406	486	571
Johnson	334	409	456	589	615
Lanier	354	375	426	540	659
Liberty	429	466	519	732	818
Long	376	408	454	622	641
Lumpkin	389	505	600	810	898
Macon	354	366	426	537	725
Meriwether	402	407	485	585	603
Mitchell	279	354	428	513	712
Montgomery	292	341	385	515	574
Murray	399	431	480	574	591
Pierce	334	346	402	512	583
Polk	364	405	494	609	629
Putnam	291	294	386	561	577
Rabun	435	451	524	676	815
Schley	354	366	426	537	725
Seminole	334	386	445	557	664
Stewart	323	350	389	499	613
Talbot	425	426	514	633	652
Tattnall	290	313	348	459	502
Telfair	292	341	385	515	574
Thomas	406	440	489	628	858
Toombs	253	350	389	542	600
Treutlen	292	341	385	515	574
Turner	354	375	426	540	659
Upson	312	423	481	575	592
Warren	363	379	437	549	566
Wayne	298	337	416	549	730
Wheeler	292	341	385	515	574
Whitfield	437	475	526	703	724
Wilkes	363	379	437	549	566
Worth	327	355	394	535	613

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Echols	433	436	522	707	728
Emanuel	254	295	389	474	606
Fannin	299	416	461	552	662
Franklin	383	415	460	559	794
Glascock	291	308	406	486	571
Gordon	433	436	560	670	691
Greene	363	379	437	549	566
Hall	583	611	705	866	1004
Haralson	352	369	423	616	746
Heard	425	426	514	633	652
Jackson	458	497	553	672	877
Jeff Davis	359	390	433	528	544
Jenkins	291	308	406	486	571
Lamar	409	411	493	650	865
Laurens	358	389	431	579	702
Lincoln	363	379	437	549	566
Lowndes	447	448	539	714	736
McIntosh	421	458	508	719	819
Marion	354	366	426	537	725
Miller	334	386	445	557	664
Monroe	422	459	509	610	630
Morgan	398	399	492	589	606
Oglethorpe	385	386	462	605	621
Pike	422	431	510	620	877
Pulaski	292	341	385	560	576
Quitman	323	350	389	499	613
Randolph	323	350	389	499	613
Screven	291	308	406	486	571
Stephens	296	411	456	546	563
Sumter	346	389	478	572	840
Taliaferro	363	379	437	549	566
Taylor	354	366	426	537	725
Terrell	336	364	404	500	614
Tift	385	417	462	590	682
Towns	435	451	524	673	815
Troup	426	431	540	683	705
Union	435	451	524	673	815
Ware	369	398	445	570	598
Washington	291	334	406	496	571
Webster	354	366	426	537	725
White	389	485	539	680	819
Wilcox	292	341	385	515	574
Wilkinson	334	409	456	589	615

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	668	783	955	1386	1550	Honolulu

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	513	616	691	974	1068
Maui	698	773	899	1203	1288
Kauai	560	630	831	1043	1135

IDAHO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA	470	552	654	952	1035	Ada, Canyon
Pocatello, ID MSA	340	394	512	743	871	Bannock

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	396	413	520	704	839
Benewah	456	464	583	833	859
Blaine	659	716	795	1129	1394
Bonner	461	483	593	839	864
Boundary	456	464	583	833	859
Camas	395	442	551	726	777
Cassia	395	442	551	726	777
Clearwater	404	417	517	746	861
Elmore	343	400	526	667	817
Fremont	377	403	512	728	865
Gooding	395	442	551	726	777
Jefferson	377	403	512	728	865
Kootenai	465	502	604	878	982
Lemhi	377	403	512	728	865
Lincoln	395	442	551	726	777
Minidoka	304	400	469	621	639
Oneida	339	390	499	705	818
Payette	341	411	522	661	863
Shoshone	391	392	473	623	660
Twin Falls	364	442	560	722	854
Washington	396	413	520	704	839
Bear Lake	339	390	499	705	818
Bingham	343	380	487	670	692
Boise	396	413	520	704	839
Bonneville	395	417	537	727	926
Butte	377	403	512	728	865
Caribou	339	390	499	705	818
Clark	377	403	512	728	865
Custer	377	403	512	728	865
Franklin	339	390	499	705	818
Gem	407	493	548	797	820
Idaho	394	422	556	665	786
Jerome	395	442	551	726	777
Latah	405	423	511	745	862
Lewis	404	417	517	746	861
Madison	359	360	462	671	730
Nez Perce	411	423	527	768	925
Owyhee	396	413	520	704	839
Power	339	390	499	705	818
Teton	377	403	512	728	865
Valley	396	413	520	704	839

ILLINOIS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington--Normal, IL MSA	439	485	612	818	1023	McLean
Champaign--Urbana, IL MSA	420	514	611	773	1044	Champaign
*Chicago, IL PMSA	693	803	906	1100	1266	Cook, DuPage, Kane, Lake, McHenry, Will
Davenport--Moline--Rock Island, IA--IL MSA	401	448	565	728	776	Henry, Rock Island
Decatur, IL MSA	346	412	523	697	719	Macon
DeKalb County MSA**	493	556	731	948	1163	DeKalb
Grundy County MSA**	495	580	760	957	1288	Grundy

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ILLINOIS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kankakee, IL PMSA	460	501	661	857	919	Kankakee
Kendall County MSA**	713	714	858	1206	1307	Kendall
Peoria--Pekin, IL MSA	389	463	576	746	847	Peoria, Tazewell, Woodford
Rockford, IL MSA	420	474	599	781	804	Boone, Ogle, Winnebago
*St. Louis, MO--IL MSA	545	594	741	969	1039	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	373	439	567	740	826	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	313	372	481	625	645	Alexander	340	343	418	546	605
Bond	321	343	445	647	761	Brown	294	360	454	608	627
Bureau	340	395	522	643	705	Calhoun	331	369	485	613	644
Carroll	365	412	519	646	665	Cass	364	366	461	586	604
Christian	308	395	472	610	713	Clark	299	417	462	672	694
Clay	272	339	415	554	570	Coles	333	426	512	722	899
Crawford	275	325	422	555	582	Cumberland	333	415	501	667	879
De Witt	395	396	483	631	738	Douglas	325	408	501	713	735
Edgar	305	357	469	590	608	Edwards	340	343	418	546	605
Effingham	423	424	510	644	681	Fayette	369	379	445	616	635
Ford	335	399	515	615	655	Franklin	295	362	456	566	800
Fulton	319	381	459	587	728	Gallatin	340	343	418	546	605
Greene	331	369	485	613	644	Hamilton	340	343	418	546	605
Hancock	367	368	440	529	547	Hardin	340	343	418	546	605
Henderson	320	374	464	585	700	Iroquois	346	384	465	585	686
Jackson	325	397	500	681	847	Jasper	272	339	415	554	570
Jefferson	411	422	503	633	652	Jo Daviess	361	387	460	613	632
Johnson	340	343	418	546	605	Knox	331	387	509	676	697
La Salle	397	429	565	713	917	Lawrence	279	327	430	572	590
Lee	346	425	511	682	794	Livingston	357	438	551	658	685
Logan	411	412	493	677	776	McDonough	321	378	476	610	798
Macoupin	415	416	500	623	645	Marion	329	377	451	577	635
Marshall	325	380	500	632	691	Mason	294	373	454	608	627
Massac	379	380	456	664	685	Mercer	318	396	489	585	687
Montgomery	389	390	468	561	695	Morgan	338	393	518	643	698
Moultrie	320	378	492	620	753	Perry	281	367	433	523	672
Piatt	396	397	499	646	739	Pike	294	360	454	608	627
Pope	340	343	418	546	605	Pulaski	340	343	418	546	605
Putnam	325	380	500	632	691	Randolph	302	352	464	615	754
Richland	318	385	427	588	704	Saline	270	348	415	562	728
Schuyler	294	360	454	608	627	Scott	331	369	485	613	644
Shelby	395	396	476	620	702	Stark	325	380	500	632	691
Stephenson	361	422	556	665	686	Union	361	362	434	532	661
Vermilion	333	398	512	613	650	Wabash	340	344	418	546	605
Warren	304	356	468	584	666	Washington	331	379	478	614	633
Wayne	247	300	381	485	499	White	340	343	418	546	605
Whiteside	368	433	534	661	679	Williamson	311	363	476	686	707

INDIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	449	520	634	901	931	Monroe
Cincinnati, OH--KY--IN PMSA	459	538	706	978	1016	Dearborn
Elkhart--Goshen, IN MSA	455	507	627	788	826	Elkhart
Evansville--Henderson, IN--KY MSA	364	431	538	676	705	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	427	460	567	711	731	Adams, Allen, DeKalb, Huntington, Wells, Whitley
Gary, IN PMSA	470	586	716	857	883	Lake, Porter
Indianapolis, IN MSA	480	549	655	846	885	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby
Kokomo, IN MSA	459	464	589	751	773	Howard, Tipton
Lafayette, IN MSA	456	536	661	848	1032	Clinton, Tippecanoe
Louisville, KY--IN MSA	432	503	597	852	891	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	473	484	585	788	827	Delaware
Ohio County MSA**	406	439	575	722	807	Ohio
South Bend, IN MSA	456	508	621	803	827	St. Joseph
Terre Haute, IN MSA	353	403	522	648	794	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	552	553	664	814	871	Benton	351	431	540	664	771
Blackford	421	423	507	645	697	Brown	515	521	621	780	876
Carroll	347	408	535	704	725	Cass	358	386	507	646	666
Crawford	350	399	491	604	641	Daviess	365	367	439	571	700
Decatur	476	478	574	744	767	Dubois	331	397	509	695	715
Fayette	338	418	519	687	707	Fountain	346	416	471	630	659
Franklin	349	426	538	670	692	Fulton	421	437	507	716	738
Gibson	412	413	494	632	869	Grant	432	433	523	660	770
Greene	318	319	410	595	615	Henry	448	450	539	693	775
Jackson	461	462	562	722	876	Jasper	470	471	585	763	786
Jay	302	370	465	630	650	Jefferson	367	393	518	620	767
Jennings	356	420	549	665	915	Knox	324	369	466	577	720
Kosciusko	374	437	574	730	850	LaGrange	455	456	547	659	732
LaPorte	395	456	579	769	791	Lawrence	359	424	553	661	680
Marshall	391	451	560	738	761	Martin	326	359	457	546	658
Miami	320	376	493	718	774	Montgomery	364	429	546	743	783
Newton	428	429	517	682	703	Noble	485	486	584	698	718
Orange	298	350	461	580	633	Owen	422	424	508	643	892
Parke	406	408	488	615	774	Perry	316	370	486	631	651
Pike	320	378	492	635	655	Pulaski	426	427	514	682	704
Putnam	475	476	573	685	772	Randolph	388	389	467	666	687
Ripley	471	472	569	685	784	Rush	445	446	536	642	704
Spencer	320	378	492	635	655	Starke	427	451	516	682	717
Steuben	412	470	618	745	767	Sullivan	294	345	454	543	559
Switzerland	389	422	555	695	775	Union	349	426	538	670	692
Wabash	308	359	472	645	735	Warren	351	431	540	664	771
Washington	357	399	469	577	768	Wayne	353	416	521	707	729
White	374	517	574	686	969						

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IOWA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	387	451	595	864	1044	Linn
Davenport--Moline--Rock Island, IA--IL MSA	401	448	565	728	776	Scott
Des Moines, IA MSA	451	539	657	841	939	Dallas, Polk, Warren
Dubuque, IA MSA	364	392	515	692	754	Dubuque
Iowa City, IA MSA	431	514	648	944	1105	Johnson
Omaha, NE--IA MSA	456	523	650	878	904	Pottawattamie
Sioux City, IA--NE MSA	381	445	585	736	758	Woodbury
Waterloo--Cedar Falls, IA MSA	367	458	545	666	924	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	332	370	486	593	663	Adams	332	370	486	593	663
Allamakee	316	348	446	578	615	Appanoose	296	346	456	576	631
Audubon	334	343	447	588	615	Benton	302	356	465	579	775
Boone	363	438	558	726	782	Bremer	321	395	492	589	796
Buchanan	375	376	452	583	599	Buena Vista	379	383	501	601	690
Butler	316	348	446	578	615	Calhoun	373	374	471	605	633
Carroll	331	386	509	607	626	Cass	363	443	557	683	735
Cedar	344	380	501	648	701	Cerro Gordo	368	409	538	668	687
Cherokee	334	343	447	588	615	Chickasaw	316	348	446	578	615
Clarke	331	378	497	595	663	Clay	298	348	459	557	698
Clayton	316	348	446	578	615	Clinton	316	370	487	621	709
Crawford	334	353	447	588	615	Davis	332	370	486	593	663
Decatur	332	370	486	593	663	Delaware	344	380	501	648	701
Des Moines	377	412	522	656	739	Dickinson	311	384	480	607	842
Emmet	300	342	451	549	648	Fayette	316	348	446	578	615
Floyd	322	348	459	574	591	Franklin	327	359	453	579	607
Fremont	363	443	557	683	735	Greene	334	343	447	588	615
Grundy	316	348	446	578	615	Guthrie	334	356	468	589	615
Hamilton	373	374	480	605	632	Hancock	327	359	453	579	607
Hardin	416	418	500	598	636	Harrison	363	443	557	683	735
Henry	410	412	493	705	726	Howard	316	348	446	578	615
Humboldt	373	374	471	605	633	Ida	334	343	447	588	615
Iowa	368	398	494	646	667	Jackson	344	380	501	648	701
Jasper	379	414	544	692	722	Jefferson	407	414	490	617	750
Jones	387	388	465	652	672	Keokuk	332	370	486	593	663
Kossuth	327	359	453	579	607	Lee	345	401	473	600	617
Louisa	374	418	517	669	708	Lucas	332	370	486	593	663
Lyon	300	342	451	549	648	Madison	366	427	562	702	723
Mahaska	360	408	520	623	822	Marion	363	446	557	688	708
Marshall	372	431	538	692	794	Mills	363	443	557	683	735
Mitchell	327	359	453	579	607	Monona	334	343	447	588	615
Monroe	332	370	486	593	663	Montgomery	363	443	557	683	735
Muscatine	372	459	571	703	758	O'Brien	300	342	451	549	648
Osceola	300	342	451	549	648	Page	314	370	486	580	597
Palo Alto	300	342	451	549	648	Plymouth	392	393	473	637	656

IOWA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pocahontas	373	374	471	605	633
Ringgold	332	370	486	593	663
Shelby	363	443	557	683	735
Story	497	524	648	927	1097
Taylor	332	370	486	593	663
Van Buren	332	370	486	593	663
Washington	322	388	493	629	756
Webster	371	378	491	679	701
Winneshiek	304	356	468	608	824
Wright	373	374	471	605	633

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Poweshiek	339	396	521	666	686
Sac	334	343	447	588	615
Sioux	355	360	437	591	608
Tama	368	398	494	646	667
Union	332	370	486	593	663
Wapello	348	405	534	637	664
Wayne	332	370	486	593	663
Winnebago	327	359	453	579	607
Worth	327	359	453	579	607

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	499	601	691	938	989	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	474	487	626	914	1099	Douglas
Topeka, KS MSA	421	457	561	723	791	Shawnee
*Wichita, KS MSA	429	481	624	806	908	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	329	333	437	579	630
Atchison	382	425	521	759	915
Barton	272	328	419	557	721
Brown	382	425	521	759	915
Chautauqua	324	360	448	577	628
Cheyenne	340	345	454	581	598
Clay	377	414	509	653	804
Coffey	316	361	474	591	609
Cowley	310	379	464	588	605
Decatur	340	345	454	581	598
Doniphan	382	425	521	759	915
Elk	324	360	448	577	628
Ellsworth	370	384	486	638	659
Ford	445	446	537	661	706
Geary	344	408	501	664	742
Graham	340	345	454	581	598
Gray	420	424	516	628	689
Greenwood	316	361	474	591	609
Harper	280	329	431	561	662
Hodgeman	420	424	516	628	689
Jefferson	382	425	521	759	915
Kearny	420	424	516	628	689
Kiowa	280	329	431	561	662
Lane	420	424	516	628	689
Linn	324	360	448	577	628
Lyon	314	367	482	644	762

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	324	360	448	577	628
Barber	280	329	431	561	662
Bourbon	316	336	436	630	710
Chase	316	361	474	591	609
Cherokee	361	374	433	606	744
Clark	420	424	516	628	689
Cloud	370	384	486	638	659
Comanche	280	329	431	561	662
Crawford	344	403	530	714	796
Dickinson	296	345	455	548	675
Edwards	280	329	431	561	662
Ellis	349	395	520	719	753
Finney	427	428	552	670	849
Franklin	420	421	522	665	711
Gove	340	345	454	581	598
Grant	420	424	516	628	689
Greeley	420	424	516	628	689
Hamilton	420	424	516	628	689
Haskell	420	424	516	628	689
Jackson	382	425	523	762	918
Jewell	370	384	486	638	659
Kingman	280	329	431	561	662
Labette	284	340	437	592	609
Lincoln	370	384	486	638	659
Logan	340	345	454	581	598
McPherson	401	402	482	631	649

KANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Marion	316	361	474	591	609
Meade	420	424	516	628	689
Montgomery	333	372	465	572	712
Morton	420	424	516	628	689
Neosho	287	345	443	527	775
Norton	340	345	454	581	598
Osborne	340	345	454	581	598
Pawnee	280	329	431	561	662
Pottawatomie	329	455	505	643	741
Rawlins	340	345	454	581	598
Republic	370	384	486	638	659
Riley	396	428	531	773	932
Rush	280	329	431	561	662
Saline	401	403	530	706	727
Seward	364	448	518	636	771
Sherman	340	351	462	580	598
Stafford	280	329	431	561	662
Stevens	420	424	516	628	689
Thomas	340	347	457	581	598
Wabaunsee	316	361	474	591	609
Washington	370	384	486	638	659
Wilson	324	360	449	577	628

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Marshall	377	414	509	653	804
Mitchell	370	384	486	638	659
Morris	377	414	509	653	804
Nemaha	382	425	521	759	915
Ness	420	424	516	628	689
Osage	316	361	474	591	609
Ottawa	370	384	486	638	659
Phillips	340	345	454	581	598
Pratt	282	330	433	561	662
Reno	346	385	505	692	712
Rice	351	383	485	643	663
Rooks	340	345	454	581	598
Russell	340	345	454	581	598
Scott	420	424	516	628	689
Sheridan	340	345	454	581	598
Smith	340	345	454	581	598
Stanton	420	424	516	628	689
Sumner	312	367	482	649	755
Trego	340	345	454	581	598
Wallace	340	345	454	581	598
Wichita	420	424	516	628	689
Woodson	324	360	448	577	628

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	459	538	706	978	1016	Boone, Campbell, Kenton
Clarksville--Hopkinsville, TN--KY MSA	461	473	557	797	830	Christian
Evansville--Henderson, IN--KY MSA	364	431	538	676	705	Henderson
Gallatin County MSA**	477	544	616	843	1084	Gallatin
Grant County MSA**	392	473	602	741	830	Grant
Huntington--Ashland, WV--KY--OH MSA	342	404	483	597	617	Boyd, Carter, Greenup
Lexington, KY MSA	404	477	571	784	815	Bourbon, Clark, Fayette, Jessamine, Madison, Scott, Woodford
Louisville, KY--IN MSA	432	503	597	852	891	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	342	383	504	712	746	Daviess
Pendleton County MSA**	420	508	645	773	905	Pendleton

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	295	327	389	474	529
Anderson	403	431	569	823	981
Barren	288	337	437	545	600
Bell	255	348	388	463	568
Bracken	327	354	437	547	565
Breckinridge	342	344	442	591	609
Caldwell	334	335	402	509	578

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	248	322	379	506	655
Ballard	342	378	466	597	673
Bath	327	354	437	547	565
Boyle	351	388	510	611	631
Breathitt	297	312	358	435	465
Butler	374	444	540	710	731
Calloway	415	416	500	616	878

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	342	378	466	597	673	Carroll	411	412	512	677	735
Casey	295	327	389	474	529	Clay	215	298	332	396	408
Clinton	295	327	389	474	529	Crittenden	323	324	389	508	577
Cumberland	295	327	389	474	529	Edmonson	297	324	399	509	593
Elliott	368	369	444	563	667	Estill	323	324	389	497	655
Fleming	327	354	437	547	565	Floyd	306	343	404	530	611
Franklin	413	438	576	781	803	Fulton	342	378	466	597	673
Garrard	353	395	474	566	830	Graves	335	336	417	498	607
Grayson	336	337	404	527	618	Green	295	327	392	474	529
Hancock	372	373	449	554	571	Hardin	368	395	476	694	828
Harlan	303	326	366	450	569	Harrison	359	361	472	619	639
Hart	297	324	399	509	593	Henry	409	429	537	675	733
Hickman	342	378	466	597	673	Hopkins	343	344	414	519	726
Jackson	325	342	392	474	488	Johnson	245	320	376	513	527
Knott	297	312	358	435	465	Knox	232	280	354	499	516
Larue	342	344	442	591	609	Laurel	346	375	417	512	700
Lawrence	267	312	412	550	567	Lee	297	312	358	435	465
Leslie	297	312	358	435	465	Letcher	297	312	358	445	465
Lewis	327	354	437	547	565	Lincoln	301	412	457	547	723
Livingston	323	324	389	508	577	Logan	370	402	447	612	678
Lyon	407	414	491	637	656	McCracken	313	394	484	649	669
McCreary	291	314	350	451	463	McLean	343	378	499	706	731
Magoffin	334	337	402	495	509	Marion	342	344	442	591	609
Marshall	374	375	452	589	766	Martin	334	337	402	495	509
Mason	281	359	434	633	727	Meade	388	389	466	598	670
Menifee	327	354	437	547	565	Mercer	379	404	458	603	710
Metcalfe	297	324	399	509	593	Monroe	297	324	399	509	593
Montgomery	336	392	517	617	636	Morgan	327	354	437	547	565
Muhlenberg	315	316	382	485	498	Nelson	333	402	486	708	766
Nicholas	427	428	560	686	721	Ohio	317	337	384	509	559
Owen	458	524	596	813	1045	Owsley	297	312	358	435	465
Perry	322	339	388	464	569	Pike	353	354	426	511	526
Powell	317	400	489	585	603	Pulaski	292	323	411	507	537
Robertson	327	354	437	547	565	Rockcastle	325	342	392	474	488
Rowan	369	409	455	571	589	Russell	295	327	389	474	529
Shelby	466	467	564	742	764	Simpson	374	439	577	717	739
Spencer	409	429	537	675	733	Taylor	264	361	401	517	679
Todd	407	414	491	637	656	Trigg	407	414	491	637	656
Trimble	409	429	537	675	733	Union	372	373	449	554	571
Warren	378	455	555	750	869	Washington	342	344	442	591	609
Wayne	248	303	379	491	506	Webster	372	373	449	554	571
Whitley	320	337	444	530	546	Wolfe	297	312	358	435	465

LOUISIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	363	398	471	626	644	Rapides
*Baton Rouge, LA MSA	482	523	608	791	960	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	404	407	505	663	756	Lafourche, Terrebonne
Lafayette, LA MSA	407	440	490	588	790	Acadia, Lafayette, St. Landry, St. Martin
Lake Charles, LA MSA	393	445	542	666	952	Calcasieu
Monroe, LA MSA	352	409	511	681	703	Ouachita
New Orleans, LA MSA	522	578	676	868	897	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
St. James Parish MSA**	391	456	559	686	707	St. James
Shreveport--Bossier City, LA MSA	406	466	542	687	709	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	315	316	380	552	613	Assumption	382	383	460	561	577
Avoyelles	244	332	377	513	613	Beauregard	347	356	419	610	734
Bienville	375	381	451	539	590	Caldwell	306	327	388	491	548
Cameron	335	355	402	584	706	Catahoula	295	318	389	494	596
Claiborne	375	381	451	539	590	Concordia	295	318	389	504	596
De Soto	375	381	451	539	590	East Carroll	306	327	388	491	548
East Feliciana	353	365	427	520	686	Evangeline	294	296	356	456	469
Franklin	306	327	388	491	548	Grant	295	324	427	510	596
Iberia	387	397	468	578	674	Iberville	344	345	415	562	579
Jackson	306	327	388	491	548	Jefferson Davis	337	338	406	514	528
La Salle	295	318	389	494	596	Lincoln	401	414	482	627	648
Madison	306	327	388	491	548	Morehouse	347	348	433	519	562
Natchitoches	391	392	470	563	727	Pointe Coupee	353	365	427	520	686
Red River	375	381	451	539	590	Richland	306	327	388	491	548
Sabine	375	381	451	539	590	St. Helena	353	365	427	520	686
St. Mary	370	377	453	592	611	Tangipahoa	353	410	516	618	734
Tensas	306	327	388	491	548	Union	306	328	400	493	548
Vermilion	336	337	404	554	573	Vernon	335	369	409	594	709
Washington	308	311	371	494	509	West Carroll	306	327	388	491	548
West Feliciana	353	365	427	520	686	Winn	315	341	379	478	509

MAINE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	432	505	642	819	923	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	354	446	542	680	745	Androscoggin county towns of Auburn city,

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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	582	691	895	1128	1208	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	634	745	930	1239	1407	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	364	444	560	688	718	Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Aroostook	335	413	495	646	712	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	458	547	705	842	1079	Baldwin town, Bridgton town, Brunswick town,

SCHEDULE B(1) - FAIR MARKET RENTS 2005 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	416	449	547	653	848	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	455	524	610	859	884	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	360	431	537	733	783	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	412	544	621	841	970	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	497	534	644	778	802	Alna town, Boothbay town, Boothbay Harbor town, Bremen town,

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	346	460	530	706	885	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	439	440	529	661	811	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	432	492	609	773	822	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	552	553	663	800	1148	Arrowsic town, Bath city, Bowdoin town, Bowdoinham town, Georgetown town, Perkins UT,

SCHEDULE B(1) - FAIR MARKET RENTS 2005 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	345	428	507	716	759	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	483	523	632	758	815	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	416	449	536	664	724	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	505	524	667	798	871	Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town,

SCHEDULE B(1) - FAIR MARKET RENTS 2005 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	611	709	847	1074	1251	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city
Columbia, MD MSA**	713	827	988	1253	1460	Columbia
Cumberland, MD--WV MSA	309	374	439	592	691	Allegany
Hagerstown, MD PMSA	420	482	616	889	917	Washington
*Washington, DC--MD--VA--WV PMSA	915	1045	1187	1537	2000	Calvert, Charles, Frederick, Montgomery, Prince George's
Wilmington--Newark, DE--MD PMSA	643	684	802	1061	1200	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	467	483	565	764	785	Dorchester	352	423	539	727	748
Garrett	294	364	452	583	773	Kent	526	527	634	778	1044
St. Mary's	591	614	799	1050	1382	Somerset	412	438	516	639	839
Talbot	549	550	662	896	946	Wicomico	420	532	640	814	873
Worcester	503	523	606	885	942						

MASSACHUSETTS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable--Yarmouth, MA MSA	597	707	919	1098	1132	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	1025	1077	1266	1513	1676	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(1) - FAIR MARKET RENTS 2005 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	827	862	1086	1297	1498	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	544	625	784	960	1043	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	656	834	1009	1205	1242	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	715	856	1102	1316	1437	Middlesex county towns of Billerica town,

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	447	589	677	810	1127	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	438	517	654	828	853	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	676	732	845	1013	1202	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	483	578	732	875	1007	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	592	701	840	1004	1043	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	591	691	909	1097	1131	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire	471	529	610	835	859	Alford town, Becket town, Clarksburg town,

SCHEDULE B(1) - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 25

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	712	903	1075	1285	1324	Aquinnah town, Chilmark town, Edgartown town, Gosnold town, Oak Bluffs town, Tisbury town, West Tisbury town
Franklin	452	527	653	871	1052	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	470	555	702	839	945	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire	547	650	829	1065	1147	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Nantucket	832	1151	1278	1529	1574	Nantucket town
Worcester	386	531	595	710	912	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	644	713	840	1081	1113	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	406	455	555	679	871	Berrien
*Detroit, MI PMSA	606	670	805	962	992	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	483	510	612	758	782	Genesee
*Grand Rapids--Muskegon--Holland, MI MSA	512	548	658	849	894	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	432	482	575	715	736	Jackson
Kalamazoo--Battle Creek, MI MSA	445	489	595	768	796	Calhoun, Kalamazoo, Van Buren
Lansing--East Lansing, MI MSA	480	521	645	817	886	Clinton, Eaton, Ingham
Saginaw--Bay City--Midland, MI MSA	391	448	560	720	740	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	348	403	493	664	703	Alger	298	378	451	555	626
Alpena	361	410	457	631	698	Antrim	431	432	521	724	914
Arenac	369	389	464	621	687	Baraga	298	378	451	555	626

MICHIGAN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barry	360	454	555	800	880
Branch	412	440	579	694	714
Charlevoix	451	488	541	778	803
Chippewa	329	409	505	612	686
Crawford	348	404	504	665	704
Dickinson	306	372	471	568	774
Gladwin	369	389	464	621	687
Grand Traverse	544	545	683	894	922
Hillsdale	348	428	510	717	784
Huron	365	367	439	582	707
Iosco	369	391	452	657	682
Isabella	404	437	487	701	765
Keweenaw	312	373	452	553	657
Leelanau	532	533	646	807	830
Mackinac	329	409	506	610	665
Marquette	297	385	458	576	626
Mecosta	363	432	523	695	917
Missaukee	382	459	541	711	781
Montmorency	348	404	505	665	704
Oceana	359	416	496	600	640
Ontonagon	312	373	452	553	657
Oscoda	348	403	493	664	703
Presque Isle	348	403	493	664	703
St. Joseph	410	457	539	665	746
Schoolcraft	321	392	465	610	665
Tuscola	358	409	519	623	745

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Benzie	532	533	646	807	830
Cass	402	459	508	673	782
Cheboygan	348	404	499	670	704
Clare	346	359	472	636	655
Delta	314	374	453	596	632
Emmet	378	466	580	782	827
Gogebic	312	373	452	553	657
Gratiot	408	409	489	652	728
Houghton	322	377	453	589	675
Ionia	384	445	543	650	722
Iron	312	373	452	553	657
Kalkaska	427	464	515	625	645
Lake	377	412	492	644	775
Luce	321	392	465	610	665
Manistee	396	410	538	644	722
Mason	303	356	466	610	670
Menominee	359	360	432	570	760
Montcalm	383	444	508	686	707
Newaygo	423	447	510	690	710
Ogemaw	369	388	480	620	686
Osceola	380	381	458	627	790
Otsego	406	474	624	748	786
Roscommon	391	393	471	612	753
Sanilac	408	440	490	690	709
Shiawassee	355	437	544	749	835
Wexford	347	459	535	708	780

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	345	416	529	675	862	St. Louis
Fargo--Moorhead, ND--MN MSA	347	412	524	756	874	Clay
Grand Forks, ND--MN MSA	355	446	547	693	942	Polk
La Crosse, WI--MN MSA	351	411	541	718	882	Houston
*Minneapolis--St. Paul, MN--WI MSA	651	763	928	1229	1386	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
Rochester, MN MSA	518	567	745	993	1023	Olmsted
St. Cloud, MN MSA	419	462	553	782	908	Benton, Stearns

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aitkin	353	415	545	680	736
Beltrami	342	404	514	707	902
Blue Earth	402	503	581	836	1022
Carlton	339	435	521	623	641
Chippewa	367	399	479	573	591

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Becker	293	347	452	566	588
Big Stone	298	363	460	588	612
Brown	364	414	497	595	612
Cass	316	404	487	614	632
Clearwater	341	385	488	616	856

SCHEDULE B(1) - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 27

MINNESOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cook	316	404	487	614	632
Crow Wing	364	426	562	721	843
Douglas	348	414	521	755	826
Fillmore	339	408	509	664	833
Goodhue	394	462	607	773	836
Hubbard	341	385	488	616	856
Jackson	311	340	425	542	565
Kandiyohi	396	406	504	679	700
Koochiching	316	404	487	614	632
Lake	316	404	487	614	632
Le Sueur	437	451	543	756	780
Lyon	376	422	519	647	666
Mahnomen	341	385	488	616	856
Martin	339	340	409	594	612
Mille Lacs	414	426	561	695	772
Mower	316	370	472	586	604
Nicollet	456	468	550	721	744
Norman	316	378	481	600	716
Pennington	308	363	472	596	651
Pipestone	311	340	425	542	565
Red Lake	316	378	481	600	716
Renville	395	412	508	664	683
Rock	311	340	425	542	565
Sibley	395	412	508	664	683
Stevens	317	372	488	588	613
Todd	355	399	493	595	791
Wabasha	350	389	499	624	876
Waseca	353	415	545	652	681
Wilkin	298	363	460	588	612
Yellow Medicine	367	399	479	573	591

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cottonwood	311	340	425	542	565
Dodge	348	381	500	605	714
Faribault	311	340	425	542	565
Freeborn	314	368	484	577	761
Grant	298	363	460	588	612
Itasca	333	411	512	620	727
Kanabec	385	451	593	740	800
Kittson	316	378	481	600	716
Lac qui Parle	367	399	479	573	591
Lake of the Woods	341	385	488	616	856
Lincoln	367	399	479	573	591
McLeod	458	459	569	815	841
Marshall	316	378	481	600	716
Meeker	395	438	508	664	683
Morrison	329	391	506	605	888
Murray	311	340	425	542	565
Nobles	302	378	459	609	628
Otter Tail	313	372	480	585	603
Pine	394	427	552	721	744
Pope	298	363	460	588	612
Redwood	367	399	479	573	591
Rice	479	500	658	786	914
Roseau	318	378	490	600	715
Steele	382	464	586	737	961
Swift	298	363	460	588	612
Traverse	298	363	460	588	612
Wadena	355	399	493	595	791
Watonwan	311	340	425	542	565
Winona	359	424	553	764	970

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	474	502	592	794	817	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	377	434	515	750	774	Forrest, Lamar
Jackson, MS MSA	456	519	609	742	765	Hinds, Madison, Rankin
Memphis, TN--AR--MS MSA	515	559	622	831	857	DeSoto

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	304	421	467	560	802
Amite	329	369	411	491	566
Benton	403	451	500	600	616
Calhoun	323	333	394	528	661
Chickasaw	333	409	479	574	591
Claiborne	334	335	402	504	591

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcorn	329	355	396	550	696
Attala	323	333	394	528	661
Bolivar	359	406	467	560	821
Carroll	274	317	419	556	582
Choctaw	323	333	394	528	661
Clarke	367	408	469	614	635

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clay	325	326	392	571	589
Copiah	341	342	411	504	590
Franklin	329	369	411	491	566
Greene	319	342	421	550	566
Holmes	372	430	479	573	600
Issaquena	372	430	479	573	600
Jasper	338	365	430	517	550
Jefferson Davis	334	335	402	504	591
Kemper	367	408	469	614	635
Lauderdale	372	417	489	672	693
Leake	338	365	430	517	550
Leflore	277	325	427	567	667
Lowndes	386	396	464	674	695
Marshall	272	340	420	613	632
Montgomery	323	333	394	528	661
Newton	367	408	469	614	635
Oktibbeha	351	426	519	676	696
Pearl River	388	389	466	569	802
Pike	344	373	415	546	563
Prentiss	265	309	408	489	504
Scott	350	372	421	504	543
Simpson	347	366	419	502	725
Stone	411	412	494	641	774
Tallahatchie	274	317	419	556	582
Tippah	313	340	377	491	611
Tunica	377	454	581	698	856
Walthall	329	369	411	491	566
Washington	304	396	467	606	741
Webster	323	333	394	528	661
Winston	333	409	479	574	591
Yazoo	346	367	418	499	516

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Coahoma	376	389	513	613	901
Covington	334	335	402	504	591
George	411	412	494	641	774
Grenada	317	348	407	573	682
Humphreys	274	317	419	556	582
Itawamba	271	369	418	552	652
Jefferson	334	335	402	504	591
Jones	299	347	442	582	601
Lafayette	395	467	576	690	710
Lawrence	334	335	402	504	591
Lee	401	418	482	658	742
Lincoln	293	362	402	551	706
Marion	314	356	399	524	596
Monroe	343	366	414	518	554
Neshoba	286	386	442	526	773
Noxubee	372	386	449	615	656
Panola	272	377	420	503	580
Perry	319	342	421	550	566
Pontotoc	343	344	414	563	579
Quitman	360	385	454	544	682
Sharkey	372	430	479	573	600
Smith	338	365	430	517	550
Sunflower	292	359	402	573	591
Tate	346	401	446	625	783
Tishomingo	259	337	399	501	518
Union	299	416	461	552	668
Warren	449	493	550	657	677
Wayne	319	342	421	550	566
Wilkinson	329	369	411	491	566
Yalobusha	323	333	394	528	661

MISSOURI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	372	446	557	810	905	Boone
Joplin, MO MSA	323	388	494	629	647	Jasper, Newton
*Kansas City, MO--KS MSA	499	601	691	938	989	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	329	409	507	629	756	Andrew, Buchanan
*St. Louis, MO--IL MSA	545	594	741	969	1039	Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	342	405	520	748	875	Christian, Greene, Webster

SCHEDULE B(1) - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 29

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	327	380	501	658	727
Audrain	367	368	443	559	710
Barton	271	342	417	505	554
Benton	282	336	434	602	621
Butler	343	344	415	575	615
Callaway	385	389	492	672	692
Cape Girardeau	336	391	516	667	840
Carter	334	335	403	560	602
Chariton	354	387	500	627	700
Cole	349	387	502	730	852
Crawford	283	359	435	579	763
Dallas	264	343	406	554	572
DeKalb	360	361	452	559	692
Douglas	288	323	390	516	598
Gasconade	321	349	452	566	720
Grundy	360	361	449	559	692
Henry	327	380	501	601	619
Holt	360	361	449	559	692
Howell	298	342	433	537	760
Johnson	398	424	514	687	773
Laclede	360	361	439	574	753
Lewis	326	336	443	548	646
Livingston	348	349	443	592	775
Macon	329	330	407	487	524
Maries	322	350	430	567	721
Mercer	360	361	449	559	692
Mississippi	298	324	425	561	647
Monroe	298	348	459	590	607
Morgan	383	384	461	626	729
Nodaway	401	402	500	598	698
Osage	322	350	430	567	721
Pemiscot	279	327	428	538	554
Pettis	396	397	514	641	768
Pike	294	344	453	593	648
Pulaski	388	419	466	677	741
Ralls	298	348	459	590	607
Reynolds	334	335	403	560	602
St. Clair	282	336	434	602	621
St. Francois	393	395	475	663	690
Schuyler	326	336	443	548	646
Scott	377	378	473	590	697
Shelby	326	336	443	548	646
Stone	335	390	515	675	743
Taney	430	431	544	649	826
Vernon	316	376	455	637	657

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Atchison	360	361	449	559	692
Barry	285	359	437	570	589
Bates	298	351	458	643	664
Bollinger	328	372	489	625	723
Caldwell	360	361	449	559	692
Camden	414	420	516	752	773
Carroll	354	387	500	627	700
Cedar	282	336	434	602	621
Clark	326	336	443	548	646
Cooper	360	380	494	659	767
Dade	348	364	474	616	663
Daviess	360	361	449	559	692
Dent	322	350	430	567	721
Dunklin	307	334	396	506	565
Gentry	360	361	449	559	692
Harrison	360	361	449	559	692
Hickory	282	336	434	602	621
Howard	360	380	486	659	767
Iron	328	372	489	625	723
Knox	326	336	443	548	646
Lawrence	372	373	449	611	705
Linn	326	336	443	548	646
McDonald	339	340	426	606	626
Madison	328	372	489	625	723
Marion	298	347	458	596	613
Miller	359	360	430	574	598
Moniteau	298	348	459	555	740
Montgomery	298	348	459	590	607
New Madrid	294	338	413	551	567
Oregon	288	323	390	516	598
Ozark	288	323	390	516	598
Perry	337	367	481	576	846
Phelps	336	362	454	628	773
Polk	283	331	435	634	727
Putnam	326	336	443	548	646
Randolph	306	360	471	597	614
Ripley	334	335	403	560	602
Ste. Genevieve	328	372	489	625	723
Saline	300	351	462	599	703
Scotland	326	336	443	548	646
Shannon	288	323	390	516	598
Stoddard	314	326	405	552	597
Sullivan	326	336	443	548	646
Texas	295	311	374	515	593
Washington	322	375	421	554	618

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wayne	334	335	403	560	602
Wright	294	308	401	506	521
Worth	360	361	449	559	692

MONTANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	365	433	561	764	888	Yellowstone
Great Falls, MT MSA	333	401	514	695	837	Cascade
Missoula, MT MSA	429	494	624	809	968	Missoula

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	402	469	616	797	966
Blaine	319	388	492	656	749
Carbon	349	374	491	586	611
Chouteau	319	388	492	656	749
Daniels	350	363	431	581	612
Deer Lodge	358	411	522	706	728
Fergus	349	364	479	580	612
Gallatin	411	489	636	849	1114
Glacier	319	388	492	656	749
Granite	358	411	522	706	728
Jefferson	358	411	522	706	728
Lake	427	429	520	701	755
Liberty	319	388	492	656	749
McCone	350	363	431	581	612
Meagher	402	469	616	797	966
Musselshell	350	363	431	581	612
Petroleum	350	363	431	581	612
Pondera	319	388	492	656	749
Powell	358	411	522	706	728
Ravalli	408	445	571	748	885
Roosevelt	350	363	431	581	612
Sanders	348	427	534	739	828
Silver Bow	353	379	488	638	698
Sweet Grass	350	363	431	581	612
Toole	319	388	492	656	749
Valley	350	363	431	581	612
Wibaux	350	363	431	581	612
Big Horn	349	363	468	580	612
Broadwater	358	411	522	706	728
Carter	350	363	431	581	612
Custer	273	379	419	610	631
Dawson	350	363	431	581	612
Fallon	350	363	431	581	612
Flathead	363	446	560	792	971
Garfield	350	363	431	581	612
Golden Valley	350	363	431	581	612
Hill	294	362	452	652	692
Judith Basin	319	388	492	656	749
Lewis and Clark	387	443	553	803	829
Lincoln	348	427	534	739	828
Madison	402	469	616	797	966
Mineral	430	487	611	783	937
Park	383	447	587	702	928
Phillips	350	363	431	581	612
Powder River	350	363	431	581	612
Prairie	350	363	431	581	612
Richland	350	363	431	581	612
Rosebud	349	363	470	580	612
Sheridan	350	363	431	581	612
Stillwater	350	363	431	581	612
Teton	319	388	492	656	749
Treasure	350	363	431	581	612
Wheatland	350	363	431	581	612

NEBRASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	408	460	590	828	1010	Lancaster
Omaha, NE--IA MSA	456	523	650	878	904	Cass, Douglas, Sarpy, Washington
Sioux City, IA--NE MSA	381	445	585	736	758	Dakota

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NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	341	398	524	663	682
Arthur	349	403	462	610	629
Blaine	409	410	492	608	709
Box Butte	339	344	453	593	705
Brown	339	344	453	588	705
Burt	404	405	486	609	629
Cedar	404	405	486	609	629
Cherry	339	344	453	588	705
Clay	344	403	530	678	787
Cuming	404	405	486	609	629
Dawes	310	365	479	574	713
Deuel	339	344	453	588	705
Dodge	388	455	598	714	872
Fillmore	391	392	471	597	626
Frontier	349	403	462	610	629
Gage	408	409	491	599	617
Garfield	409	410	492	608	709
Grant	349	403	462	610	629
Hall	414	415	520	650	841
Harlan	344	403	530	678	787
Hitchcock	349	403	462	610	629
Hooker	349	403	462	610	629
Jefferson	391	392	471	597	626
Kearney	344	403	530	678	787
Keya Paha	339	344	453	588	705
Knox	404	405	486	609	629
Logan	349	403	462	610	629
McPherson	349	403	462	610	629
Merrick	409	410	492	608	709
Nance	404	405	486	609	629
Nuckolls	344	403	530	678	787
Pawnee	391	392	471	597	626
Phelps	344	403	530	678	787
Platte	401	402	482	703	724
Red Willow	293	382	424	617	636
Rock	339	344	453	588	705
Saunders	471	473	568	828	853
Seward	307	379	474	630	799
Sherman	409	410	492	608	709
Stanton	404	405	486	609	629
Thomas	349	403	462	610	629
Valley	409	410	492	608	709
Webster	344	403	530	678	787
York	346	409	535	649	780

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Antelope	404	405	486	609	629
Banner	339	344	453	588	705
Boone	404	405	486	609	629
Boyd	339	344	453	588	705
Buffalo	370	433	570	775	901
Butler	391	392	471	597	626
Chase	349	403	462	610	629
Cheyenne	339	344	453	588	705
Colfax	404	405	486	609	629
Custer	409	410	492	608	709
Dawson	423	459	511	622	641
Dixon	404	405	486	609	629
Dundy	349	403	462	610	629
Franklin	344	403	530	678	787
Furnas	349	403	462	610	629
Garden	339	344	453	588	705
Gosper	349	403	462	610	629
Greeley	409	410	492	608	709
Hamilton	409	410	492	608	709
Hayes	349	403	462	610	629
Holt	339	344	453	588	705
Howard	409	410	492	608	709
Johnson	391	392	471	597	626
Keith	349	403	462	610	629
Kimball	339	344	453	588	705
Lincoln	358	403	513	629	792
Loup	409	410	492	608	709
Madison	362	382	502	684	706
Morrill	339	344	453	588	705
Nemaha	391	392	471	597	626
Otoe	399	401	481	596	625
Perkins	349	403	462	610	629
Pierce	404	405	486	609	629
Polk	391	392	471	597	626
Richardson	391	392	471	597	626
Saline	433	457	522	638	659
Scotts Bluff	406	407	489	623	822
Sheridan	339	344	453	588	705
Sioux	339	344	453	588	705
Thayer	391	392	471	597	626
Thurston	404	405	486	609	629
Wayne	404	405	486	609	629
Wheeler	409	410	492	608	709

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	665	773	907	1234	1550	Clark, Nye
Reno, NV MSA	577	690	852	1241	1496	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	552	553	695	879	1033	Douglas	577	710	863	1201	1332
Elko	498	541	702	875	1126	Esmeralda	427	500	638	847	937
Eureka	427	500	638	847	937	Humboldt	436	511	671	803	827
Lander	427	500	638	847	937	Lincoln	427	500	638	847	937
Lyon	457	514	676	985	1015	Mineral	427	500	638	847	937
Pershing	427	500	638	847	937	Storey	519	618	763	1112	1283
White Pine	427	500	638	847	937	Carson	511	616	742	1081	1304

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	1025	1077	1266	1513	1676	Rockingham county towns of Seabrook town, South Hampton town
Lawrence, MA--NH PMSA	656	834	1009	1205	1242	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	715	856	1102	1316	1437	Hillsborough county towns of Pelham town
Manchester, NH PMSA	632	773	934	1116	1150	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	706	834	1038	1392	1510	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	634	745	930	1239	1407	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

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NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Belknap	455	560	699	923	1186	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	505	533	703	956	1174	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	559	597	748	902	1098	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	328	429	504	707	794	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	496	546	692	931	981	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,

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	582	591	776	1131	1363	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	500	593	765	939	1218	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	582	712	893	1180	1215	Deerfield town, Northwood town, Nottingham town
Strafford	539	621	777	1031	1265	Middleton town, New Durham town, Strafford town
Sullivan	422	511	651	882	953	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	669	702	845	1101	1173	Atlantic, Cape May
*Bergen--Passaic, NJ PMSA	906	990	1132	1428	1729	Bergen, Passaic
Jersey City, NJ PMSA	892	943	1100	1333	1435	Hudson
Middlesex--Somerset--Hunterdon, NJ PMSA	992	1029	1210	1518	1791	Hunterdon, Middlesex, Somerset
Monmouth--Ocean, NJ PMSA	749	866	1057	1377	1495	Monmouth, Ocean
*Newark, NJ PMSA	735	891	1020	1242	1403	Essex, Morris, Sussex, Union, Warren
*Philadelphia, PA--NJ PMSA	698	801	962	1153	1398	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	706	813	977	1168	1310	Mercer
Vineland--Millville--Bridgeton, NJ PMSA	644	646	814	989	1042	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	470	553	699	1017	1224	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	405	437	487	672	746	Dona Ana
Santa Fe, NM MSA	534	661	818	1038	1090	Los Alamos, Santa Fe

NEW MEXICO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	320	360	427	621	640
Cibola	333	359	400	581	631
Curry	367	380	441	597	776
Eddy	283	361	424	569	691
Guadalupe	431	437	520	653	681
Hidalgo	320	360	427	621	640
Lincoln	343	432	526	662	924
McKinley	348	409	538	643	833
Otero	334	395	437	639	769
Rio Arriba	393	400	473	612	679
San Juan	419	443	534	706	796
Sierra	284	353	438	640	770
Taos	523	568	629	753	776
Union	365	376	439	592	721

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Chaves	352	353	451	590	608
Colfax	390	417	469	592	616
De Baca	365	376	439	592	721
Grant	353	409	465	655	674
Harding	365	376	439	592	721
Lea	342	372	413	543	572
Luna	317	344	382	487	585
Mora	431	437	520	653	681
Quay	365	376	439	592	721
Roosevelt	339	348	409	567	701
San Miguel	369	398	490	651	756
Socorro	362	363	435	521	738
Torrance	320	360	427	621	640

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	541	559	679	813	876	Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie
Binghamton, NY MSA	436	438	524	684	802	Broome, Tioga
*Buffalo--Niagara Falls, NY MSA	538	542	648	806	899	Erie, Niagara
Dutchess County, NY PMSA	672	789	942	1177	1330	Dutchess
Elmira, NY MSA	478	479	575	739	770	Chemung
Glens Falls, NY MSA	454	480	604	762	858	Warren, Washington
Jamestown, NY MSA	426	428	513	662	723	Chautauqua
Nassau--Suffolk, NY PMSA	898	1037	1225	1625	1771	Nassau, Suffolk
New York, NY PMSA	846	915	1018	1252	1288	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Westchester County MSA**	908	1083	1259	1532	1872	Westchester
Newburgh, NY--PA PMSA	674	767	954	1143	1231	Orange
Rochester, NY MSA	511	561	687	824	878	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	507	508	610	784	853	Cayuga, Madison, Onondaga, Oswego
Utica--Rome, NY MSA	451	452	544	667	757	Herkimer, Oneida

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	422	424	508	633	778
Chenango	431	434	520	655	913
Columbia	532	543	640	773	824
Delaware	436	438	525	649	854
Franklin	420	421	503	646	715
Greene	459	496	604	785	808
Jefferson	479	480	577	744	781
Otsego	452	463	544	723	752
Schuyler	464	466	559	745	769
Steuben	455	456	548	703	776
Tompkins	585	602	705	853	885

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cattaraugus	428	429	516	678	778
Clinton	486	488	585	743	966
Cortland	464	465	568	722	886
Essex	458	459	551	733	797
Fulton	359	438	554	663	704
Hamilton	462	463	556	693	803
Lewis	426	428	513	642	716
St. Lawrence	427	428	515	652	712
Seneca	492	493	591	778	984
Sullivan	468	519	666	797	934
Ulster	566	614	735	931	1157

NEW YORK continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wyoming	442	454	533	776	847
Yates	453	459	545	706	727

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	460	537	600	816	1054	Buncombe, Madison
Charlotte--Gastonia--Rock Hill, NC--SC MSA	597	647	719	913	1000	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	476	509	574	820	965	Cumberland
Goldsboro, NC MSA	366	434	508	636	850	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	501	558	627	834	902	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph, Stokes, Yadkin
Greenville, NC MSA	420	439	545	790	815	Pitt
Hickory--Morganton--Lenoir, NC MSA	427	449	516	662	771	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	432	463	520	730	857	Onslow
*Norfolk--Virginia Beach--Newport News, VA--NC MSA	653	686	788	1087	1361	Currituck
Raleigh--Durham--Chapel Hill, NC MSA	574	701	779	995	1076	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	366	441	562	698	719	Edgecombe, Nash
Wilmington, NC MSA	496	553	673	951	979	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	334	392	449	589	607	Anson	361	388	434	610	644
Ashe	347	348	419	554	655	Avery	374	462	546	653	771
Beaufort	306	399	470	566	582	Bertie	313	397	457	547	564
Bladen	256	311	394	574	620	Camden	360	469	554	752	772
Carteret	446	447	537	782	942	Caswell	408	409	500	611	638
Cherokee	251	325	386	561	676	Chowan	360	469	554	752	772
Clay	396	398	477	626	729	Cleveland	433	435	523	688	773
Columbus	304	391	434	520	535	Craven	406	463	531	716	894
Dare	551	552	677	895	921	Duplin	341	369	411	520	536
Gates	360	469	554	752	772	Graham	396	398	477	626	729
Granville	449	450	541	675	803	Greene	364	365	438	619	639
Halifax	302	419	464	590	677	Harnett	415	451	500	675	878
Haywood	413	414	516	668	865	Henderson	371	457	572	754	838
Hertford	298	411	458	601	618	Hoke	439	477	528	723	881
Hyde	360	469	554	752	772	Iredell	489	493	590	782	1020
Jackson	444	460	547	718	741	Jones	409	442	529	732	931
Lee	357	488	551	677	967	Lenoir	365	367	482	576	827
McDowell	318	380	490	604	622	Macon	369	401	517	628	907
Martin	363	385	437	566	582	Mitchell	374	462	546	653	771
Montgomery	373	405	450	561	790	Moore	447	448	564	811	989
Northampton	303	409	464	590	607	Pamlico	313	398	468	561	577
Pasquotank	356	460	547	794	818	Pender	433	435	523	688	707
Perquimans	360	469	554	752	772	Person	426	427	515	615	705
Polk	410	411	504	632	650	Richmond	328	411	456	573	591
Robeson	335	405	470	564	628	Rockingham	398	421	499	620	639

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NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Rutherford	400	402	492	589	606
Scotland	403	404	512	622	775
Surry	333	401	446	596	613
Transylvania	320	445	493	622	656
Vance	403	404	486	582	600
Washington	339	457	521	625	642
Wilkes	334	382	456	585	609
Yancey	367	368	443	529	545
Sampson	340	347	409	568	720
Stanly	379	409	500	681	741
Swain	396	398	477	626	729
Tyrrell	360	469	554	752	772
Warren	412	413	495	605	622
Watauga	404	494	621	755	975
Wilson	459	460	558	668	708

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	391	409	509	737	758	Burleigh, Morton
Fargo--Moorhead, ND--MN MSA	347	412	524	756	874	Cass
Grand Forks, ND--MN MSA	355	446	547	693	942	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	296	344	422	551	573
Benson	345	347	416	573	731
Bottineau	344	390	485	683	744
Burke	344	390	485	683	744
Dickey	345	347	416	573	731
Dunn	296	344	422	551	573
Emmons	344	390	485	683	744
Golden Valley	296	344	422	551	573
Griggs	345	347	416	573	731
Kidder	344	390	485	683	744
Logan	344	390	485	683	744
McIntosh	344	390	485	683	744
McLean	344	390	485	683	744
Mountrail	344	390	485	683	744
Oliver	296	344	422	551	573
Pierce	344	390	485	683	744
Ransom	345	347	416	573	731
Richland	316	380	481	625	741
Sargent	345	347	416	573	731
Sioux	296	344	422	551	573
Stark	297	361	418	608	735
Stutsman	352	353	423	586	743
Traill	362	449	535	717	774
Ward	304	378	465	642	762
Williams	265	323	407	536	568
Barnes	345	347	416	573	731
Billings	296	344	422	551	573
Bowman	296	344	422	551	573
Cavalier	345	347	416	573	731
Divide	296	344	422	551	573
Eddy	345	347	416	573	731
Foster	345	347	416	573	731
Grant	296	344	422	551	573
Hettinger	296	344	422	551	573
LaMoure	345	347	416	573	731
McHenry	344	390	485	683	744
McKenzie	296	344	422	551	573
Mercer	296	344	422	551	573
Nelson	362	449	535	717	774
Pembina	362	449	535	717	774
Ramsey	345	355	467	573	736
Renville	344	390	485	683	744
Rolette	344	390	485	683	744
Sheridan	344	390	485	683	744
Slope	296	344	422	551	573
Steele	362	449	535	717	774
Towner	345	347	416	573	731
Walsh	362	449	535	717	774
Wells	345	347	416	573	731

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	455	532	681	866	893	Portage, Summit

OHIO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Brown County MSA**	382	400	528	681	821	Brown
Canton--Massillon, OH MSA	399	443	559	706	748	Carroll, Stark
Cincinnati, OH--KY--IN PMSA	459	538	706	978	1016	Clermont, Hamilton, Warren
*Cleveland--Lorain--Elyria, OH PMSA	508	578	703	916	980	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	459	534	675	851	930	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton--Springfield, OH MSA	426	486	595	797	965	Clark, Greene, Miami, Montgomery
Hamilton--Middletown, OH PMSA	426	542	655	812	848	Butler
Huntington--Ashland, WV--KY--OH MSA	342	404	483	597	617	Lawrence
Lima, OH MSA	399	404	511	632	649	Allen, Auglaize
Mansfield, OH MSA	329	407	507	652	687	Crawford, Richland
Parkersburg--Marietta, WV--OH MSA	351	379	488	644	723	Washington
Steubenville--Weirton, OH--WV MSA	305	374	461	576	625	Jefferson
Toledo, OH MSA	416	463	571	742	812	Fulton, Lucas, Wood
Wheeling, WV--OH MSA	299	360	460	578	675	Belmont
Youngstown--Warren, OH MSA	387	434	523	655	722	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	338	351	416	551	582	Ashland	353	421	545	703	723
Athens	415	451	500	643	669	Champaign	348	425	536	661	711
Clinton	387	478	530	772	907	Coshocton	325	392	467	604	689
Darke	316	404	487	648	667	Defiance	377	432	524	661	805
Erie	369	445	568	741	780	Fayette	401	461	563	678	904
Gallia	290	385	427	543	713	Guernsey	320	395	455	601	618
Hancock	374	437	567	771	819	Hardin	380	413	458	574	752
Harrison	324	387	486	622	640	Henry	341	418	506	651	671
Highland	414	415	499	672	694	Hocking	296	412	457	652	671
Holmes	383	384	461	608	645	Huron	367	444	543	753	829
Jackson	422	424	508	609	628	Knox	441	444	533	682	782
Logan	454	459	546	687	709	Marion	361	455	556	705	858
Meigs	388	421	467	640	659	Mercer	308	400	472	636	655
Monroe	383	384	461	566	633	Morgan	383	384	461	566	633
Morrow	358	424	521	675	797	Muskingum	389	399	480	615	775
Noble	383	384	461	566	633	Ottawa	380	452	584	698	718
Paulding	349	382	475	620	639	Perry	414	415	499	624	642
Pike	325	418	500	599	623	Preble	444	458	556	720	746
Putnam	350	387	510	633	660	Ross	375	425	496	613	704
Sandusky	444	454	534	664	725	Scioto	348	364	435	571	683
Seneca	369	387	500	628	647	Shelby	416	425	553	690	764
Tuscarawas	335	391	516	653	673	Union	562	563	676	809	834
Van Wert	314	376	483	588	607	Vinton	318	393	436	597	743
Wayne	372	463	570	681	745	Williams	414	420	521	690	762
Wyandot	379	380	456	625	644						

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	361	380	457	633	651	Garfield

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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	329	373	473	648	688	Sequoyah
Lawton, OK MSA	355	383	482	704	847	Comanche
*Oklahoma City, OK MSA	439	476	581	801	915	Canadian, Cleveland, Logan, McClain, Oklahoma, Pottawatomie
*Tulsa, OK MSA	469	509	640	857	930	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	332	333	398	475	489	Alfalfa	335	346	402	546	563
Atoka	307	344	424	551	643	Beaver	335	346	402	546	563
Beckham	332	359	399	522	700	Blaine	335	346	402	546	563
Bryan	346	347	426	551	656	Caddo	262	290	381	456	570
Carter	387	413	467	581	622	Cherokee	354	381	441	554	637
Choctaw	277	300	335	475	489	Cimarron	335	346	402	546	563
Coal	307	344	424	551	643	Cotton	324	360	454	657	769
Craig	296	346	455	545	800	Custer	318	319	412	589	607
Delaware	306	344	426	572	590	Dewey	335	346	402	546	563
Ellis	335	346	402	546	563	Garvin	278	325	430	565	689
Grady	312	348	433	586	673	Grant	335	346	402	546	563
Greer	313	325	404	543	569	Harmon	313	325	404	543	569
Harper	335	346	402	546	563	Haskell	258	310	397	500	548
Hughes	354	403	481	613	630	Jackson	301	391	439	616	635
Jefferson	324	360	454	657	769	Johnston	307	344	424	551	643
Kay	297	368	457	631	652	Kingfisher	335	346	402	565	581
Kiowa	313	325	404	543	569	Latimer	258	310	397	500	548
Le Flore	277	323	410	507	621	Lincoln	350	351	423	557	575
Love	307	344	424	551	643	McCurtain	246	287	379	492	508
McIntosh	324	367	439	549	623	Major	335	346	402	546	563
Marshall	307	344	424	551	643	Mayes	283	393	436	546	624
Murray	334	335	401	539	690	Muskogee	332	391	464	587	648
Noble	321	373	449	624	643	Nowata	317	348	432	576	650
Okfuskee	354	403	481	613	630	Okmulgee	291	327	431	585	621
Ottawa	333	334	399	544	561	Pawnee	370	381	443	574	591
Payne	390	447	548	776	799	Pittsburg	299	349	460	579	706
Pontotoc	298	333	424	578	596	Pushmataha	258	310	397	500	548
Roger Mills	313	325	404	543	569	Seminole	274	338	422	507	522
Stephens	277	321	423	578	596	Texas	341	408	460	582	696
Tillman	324	360	454	657	769	Washington	362	363	442	619	681
Washita	313	325	404	543	569	Woods	296	317	399	580	598
Woodward	304	355	438	546	563						

OREGON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Corvallis, OR MSA	447	542	675	981	1128	Benton
Eugene--Springfield, OR MSA	447	543	687	961	1070	Lane
Medford--Ashland, OR MSA	440	523	657	956	984	Jackson

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	535	620	717	1044	1257	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR PMSA	464	515	616	895	1080	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	345	402	530	771	794	Clatsop	392	487	602	871	898
Coos	376	456	578	767	883	Crook	372	478	572	774	906
Curry	425	489	577	843	1017	Deschutes	472	549	654	953	982
Douglas	367	438	565	766	948	Gilliam	399	467	564	764	894
Grant	399	467	564	764	894	Harney	357	416	523	723	769
Hood River	402	497	619	881	909	Jefferson	445	474	537	781	879
Josephine	431	494	597	849	942	Klamath	355	417	531	743	825
Lake	357	416	523	723	769	Lincoln	445	508	648	898	1014
Linn	425	515	642	885	1096	Malheur	378	431	525	759	781
Morrow	399	467	564	764	894	Sherman	399	467	564	764	894
Tillamook	410	490	630	881	907	Umatilla	372	424	542	761	849
Union	355	413	545	795	818	Wallowa	352	410	541	774	832
Wasco	411	460	573	814	1008	Wheeler	399	467	564	764	894

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	462	563	671	873	947	Carbon, Lehigh, Northampton
Altoona, PA MSA	375	411	497	651	672	Blair
Erie, PA MSA	372	420	542	648	737	Erie
Harrisburg--Lebanon--Carlisle, PA MSA	441	514	643	821	861	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	345	351	428	536	612	Cambria, Somerset
Lancaster, PA MSA	440	522	643	816	857	Lancaster
Newburgh, NY--PA PMSA	674	767	954	1143	1231	Pike
*Philadelphia, PA--NJ PMSA	698	801	962	1153	1398	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA MSA	484	531	639	798	853	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland
Reading, PA MSA	446	498	614	821	847	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	403	473	568	721	780	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	415	434	529	648	712	Mercer
State College, PA MSA	516	575	677	809	834	Centre
Williamsport, PA MSA	365	419	505	663	682	Lycoming
York, PA MSA	420	482	612	739	766	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	442	483	578	778	863	Armstrong	371	403	446	571	749
Bedford	356	404	467	558	741	Bradford	306	410	470	588	720
Cameron	393	408	472	626	673	Clarion	358	389	431	550	575
Clearfield	330	364	433	621	732	Clinton	425	426	513	614	631
Crawford	375	416	471	625	714	Elk	383	400	460	596	721
Forest	362	386	435	565	581	Franklin	366	416	525	691	847

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	306	390	459	566	662	Greene	387	412	466	557	573
Huntingdon	294	364	452	584	601	Indiana	419	436	504	602	658
Jefferson	300	371	441	584	602	Juniata	363	393	473	643	663
Lawrence	342	446	525	628	737	McKean	395	415	474	635	683
Mifflin	323	374	459	596	746	Monroe	483	595	744	950	1063
Montour	421	483	556	665	686	Northumberland	316	412	460	570	590
Potter	389	422	468	620	638	Schuylkill	305	398	458	572	629
Snyder	328	430	506	633	683	Sullivan	311	417	478	599	713
Susquehanna	381	415	486	584	644	Tioga	404	443	493	648	692
Union	452	471	544	715	769	Venango	348	380	453	572	649
Warren	299	384	460	597	632	Wayne	458	460	578	722	814

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	568	668	774	926	1035	Washington county towns of Hopkinton town, Westerly town
Providence--Fall River--Warwick, RI--MA MSA	676	732	845	1013	1202	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	597	729	901	1224	1581	Middletown town, Newport city, Portsmouth town
Washington	533	646	802	1020	1177	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	446	487	548	740	777	Aiken, Edgefield
Charleston--North Charleston, SC MSA	514	569	644	839	977	Berkeley, Charleston, Dorchester

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	597	647	719	913	1000	York
Columbia, SC MSA	507	561	625	797	822	Lexington, Richland
Florence, SC MSA	370	427	489	589	813	Florence
Greenville--Spartanburg--Anderson, SC MSA	459	502	562	727	748	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	518	569	665	795	963	Horry
Sumter, SC MSA	402	437	484	622	658	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	285	396	440	534	550	Allendale	356	385	428	531	687
Bamberg	323	324	389	519	534	Barnwell	366	385	442	532	688
Beaufort	551	663	750	914	971	Calhoun	356	385	428	531	687
Chester	401	402	482	576	612	Chesterfield	309	385	437	522	767
Clarendon	407	408	490	587	669	Colleton	276	344	425	601	617
Darlington	274	351	422	507	546	Dillon	332	338	400	500	549
Fairfield	390	422	468	603	702	Georgetown	458	459	553	716	865
Greenwood	411	430	494	717	739	Hampton	350	356	421	519	589
Jasper	429	466	519	619	702	Kershaw	314	395	486	611	709
Lancaster	316	399	467	642	707	Laurens	413	449	497	628	733
Lee	315	386	461	567	710	McCormick	392	411	472	653	674
Marion	351	352	425	516	530	Marlboro	327	328	394	497	589
Newberry	373	406	451	573	706	Oconee	306	358	470	583	827
Orangeburg	364	394	438	544	674	Saluda	392	411	472	653	674
Union	353	354	425	587	659	Williamsburg	407	408	490	587	669

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	408	477	609	804	827	Pennington
Sioux Falls, SD MSA	454	475	607	793	919	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	303	355	467	598	623	Beadle	380	381	457	665	754
Bennett	352	366	467	625	695	Bon Homme	303	355	467	598	623
Brookings	309	388	477	673	838	Brown	347	372	490	622	739
Brule	303	355	467	598	623	Buffalo	303	355	467	598	623
Butte	352	366	467	625	695	Campbell	341	357	469	619	736
Charles Mix	303	355	467	598	623	Clark	310	369	474	641	756
Clay	362	385	506	698	888	Codington	334	390	513	663	757
Corson	352	366	467	625	695	Custer	352	366	467	625	695
Davison	324	380	499	640	688	Day	341	357	469	619	736
Deuel	310	369	474	641	756	Dewey	352	366	467	625	695
Douglas	303	355	467	598	623	Edmunds	341	357	469	619	736
Fall River	351	366	481	624	694	Faulk	341	357	469	619	736
Grant	310	369	474	641	756	Gregory	303	355	467	598	623

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SOUTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Haakon	352	366	467	625	695
Hand	341	357	469	619	736
Harding	352	366	467	625	695
Hutchinson	303	355	467	598	623
Jackson	352	366	467	625	695
Jones	352	366	467	625	695
Lake	310	369	474	641	756
Lyman	303	355	467	598	623
McPherson	341	357	469	619	736
Meade	314	375	485	705	787
Miner	310	369	474	641	756
Perkins	352	366	467	625	695
Roberts	341	357	469	619	736
Shannon	352	366	467	625	695
Stanley	303	355	467	598	623
Todd	352	366	467	625	695
Turner	379	402	504	692	745
Walworth	341	357	469	619	736
Ziebach	352	366	467	625	695

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hamlin	310	369	474	641	756
Hanson	303	355	467	598	623
Hughes	316	396	489	613	633
Hyde	303	355	467	598	623
Jerauld	341	357	469	619	736
Kingsbury	310	369	474	641	756
Lawrence	335	407	501	698	745
McCook	310	369	474	641	756
Marshall	341	357	469	619	736
Mellette	352	366	467	625	695
Moody	310	369	474	641	756
Potter	352	366	467	625	695
Sanborn	303	355	467	598	623
Spink	341	357	469	619	736
Sully	303	355	467	598	623
Tripp	303	355	467	598	623
Union	388	453	597	712	744
Yankton	324	384	499	654	672

TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN--GA MSA	454	483	569	701	830	Hamilton, Marion
Clarksville--Hopkinsville, TN--KY MSA	461	473	557	797	830	Montgomery
Jackson, TN MSA	418	456	576	771	792	Chester, Madison
Johnson City--Kingsport--Bristol, TN--VA MSA	334	384	476	616	750	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	400	461	553	733	771	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN--AR--MS MSA	515	559	622	831	857	Fayette, Shelby, Tipton
Nashville, TN MSA	524	601	697	910	937	Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	364	446	560	701	722
Bledsoe	272	341	416	546	563
Campbell	352	353	424	546	650
Carroll	366	367	442	545	609
Clay	356	357	440	571	588
Coffee	399	400	480	651	711
Cumberland	370	371	447	634	784
DeKalb	352	353	424	612	632
Fentress	356	357	440	571	588
Gibson	358	366	437	549	607
Grainger	364	365	439	579	635
Grundy	272	341	416	546	563
Hancock	344	345	415	531	639
Hardin	292	326	399	529	545

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Benton	347	348	440	544	597
Bradley	392	401	519	651	824
Cannon	356	357	440	571	588
Claiborne	269	343	414	554	621
Cocke	264	326	405	485	661
Crockett	339	368	408	532	549
Decatur	315	346	421	541	616
Dyer	302	355	465	620	677
Franklin	307	369	474	689	830
Giles	315	370	488	587	604
Greene	285	359	439	595	611
Hamblen	383	385	468	630	648
Hardeman	292	362	404	547	709
Haywood	375	388	508	607	667

TENNESSEE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Henderson	313	415	484	577	595
Hickman	299	416	461	672	693
Humphreys	340	368	409	583	602
Jefferson	393	402	474	620	814
Lake	329	368	443	575	592
Lawrence	296	332	430	532	607
Lincoln	369	370	445	544	560
McNairy	256	301	394	569	586
Marshall	361	384	503	605	759
Meigs	272	341	416	546	563
Moore	391	392	469	619	639
Obion	299	361	436	575	606
Perry	299	348	449	572	589
Polk	382	395	505	620	772
Rhea	269	332	415	551	567
Scott	313	319	377	499	664
Smith	384	385	461	615	635
Trousdale	356	378	499	599	616
Warren	361	365	470	630	749
Weakley	312	384	430	629	758

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Henry	292	342	450	538	655
Houston	347	348	440	544	597
Jackson	356	357	440	571	588
Johnson	287	357	443	594	611
Lauderdale	393	394	474	576	595
Lewis	299	348	449	572	589
McMinn	394	395	475	568	757
Macon	290	353	446	531	590
Maury	386	482	594	756	779
Monroe	353	354	449	537	685
Morgan	362	363	439	549	640
Overton	264	332	405	495	509
Pickett	356	357	440	571	588
Putnam	372	373	465	669	718
Roane	391	404	469	627	644
Sequatchie	272	341	416	546	563
Stewart	293	382	451	615	634
Van Buren	356	357	440	571	588
Wayne	299	348	449	572	589
White	317	322	423	598	614

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	386	410	522	683	861	Taylor
Amarillo, TX MSA	397	430	539	743	834	Potter, Randall
*Austin--San Marcos, TX MSA	656	747	912	1240	1435	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont--Port Arthur, TX MSA	413	463	554	687	712	Hardin, Jefferson, Orange
Brazoria, TX PMSA	492	548	630	869	933	Brazoria
Brownsville--Harlingen--San Benito, TX MSA	362	418	479	592	669	Cameron
Bryan--College Station, TX MSA	484	550	674	876	903	Brazos
Corpus Christi, TX MSA	513	526	663	903	974	Nueces, San Patricio
*Dallas, TX PMSA	633	713	868	1147	1412	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	429	460	548	786	932	El Paso
*Fort Worth--Arlington, TX PMSA	558	597	732	995	1125	Hood, Johnson, Parker, Tarrant
Galveston--Texas City, TX PMSA	518	599	730	930	1000	Galveston
Henderson County MSA**	413	427	562	737	760	Henderson
*Houston, TX PMSA	589	657	801	1071	1347	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen--Temple, TX MSA	420	463	590	858	1036	Bell, Coryell
Laredo, TX MSA	408	447	535	699	916	Webb
Longview--Marshall, TX MSA	428	452	521	697	717	Gregg, Harrison, Upshur
Lubbock, TX MSA	375	458	578	824	848	Lubbock
McAllen--Edinburg--Mission, TX MSA	370	407	480	576	661	Hidalgo
Odessa--Midland, TX MSA	352	380	501	730	811	Ector, Midland
San Angelo, TX MSA	368	424	540	775	844	Tom Green
*San Antonio, TX MSA	519	574	716	957	1139	Bexar, Comal, Guadalupe, Wilson

SCHEDULE B(1) - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 45

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	476	501	589	774	895	Grayson
Texarkana, TX--Texarkana, AR MSA	410	414	510	622	677	Bowie
Tyler, TX MSA	433	509	573	785	858	Smith
Victoria, TX MSA	408	456	587	726	837	Victoria
Waco, TX MSA	472	473	588	736	760	McLennan
Wichita Falls, TX MSA	425	448	538	749	771	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	420	440	507	667	875	Andrews	318	339	383	533	570
Angelina	401	457	511	661	682	Aransas	352	437	520	758	781
Armstrong	347	349	431	574	592	Atascosa	304	354	467	590	607
Austin	467	468	563	747	771	Bailey	313	360	419	545	691
Bandera	377	463	563	713	848	Baylor	307	364	453	576	685
Bee	391	392	470	631	707	Blanco	374	402	508	667	764
Borden	356	357	431	556	574	Bosque	386	387	465	565	677
Brewster	334	349	459	549	570	Briscoe	347	349	431	574	592
Brooks	317	344	382	556	619	Brown	374	406	512	651	747
Burleson	417	458	510	664	684	Burnet	381	446	586	737	758
Calhoun	335	396	508	640	857	Callahan	380	408	483	615	642
Camp	394	395	485	662	683	Carson	347	349	431	574	592
Cass	262	362	402	552	650	Castro	347	349	431	574	592
Cherokee	374	410	460	615	640	Childress	347	349	431	574	592
Clay	307	364	453	576	685	Cochran	313	360	419	545	691
Coke	367	421	537	773	842	Coleman	374	402	508	667	764
Collingsworth	347	349	431	574	592	Colorado	366	404	458	605	622
Comanche	380	408	483	615	642	Concho	356	357	431	556	574
Cooke	432	433	546	674	694	Cottle	307	364	453	576	685
Crane	318	339	383	491	570	Crockett	356	357	431	556	574
Crosby	313	360	419	545	691	Culberson	318	339	383	491	570
Dallam	347	385	508	607	623	Dawson	356	357	431	556	574
Deaf Smith	258	329	397	577	657	Delta	348	404	488	598	719
DeWitt	324	336	438	572	619	Dickens	313	360	419	545	691
Dimmit	361	362	440	599	710	Donley	347	349	431	574	592
Duval	322	405	467	622	662	Eastland	380	408	483	615	642
Edwards	361	362	440	599	710	Erath	379	411	513	626	645
Falls	309	422	475	606	629	Fannin	408	411	490	611	629
Fayette	389	441	534	663	683	Fisher	332	333	430	615	668
Floyd	313	360	419	545	691	Foard	307	364	453	576	685
Franklin	348	404	488	598	719	Freestone	309	422	475	621	640
Frio	377	463	563	713	848	Gaines	318	339	383	497	570
Garza	313	360	419	545	691	Gillespie	397	464	610	845	870
Glasscock	356	357	431	556	574	Goliad	324	334	437	572	619
Gonzales	270	308	394	573	590	Gray	354	355	458	575	593
Grimes	417	458	510	664	684	Hale	305	386	454	556	621
Hall	347	349	431	574	592	Hamilton	374	402	508	667	764
Hansford	347	349	431	574	592	Hardeman	307	364	453	576	685

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hartley	347	349	431	574	592
Hemphill	347	349	431	574	592
Hockley	349	371	448	622	641
Houston	452	485	544	651	671
Hudspeth	318	339	383	491	570
Irion	356	357	431	556	574
Jackson	300	388	461	562	811
Jeff Davis	318	339	383	491	570
Jim Wells	299	402	447	594	613
Karnes	324	334	437	572	619
Kenedy	317	344	382	556	619
Kerr	472	511	575	742	765
King	313	360	419	545	691
Kleberg	402	430	483	705	850
Lamar	352	408	512	645	721
Lampasas	299	381	460	671	786
Lavaca	366	404	458	605	622
Leon	417	458	510	664	684
Lipscomb	347	349	431	574	592
Llano	485	488	642	768	791
Lynn	313	360	419	545	691
McMullen	322	405	467	622	662
Marion	394	395	485	662	683
Mason	356	357	431	556	574
Maverick	333	334	400	581	599
Menard	356	357	431	556	574
Mills	374	402	508	667	764
Montague	356	455	507	640	889
Morris	348	404	488	598	719
Nacogdoches	380	476	561	670	918
Newton	351	352	424	551	743
Ochiltree	347	349	431	602	620
Palo Pinto	397	398	493	681	700
Parmer	347	349	431	574	592
Polk	379	384	456	546	562
Rains	394	395	491	662	682
Real	361	362	440	599	710
Reeves	318	339	383	491	570
Roberts	347	349	431	574	592
Runnels	356	357	431	556	574
Sabine	351	352	424	551	743
San Jacinto	452	485	544	651	671
Schleicher	356	357	431	556	574
Shackelford	332	333	430	615	668
Sherman	347	349	431	574	592

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Haskell	332	333	430	615	668
Hill	299	414	459	650	709
Hopkins	350	404	493	625	865
Howard	359	362	433	608	625
Hutchinson	392	393	471	564	701
Jack	307	364	453	576	685
Jasper	379	380	456	564	652
Jim Hogg	317	344	382	556	619
Jones	332	333	430	615	668
Kendall	638	639	769	1120	1350
Kent	332	333	430	615	668
Kimble	356	357	431	556	574
Kinney	361	362	440	599	710
Knox	307	364	453	576	685
Lamb	313	360	419	545	691
La Salle	361	362	440	599	710
Lee	376	428	475	650	670
Limestone	300	417	461	590	611
Live Oak	322	405	467	622	662
Loving	318	339	383	491	570
McCulloch	377	378	454	661	682
Madison	417	458	510	664	684
Martin	356	357	431	556	574
Matagorda	306	402	470	685	826
Medina	414	460	541	647	787
Milam	299	369	459	594	631
Mitchell	332	333	430	615	668
Moore	300	369	425	619	637
Motley	313	360	419	545	691
Navarro	439	447	540	656	677
Nolan	322	323	415	535	727
Oldham	347	349	431	574	592
Panola	337	365	405	493	711
Pecos	335	366	406	492	571
Presidio	318	339	383	491	570
Reagan	356	357	431	556	574
Red River	348	404	488	598	719
Refugio	322	405	467	622	662
Robertson	417	458	510	664	684
Rusk	402	403	483	578	595
San Augustine	351	352	424	551	743
San Saba	374	402	508	667	764
Scurry	277	328	420	611	671
Shelby	308	309	371	533	650
Somervell	380	408	483	615	642

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	268	292	323	471	569	Stephens	332	339	446	614	667
Sterling	356	357	431	556	574	Stonewall	332	333	430	615	668
Sutton	356	357	431	556	574	Swisher	347	349	431	574	592
Terrell	318	339	383	491	570	Terry	313	360	420	552	691
Throckmorton	332	333	430	615	668	Titus	367	435	516	620	906
Trinity	452	485	544	651	671	Tyler	380	381	458	590	764
Upton	356	357	431	556	574	Uvalde	304	414	466	607	817
Val Verde	334	400	472	587	684	Van Zandt	415	417	510	713	734
Walker	466	498	602	775	1003	Ward	335	339	403	492	571
Washington	443	504	558	783	808	Wharton	365	410	455	602	620
Wheeler	347	349	431	574	592	Wilbarger	281	335	433	556	620
Willacy	317	344	382	556	619	Winkler	318	339	383	491	570
Wise	450	451	542	662	736	Wood	350	353	466	679	817
Yoakum	313	360	419	545	691	Young	305	355	468	594	691
Zapata	317	344	382	556	619	Zavala	361	362	440	599	710

UTAH

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kane County MSA**	467	468	572	810	861	Kane
Provo--Orem, UT MSA	492	541	632	919	1108	Utah
*Salt Lake City--Ogden, UT MSA	570	634	747	1052	1225	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	467	468	572	810	862	Box Elder	362	444	559	739	860
Cache	427	460	577	780	968	Carbon	415	416	500	657	771
Daggett	431	468	519	670	912	Duchesne	431	468	519	670	912
Emery	431	468	519	670	912	Garfield	467	468	572	810	862
Grand	432	471	522	670	916	Iron	427	451	519	756	912
Juab	467	468	572	810	862	Millard	467	468	572	810	862
Morgan	431	468	519	670	912	Piute	467	468	572	810	862
Rich	435	462	578	779	943	San Juan	431	468	519	670	912
Sanpete	467	468	572	810	862	Sevier	467	468	572	810	862
Summit	617	857	952	1333	1670	Tooele	458	513	610	771	1069
Uintah	371	403	447	587	660	Wasatch	483	565	744	889	1068
Washington	488	512	608	884	994	Wayne	467	468	572	810	862

VERMONT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington, VT MSA	579	640	810	1040	1272	Chittenden county towns of Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town,

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	453	567	682	897	1196	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	452	566	659	859	1009	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	427	444	557	705	730	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	570	630	792	1013	1134	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Essex	440	494	600	765	897	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	570	630	792	1013	1134	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin town, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle	570	630	792	1013	1134	Alburg town, Isle La Motte town, North Hero town
Lamoille	446	536	624	869	1096	Belvidere town, Cambridge town, Eden town, Elmore town, Hyde Park town, Johnson town, Morristown town, Stowe town, Waterville town, Wolcott town
Orange	475	537	625	870	897	Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town, Fairlee town, Newbury town, Orange town,

SCHEDULE B(1) - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 49

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	321	443	495	625	786	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	408	534	621	821	1051	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	448	524	656	886	992	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	531	553	727	878	906	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	500	560	659	897	1067	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	520	629	744	962	1063	Albemarle, Fluvanna, Greene,

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**	843	881	1016	1214	1660	Clarke
Culpeper County MSA**	578	588	696	900	956	Culpeper
Danville, VA MSA	330	379	489	610	655	Pittsylvania, Danville city
Johnson City--Kingsport--Bristol, TN--VA MSA	334	384	476	616	750	Scott, Washington, Bristol city
King George County MSA**	583	584	702	1021	1051	King George
Lynchburg, VA MSA	428	431	520	660	729	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
*Norfolk--Virginia Beach--Newport News, VA--NC MSA	653	686	788	1087	1361	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	668	721	810	1086	1301	Charles, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, New Kent, Powhatan, Prince George, Colonial Heights city, Hopewell city, Petersburg city, Richmond city
Roanoke, VA MSA	416	449	586	788	813	Botetourt, Roanoke, Roanoke city, Salem city
Warren County MSA**	435	506	630	886	913	Warren
*Washington, DC--MD--VA--WV PMSA	915	1045	1187	1537	2000	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	321	439	494	600	739	Alleghany	299	383	460	559	583
Amelia	376	406	452	581	735	Appomattox	391	413	469	581	736
Augusta	409	421	549	785	903	Bath	401	417	518	715	863
Bland	363	376	436	556	618	Brunswick	403	416	485	605	837
Buchanan	363	376	436	556	618	Buckingham	376	406	452	581	735
Caroline	387	464	595	852	876	Carroll	364	395	438	525	584
Charlotte	376	406	452	581	735	Craig	401	417	518	715	863
Cumberland	376	406	452	581	735	Dickenson	338	362	406	530	545
Essex	377	465	573	780	804	Floyd	430	468	519	722	914
Franklin	294	352	453	542	577	Frederick	439	490	647	905	931
Giles	284	368	436	556	767	Grayson	363	376	436	556	618
Greensville	404	438	486	587	729	Halifax	275	382	423	568	743
Henry	338	352	439	563	645	Highland	401	417	518	715	863
King and Queen	377	464	565	688	709	King William	377	464	565	691	711
Lancaster	377	464	565	695	716	Lee	250	302	386	496	525
Louisa	469	532	606	725	746	Lunenburg	403	416	485	605	837
Madison	414	462	558	772	797	Mecklenburg	307	383	472	579	772
Middlesex	377	464	565	688	709	Montgomery	456	499	559	767	982
Nelson	401	417	518	715	863	Northampton	377	464	565	688	709
Northumberland	377	464	565	688	709	Nottoway	376	406	452	642	735
Orange	376	517	576	838	1011	Page	318	371	487	628	647
Patrick	316	344	381	472	486	Prince Edward	455	456	548	656	878
Pulaski	333	352	439	629	676	Rappahannock	414	462	558	772	797

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Richmond	377	464	565	688	709
Rockingham	421	468	569	797	819
Shenandoah	386	414	506	675	748
Southampton	339	469	520	643	915
Sussex	403	416	485	615	837
Westmoreland	381	464	586	804	828
Wythe	305	386	469	615	825
Rockbridge	361	406	452	658	793
Russell	279	370	428	524	540
Smyth	325	353	393	499	646
Surry	403	416	485	605	837
Tazewell	363	364	436	560	633
Wise	351	358	422	549	692

WASHINGTON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	500	552	693	1011	1139	Whatcom
Bremerton, WA PMSA	553	620	764	1093	1194	Kitsap
Olympia, WA PMSA	521	585	747	1085	1312	Thurston
Portland--Vancouver, OR--WA PMSA	535	620	717	1044	1257	Clark
Richland--Kennewick--Pasco, WA MSA	442	482	605	818	969	Benton, Franklin
Seattle--Bellevue--Everett, WA PMSA	610	693	834	1175	1429	Island, King, Snohomish
Spokane, WA MSA	398	466	614	843	956	Spokane
Tacoma, WA PMSA	502	573	736	1072	1177	Pierce
Yakima, WA MSA	422	495	640	843	889	Yakima

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	354	422	541	726	749
Chelan	449	474	608	856	961
Columbia	365	426	562	758	906
Douglas	499	500	610	803	927
Garfield	365	426	562	758	906
Grays Harbor	366	429	564	794	816
Kittitas	408	476	627	840	872
Lewis	395	505	607	811	848
Mason	444	522	626	855	1013
Pacific	388	418	548	777	808
San Juan	559	601	743	1068	1304
Skamania	386	487	576	841	952
Wahkiakum	387	488	570	830	952
Whitman	395	435	564	796	975
Asotin	357	458	550	735	853
Clallam	401	444	577	843	869
Cowlitz	390	490	569	829	945
Ferry	354	419	541	726	749
Grant	361	429	555	750	770
Jefferson	457	560	685	996	1025
Klickitat	472	479	569	799	823
Lincoln	354	419	541	726	749
Okanogan	393	474	557	762	839
Pend Oreille	354	419	541	726	749
Skagit	499	618	767	1049	1309
Stevens	351	423	540	740	808
Walla Walla	365	426	562	808	833

WEST VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County MSA**	449	513	619	821	982	Berkeley
Charleston, WV MSA	385	426	541	726	747	Kanawha, Putnam
Cumberland, MD--WV MSA	309	374	439	592	691	Mineral
Huntington--Ashland, WV--KY--OH MSA	342	404	483	597	617	Cabell, Wayne
Jefferson County MSA**	389	525	598	873	1051	Jefferson
Parkersburg--Marietta, WV--OH MSA	351	379	488	644	723	Wood
Steubenville--Weirton, OH--WV MSA	305	374	461	576	625	Brooke, Hancock
Wheeling, WV--OH MSA	299	360	460	578	675	Marshall, Ohio

WEST VIRGINIA 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
Barbour	325	339	422	553	569	Boone	267	346	410	507	562
Braxton	325	339	422	553	569	Calhoun	326	388	471	619	703
Clay	386	421	531	695	716	Doddridge	309	394	465	557	662
Fayette	369	370	443	548	589	Gilmer	325	339	422	553	569
Grant	391	451	507	664	824	Greenbrier	354	403	446	536	705
Hampshire	391	451	507	664	824	Hardy	391	451	507	664	824
Harrison	384	385	462	579	647	Jackson	326	388	471	619	703
Lewis	323	350	410	514	529	Lincoln	344	380	421	516	531
Logan	305	370	437	537	552	McDowell	341	353	409	558	709
Marion	319	408	490	586	714	Mason	317	324	382	484	517
Mercer	349	362	420	568	719	Mingo	265	357	407	513	666
Monongalia	406	429	513	672	781	Monroe	365	396	439	547	566
Morgan	391	451	507	664	824	Nicholas	354	384	426	542	593
Pendleton	391	451	507	664	824	Pleasants	326	388	471	619	703
Pocahontas	364	378	438	536	636	Preston	405	422	499	647	755
Raleigh	376	400	451	576	593	Randolph	352	353	455	587	604
Ritchie	326	388	471	619	703	Roane	326	388	471	619	703
Summers	365	396	439	547	566	Taylor	309	394	465	557	662
Tucker	325	339	422	553	569	Tyler	326	388	471	619	703
Upshur	290	362	446	599	618	Webster	364	378	438	536	636
Wetzel	261	356	400	509	579	Wirt	326	388	471	619	703
Wyoming	341	353	409	558	709						

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	402	465	563	777	913	Calumet, Outagamie, Winnebago
Duluth--Superior, MN--WI MSA	345	416	529	675	862	Douglas
Eau Claire, WI MSA	355	424	530	718	748	Chippewa, Eau Claire
Green Bay, WI MSA	449	459	587	833	885	Brown
Janesville--Beloit, WI MSA	422	493	614	804	827	Rock
Kenosha, WI PMSA	559	582	722	993	1142	Kenosha
La Crosse, WI--MN MSA	351	411	541	718	882	La Crosse
Madison, WI MSA	500	630	746	1019	1297	Dane
Milwaukee--Waukesha, WI PMSA	481	577	694	862	888	Milwaukee, Ozaukee, Washington, Waukesha
*Minneapolis--St. Paul, MN--WI MSA	651	763	928	1229	1386	Pierce, St. Croix
Racine, WI PMSA	451	527	661	822	902	Racine
Sheboygan, WI MSA	358	460	543	671	824	Sheboygan
Wausau, WI MSA	355	443	546	729	806	Marathon

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	379	416	514	669	690	Ashland	365	367	473	601	814
Barron	325	410	489	624	642	Bayfield	327	382	479	613	636
Buffalo	350	398	508	644	672	Burnett	327	382	479	613	636
Clark	298	352	461	630	649	Columbia	395	462	608	821	847
Crawford	383	410	461	572	705	Dodge	501	502	605	766	827
Door	370	473	569	764	857	Dunn	383	413	518	755	776

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WISCONSIN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Florence	329	397	492	626	657
Forest	379	416	514	669	690
Green	369	398	522	663	774
Iowa	380	444	584	698	718
Jackson	350	398	508	644	672
Juneau	332	409	510	671	692
Lafayette	366	386	496	635	712
Lincoln	409	410	491	715	737
Marinette	373	403	448	587	605
Menominee	387	434	528	680	755
Oconto	353	428	475	615	641
Pepin	350	398	508	644	672
Portage	439	445	531	703	723
Richland	344	384	489	627	647
Sauk	380	505	579	778	803
Shawano	333	393	484	604	694
Trempealeau	361	362	459	627	646
Vilas	379	416	514	700	721
Washburn	327	382	479	613	636
Waushara	387	434	528	680	755

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Fond du Lac	430	461	555	729	791
Grant	386	387	465	602	816
Green Lake	375	430	499	653	797
Iron	327	382	479	613	636
Jefferson	431	505	665	797	1004
Kewaunee	329	397	492	626	657
Langlade	375	376	452	596	650
Manitowoc	335	392	516	617	768
Marquette	387	434	528	680	755
Monroe	345	403	531	674	736
Oneida	375	410	538	688	947
Polk	382	447	587	722	745
Price	327	382	479	613	636
Rusk	327	382	479	613	636
Sawyer	327	385	479	613	636
Taylor	327	382	479	613	636
Vernon	370	372	466	589	642
Walworth	444	522	681	850	877
Waupaca	340	427	519	678	698
Wood	333	409	507	617	676

WYOMING

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	340	372	470	684	824	Natrona
Cheyenne, WY MSA	401	423	536	730	940	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	383	439	557	765	810
Campbell	426	459	514	696	758
Converse	272	336	418	570	735
Fremont	375	377	479	600	765
Hot Springs	380	397	475	620	742
Lincoln	375	444	505	674	796
Park	356	409	481	604	796
Sheridan	382	412	506	647	790
Sweetwater	313	380	477	667	692
Uinta	325	410	467	638	757
Weston	380	397	475	620	742

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	380	397	475	620	742
Carbon	296	354	455	570	693
Crook	380	397	475	620	742
Goshen	366	367	442	545	750
Johnson	380	396	488	620	741
Niobrara	380	397	475	620	742
Platte	380	397	475	620	742
Sublette	375	444	505	674	796
Teton	652	727	915	1206	1242
Washakie	380	397	475	620	742

GUAM

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	663	712	869	1266	1514

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR

PUERTO RICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	264	287	318	404	560	Aguada, Aguadilla, Moca
Arecibo, PR PMSA	266	289	321	438	513	Arecibo, Camuy, Hatillo
Caguas, PR PMSA	292	316	352	488	588	Caguas, Cayey, Cidra, Gurabo, San Lorenzo
Mayagüez, PR MSA	306	332	369	457	564	Añasco, Cabo Rojo, Hormigueros, Mayagüez, Sabana Grande, San Germán
Ponce, PR MSA	282	306	339	461	536	Guayanilla, Juana Díaz, Peñuelas, Ponce, Villalba, Yauco
San Juan--Bayamón, PR PMSA	340	369	410	543	650	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	255	276	307	404	448	Aibonito	255	276	307	404	448
Arroyo	255	276	307	404	448	Barranquitas	255	276	307	404	448
Ciales	255	276	307	404	448	Coamo	255	276	307	404	448
Culebra	255	276	307	404	448	Guánica	255	276	307	404	448
Guayama	255	276	307	404	448	Isabela	255	276	307	404	448
Jayuya	255	276	307	404	448	Lajas	255	276	307	404	448
Lares	255	276	307	404	448	Las Marías	255	276	307	404	448
Maricao	255	276	307	404	448	Maunabo	255	276	307	404	448
Orocovis	255	276	307	404	448	Patillas	255	276	307	404	448
Quebradillas	255	276	307	404	448	Rincón	255	276	307	404	448
Salinas	255	276	307	404	448	San Sebastián	255	276	307	404	448
Santa Isabel	255	276	307	404	448	Utuado	255	276	307	404	448
Vieques	255	276	307	404	448						

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	462	481	583	728	833	St. John/St. Thomas	525	628	808	1001	1046

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. 09/23/2004
Note3: HUD defined MSAs are followed by *

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ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV--AZ MSA	625	731	851	1157	1437	Mohave
Phoenix--Mesa, AZ MSA	550	639	771	1123	1316	Maricopa, Pinal

CALIFORNIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Oakland, CA PMSA	866	1043	1237	1678	2077	Alameda, Contra Costa
Orange County, CA PMSA	933	1053	1255	1777	2047	Orange
Sacramento, CA PMSA	661	759	928	1328	1542	El Dorado, Placer, Sacramento
San Diego, CA MSA	793	906	1111	1578	1950	San Diego
San Jose, CA PMSA	899	1045	1261	1719	1884	Santa Clara
Ventura, CA PMSA	939	1038	1322	1892	2162	Ventura

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Denver, CO PMSA	627	716	907	1274	1484	Adams, Arapahoe, Denver, Douglas, Jefferson

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	893	1012	1153	1479	1929	District of Columbia

FLORIDA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fort Lauderdale, FL PMSA	686	764	933	1278	1504	Broward
Miami, FL PMSA	633	717	869	1113	1302	Miami-Dade
Tampa--St. Petersburg--Clearwater, FL MSA	563	625	757	959	1158	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach--Boca Raton, FL MSA	601	709	828	1136	1220	Palm Beach

GEORGIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlanta, GA MSA	720	779	868	1056	1156	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton

ILLINOIS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chicago, IL PMSA	646	754	852	1019	1135	Cook, DuPage, Kane, Lake, McHenry, Will
St. Louis, MO--IL MSA	512	558	696	900	940	Clinton, Jersey, Madison, Monroe, St. Clair

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	466	561	652	874	936	Johnson, Leavenworth, Miami, Wyandotte
Wichita, KS MSA	397	449	591	760	843	Butler, Harvey, Sedgwick

LOUISIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baton Rouge, LA MSA	447	491	568	732	843	Ascension, East Baton Rouge, Livingston, West Baton Rouge

MARYLAND

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	893	1012	1153	1479	1929	Calvert, Charles, Frederick, Montgomery, Prince George's

MICHIGAN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Detroit, MI PMSA	585	663	796	950	979	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Grand Rapids--Muskegon--Holland, MI MSA	480	518	623	791	815	Allegan, Kent, Muskegon, Ottawa

MINNESOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Minneapolis--St. Paul, MN--WI MSA	632	746	906	1183	1332	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

MISSOURI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kansas City, MO--KS MSA	466	561	652	874	936	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Louis, MO--IL MSA	512	558	696	900	940	Crawford, Franklin, Jefferson, Lincoln,

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MISSOURI continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
						St. Charles, St. Louis, Warren, St. Louis city

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	625	731	851	1157	1437	Clark, Nye

NEW JERSEY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bergen--Passaic, NJ PMSA	839	937	1052	1298	1495	Bergen, Passaic
Newark, NJ PMSA	686	835	958	1147	1251	Essex, Morris, Sussex, Union, Warren
Philadelphia, PA--NJ PMSA	668	767	916	1097	1286	Burlington, Camden, Gloucester, Salem

NEW MEXICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA	445	518	653	955	1148	Bernalillo, Sandoval, Valencia

NEW YORK

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Buffalo--Niagara Falls, NY MSA	510	511	614	757	838	Erie, Niagara

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Norfolk--Virginia Beach--Newport News, VA--NC MSA.	618	645	746	1019	1228	Currituck

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cleveland--Lorain--Elyria, OH PMSA	472	548	659	844	897	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Oklahoma City, OK MSA	414	453	550	746	799	Canadian, Cleveland, Logan, McClain, Oklahoma, Pottawatomie

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OKLAHOMA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Tulsa, OK MSA	445	482	600	793	815	Creek, Osage, Rogers, Tulsa, Wagoner

PENNSYLVANIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Philadelphia, PA--NJ PMSA	668	767	916	1097	1286	Bucks, Chester, Delaware, Montgomery, Philadelphia

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Austin--San Marcos, TX MSA	617	703	854	1152	1312	Bastrop, Caldwell, Hays, Travis, Williamson
Dallas, TX PMSA	607	684	830	1072	1301	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
Fort Worth--Arlington, TX PMSA	533	569	686	919	1026	Hood, Johnson, Parker, Tarrant
Houston, TX PMSA	555	616	744	989	1229	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
San Antonio, TX MSA	487	543	674	873	1049	Bexar, Comal, Guadalupe, Wilson

UTAH

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Salt Lake City--Ogden, UT MSA	535	589	714	990	1132	Davis, Salt Lake, Weber

VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Norfolk--Virginia Beach--Newport News, VA--NC MSA	618	645	746	1019	1228	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	640	696	773	1042	1234	Charles, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, New Kent, Powhatan, Prince George, Colonial Heights city, Hopewell city, Petersburg city, Richmond city
Washington, DC--MD--VA--WV PMSA	893	1012	1153	1479	1929	Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city

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WISCONSIN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Minneapolis--St. Paul, MN--WI MSA.....	632	746	906	1183	1332	Pierce, St. Croix

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: HUD defined MSAs are followed by * 09/23/2004

SCHEDULE D - FY 2005 FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

State	Area Name	Space Rent
California	*Orange County, CA PMSA	$590
	*San Diego, CA MSA	$618
	Los Angeles--Long Beach, CA PMSA	$485
	Riverside--San Bernardino, CA PMSA	$386
	Vallejo--Fairfield--Napa, CA PMSA	$487
Colorado	*Denver, CO PMSA	$404
	Boulder--Longmont, CO PMSA	$424
Maryland	Hagerstown, MD PMSA	$271
	St. Mary's	$390
Nevada	Reno, NV MSA	$457
New York	Newburgh, NY--PA PMSA	$416
	Utica--Rome, NY MSA	$239
Oregon	Deschutes	$284
	Portland--Vancouver, OR--WA PMSA	$323
	Salem, OR PMSA	$400
Pennsylvania	Adams	$428
Washington	Olympia, WA PMSA	$472
West Virginia	Logan	$353
	McDowell	$353
	Mercer	$353
	Mingo	$353
	Wyoming	$353

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October 1, 2004

Part III

Department of Veterans Affairs

38 CFR Part 5

Accrued Benefits, Death Compensation, and Special Rules Applicable Upon Death of a Beneficiary; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900–AL71

Accrued Benefits, Death Compensation, and Special Rules Applicable Upon Death of a Beneficiary

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations relating to accrued benefits, death compensation, and certain special rules applicable upon the death of a VA beneficiary and to relocate them in a new part of the Code of Federal Regulations (CFR). We propose to reorganize these regulations in a more logical order, add new section and paragraph headings, rewrite certain sections, divide certain sections into two or more separate new regulations, and add changes required by relevant court decisions and by the Veterans Benefits Act of 2003.

DATES: Comments must be received by VA on or before November 30, 2004.

ADDRESSES: Written comments may be submitted by: Mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail to *VAregulations@mail.va.gov;* or, through *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL71.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Chief, Regulations Rewrite Project (00REG2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9515.

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management (ORPM) to provide centralized management and coordination of VA's rulemaking process. One of the major functions of this office is to oversee a Regulation Rewrite Project (the Project) to improve the clarity and consistency of existing VA regulations. The Project responds to a recommendation made in the October 2001 ''VA Claims Processing Task Force: Report to the Secretary of Veterans Affairs.'' The Task Force recommended that the compensation and pension regulations be rewritten and reorganized in order to improve VA's claims adjudication process. Therefore, the Project began its efforts by reviewing, reorganizing, and redrafting the regulations in 38 CFR part 3 governing the Compensation and Pension (C&P) program of the Veterans Benefits Administration (VBA). These regulations are among the most difficult VA regulations for readers to understand and apply.

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It includes proposed regulations concerning accrued benefits, benefits awarded but unpaid at death, death compensation, the disposition of the proceeds of certain VA benefits upon the death of the person receiving those benefits, and effective dates applicable to various death benefits.

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Overview of New Part 5 Organization

We plan to remove the compensation and pension benefit regulations from 38 CFR part 3 and relocate them in new part 5. We also plan to reorganize the regulations so that all provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. We believe this reorganization will allow claimants and their representatives, as well as VA adjudicators, to find information relating to a specific benefit more quickly.

The first major subdivision is ''Subpart A—General Provisions.'' It would include information regarding the scope of the regulations in new part 5, delegations of authority, general definitions, and general policy provisions for this part.

''Subpart B—Service Requirements for Veterans'' would include information regarding a veteran's military service, including the minimum service requirement, types of service, periods of war, and service evidence requirements.

This subpart was published as proposed on January 30, 2004. *See* 69 FR 4820.

''Subpart C—Adjudicative Process, General'' would inform readers about types of claims and filing procedures, VA's duties, rights and responsibilities of claimants, and general effective dates, as well as revision of decisions and protection of VA ratings.

''Subpart D—Dependents of Veterans'' would provide information about how VA determines whether an individual is a dependent and the evidence requirements for such determinations.

''Subpart E—Claims for Service Connection and Disability Compensation'' would define service-connected compensation, including direct and secondary service connection. This subpart would inform readers how VA determines entitlement to service connection. The subpart would also contain provisions governing presumptions related to service connection, disability rating principles, and effective dates, as well as several special ratings.

''Subpart F—Nonservice-Connected Disability and Death Pensions'' would include information regarding the three types of nonservice-connected pension: Improved pension, Old law pension, and Section 306 pension. This subpart would also include those provisions that state how to establish entitlement for pension, where applicable, and the effective dates governing each pension.

''Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary'' would contain regulations governing claims for dependency and indemnity compensation (DIC); death compensation; accrued benefits; benefits awarded, but unpaid at death; and various special rules that apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies. This subpart would also include related definitions, effective-date rules, and rate-of-payment rules. The portion concerning accrued benefits, death compensation benefits, special rules applicable on death of a beneficiary, and effective dates is the subject of this document.

''Subpart H—Special Benefits for Veterans, Dependents, and Survivors'' would pertain to ancillary and special benefits available, including benefits for children with various birth defects.

''Subpart I—Benefits for Certain Filipino Veterans and Survivors'' would pertain to the various benefits available to Filipino veterans.

''Subpart J—Burial Benefits'' would pertain to burial allowances.

''Subpart K—Matters Affecting Receipt of Benefits'' would contain provisions regarding bars to benefits, forfeiture of benefits, and renouncement of benefits.

''Subpart L—Regulations Related to Payments and Adjustments to Payments'' would include general rate-setting rules, several adjustment and resumption regulations, and election of benefit rules.

The final subpart, ''Subpart M—Apportionments and Payments to Fiduciaries or Incarcerated Beneficiaries,'' would include regulations governing apportionments, benefits for incarcerated beneficiaries, and guardianship.

Some of the regulations in this Notice of Proposed Rulemaking (NPRM) cross-reference other compensation and pension regulations. If those regulations have been published in this or earlier NPRMs for the Project, we cite the proposed part 5 section. We also cite the **Federal Register** page where a proposed part 5 section published in an earlier NPRM may be found. However, where a regulation proposed in this NPRM would cross-reference a proposed part 5 regulation that has not yet been published, we cite to the current part 3 regulation that deals with the same subject matter. The current part 3 section we cite may differ from its eventual part 5 replacement in some respects, but we believe this method will assist readers in understanding these proposed regulations where no part 5 replacement has yet been published. If there is no part 3 counterpart to a proposed part 5 regulation that has not yet been published, we have inserted ''[regulation that will be published in a future Notice of Proposed Rulemaking]'' in the place where the part 5 regulation citation would be placed.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as a part of the Project, if the matter being commented on relates to both NPRM's. VA will provide a separate opportunity for public comment on each segment of the proposed part 5 regulations before adopting a final version of part 5.

Overview of Proposed Subpart G Organization

This NPRM pertains to those regulations governing accrued benefits, death compensation, special rules applicable upon death of a beneficiary and, with regard to effective dates only, DIC benefits. These regulations would be contained in proposed Subpart G of new 38 CFR part 5. While these regulations have been substantially restructured and rewritten for greater clarity and ease of use, many of the basic concepts contained in these proposed regulations are the same as in their existing counterparts in 38 CFR part 3. However, we also propose substantive changes, including those stemming from relevant court decisions and from provisions of the Veterans Benefits Act of 2003.

Table Comparing Current Part 3 Rules With Proposed Part 5 Rules.

The following table shows the correspondence between the current regulations in part 3 and those proposed regulations contained in this NPRM:

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or ''New'')
5.550(a)	3.1000(a).
5.550(b)	New.
5.550(c)	3.1000(d)(2).
5.550(d)	New.
5.550(e)	New.
5.550(f)	3.1000(d)(3).
5.550(g)	3.1000(d)(4).
5.550(h)	3.1000(d)(1).
5.551(a)	New.
5.551(b)	3.1000(a)(1).
5.551(c)	3.1000(a)(2), (f).
5.551(d)	3.1000(d)(2).
5.551(e)	3.1000(a)(4), 3.1002.
5.551(f)	3.1000(c)(2).
5.552(a)	New.
5.552(b) and (c)	3.1000(c).
5.553	3.1000(c)(1).
5.554	3.667(e).
5.555	3.1000(e) through (h), 3.803(d).
5.556(a)	3.1000(a).
5.556(b)	New.
5.557	New.
5.558	New.
5.559	New.
5.560(a)	3.4(a).
5.560(b)	3.4(c)(1).
5.560(c)	3.5(d).
5.560(d)	New.
5.561(a)	Introduction to 3.54.
5.561(b) and (c), except for (c)(1).	3.54(b).
5.561(c)(1)	3.54(b) and (e).
5.562(a)	3.351(a)(6), (b), and (c).
5.562(b)	3.351(c).
5.563	3.1000(b).
5.564(a)(1)	Introduction to 3.1003 and 3.1003(a).
5.564(a)(2)	New.
5.564(b)	3.1003(a)(1).
5.564(c)	3.1003(a)(2).
5.564(d)	3.1003(b).
5.564(e)	3.1003(c).
5.565(a) through (d)(1).	New.
5.565(d)(2)	3.1008.
5.566(a)	Introduction to 3.1009.
5.566(b) and (c)	New.
5.566(d)	3.1009(a).
5.566(e)	3.1009(b).

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or "New")
5.567(a)	3.400(c)(1).
5.567(b)	3.400(c)(2).
5.567(c)	3.400(c)(4)(i).
5.567(d)	3.400(c)(4)(ii).
5.567(e)	3.402(a).
5.568(a)	Introduction to 3.657.
5.568(b)(1)	3.657(a)(1).
5.568(b)(2)	3.657(a)(2).
5.568(b)(3)	New.
5.569(a)	Introduction to 3.657.
5.569(b)	3.657(b)(1).
5.569(c)(1) and (2)	3.657(b)(2).
5.569(c)(3)	New.
5.570(a)	Introduction to 3.502.
5.570(b)(1)	3.502(a)(1).
5.570(b)(2)	3.502(a)(2).
5.570(c)	3.502(b).
5.571(a)	3.660(b)(1).
5.571(b)	3.660(b)(2).
5.571(c)	3.660(b) introduction.
5.572(a) and (b)	3.660(a)(2) second sentence.
5.572(c)	New.
5.572(d)	3.660(a)(3).

Readers who use this table to compare existing regulatory provisions with the proposed provisions, and who observe a substantive difference between them, should consult the text that appears later in this document for an explanation of significant changes in each regulation. Not every paragraph of every current part 3 section affected by these proposed regulations is accounted for in the table. In some instances other portions of the part 3 sections that are contained in these proposed regulations appear in subparts of part 5 that will be published for public comment at a later time. For example, a reader might find a reference to paragraph (a) of a part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a future NPRM. The table also does not include material from the current sections that will be removed from part 3 and not carried forward to part 5. A listing of material VA proposes to remove from part 3 appears later in this document.

Content of Proposed Rules

Accrued Benefits

5.550 Definitions

The first proposed regulation, § 5.550, defines ''accrued benefits'' and other terms important in determining entitlement to benefits under 38 U.S.C. 5121, ''Payment of certain accrued benefits upon death of a beneficiary.'' These proposed definitions are influenced by court opinions relating to benefits for survivors under 38 U.S.C. 5121 and by changes to 38 U.S.C. 5121 made by section 104 of the Veterans Benefits Act of 2003 (''the Act''), Pub. L. 108–183, 117 Stat. 2656.

Understanding the complex background of our first two proposed definitions, ''accrued benefits'' and ''benefits awarded, but unpaid at death'' is critical to understanding these proposed definitions and other issues in this NPRM.

Prior to its amendment by section 104 of the Act, the introductory portion of 38 U.S.C. 5121(a) read as follows:

> Except as provided in sections 3329 and 3330 of title 31, periodic monetary benefits (other than insurance and servicemen's indemnity) under laws administered by the Secretary to which an individual was entitled at death under existing ratings or decisions, or those based on evidence in the file at date of death (hereinafter in this section and section 5122 of this title referred to as '''accrued benefits''') and due and unpaid for a period not to exceed two years, shall, upon the death of such individual be paid as follows. ***

VA traditionally construed 38 U.S.C. 5121(a) as providing only one type of benefit to survivors: accrued benefits. The United States Court of Appeals for Veterans Claims (CAVC) in *Bonny* v. *Principi,* 16 Vet. App. 504 (2002) interpreted section 5121(a) differently. The CAVC's analysis includes the following:

> The comma in the middle of paragraph (a), between ''decisions'' and ''or,'' and the use of the conjunction ''or'' after the comma, indicate that the separated phrases state substantive alternatives. 38 U.S.C. 5121(a). The paragraph provides for payment of (1) periodic monetary benefits to which an individual was entitled at death under existing ratings or decisions, which the Court will call ''benefits awarded but unpaid'', or (2) periodic monetary benefits based on evidence in the file at the date of an entitled individual's death and due and unpaid for a period not to exceed two years, which are called ''accrued benefits'' for purposes of sections 5121 and 5122. *Id.*
>
> * * * * *
>
> The important distinction between the two types of periodic monetary benefits is that one type of benefits is due to be paid to the veteran at his death and one type is not. As to the former, when the benefits have been awarded but not paid pre-death, an eligible survivor is to receive the entire amount of the award. The right to receive the entire amount of periodic monetary benefits that was awarded to the eligible individual shifts to the eligible survivor when payment of the award was not made before the eligible individual died. This interpretation of 38 U.S.C. 5121(a) is completely consistent with the plain language of the statute, as previously quoted and interpreted herein.
>
> As to the latter type of periodic monetary benefits, what is determinative regarding accrued benefits is that evidence in the individual's file at the date of death supports a decision in favor of awarding benefits. Because the benefits cannot be awarded to the deceased individual, an eligible survivor can claim a portion of those accrued benefits.

16 Vet. App. at 507–08. The CAVC's analysis recognized two kinds of benefits under 38 U.S.C. 5121, which we propose to call ''accrued benefits'' and ''benefits awarded, but unpaid at death.'' These terms are defined in § 5.550(a) and (b), respectively, to comply with the court's analysis.

These proposed definitions are also influenced by the Act. Section 104(a) of the Act removed the 2-year limitation on accrued benefits payable under 38 U.S.C. 5121. Section 104(c) of the Act made certain ''technical amendments'' to 38 U.S.C. 5121, including removal of the comma after ''or decisions'' in the introductory text of paragraph (a). This is the same comma relied upon by the CAVC in *Bonny* for interpreting 38 U.S.C. 5121 to require a distinction between accrued benefits and benefits awarded, but unpaid at death. Therefore, an important question is whether Congress intended to change the interpretation of 38 U.S.C. 5121 required by the *Bonny* decision by removing this comma. Based on the following analysis, we believe that it did.

The text of section 104 of the Act is identical to the text of a provision in the House bill, H.R. 2297, as amended, 108th Cong. (2003). The ''Explanatory Statement on Senate Amendment to House Bill, H.R. 2297, as Amended'' notes that the Act reflects a compromise agreement reached by the House and Senate Committees on Veterans' Affairs on provisions of a number of House and Senate bills affecting veterans' benefits. Section 104 of the Act was based on portions of two of these bills, section 6 of H.R. 1460, 108th Cong. (2003), and section 105 of S. 1132, as amended, 108th Cong. (2003). *See* 149 Cong. Rec. S15,133–34 (daily ed. Nov. 19, 2003).

The removal of the comma in question in 38 U.S.C. 5121(a) comes from section 105(b) of S. 1132, as passed by the Senate. *See* 149 Cong. Rec. S13,745 (daily ed. Oct. 31, 2003). S. 1132 was also based on a number of other bills, including S. 1188, 108th Cong. (2003). A principal purpose of S. 1188 was to amend 38 U.S.C. 5121 ''to repeal the two-year limitation on the payment of accrued benefits that are due and unpaid by the Secretary of Veterans Affairs upon the death of a veteran or other beneficiary under laws administered by the Secretary.'' 149 Cong. Rec. S7,476 (daily ed. June 5, 2003). As originally drafted, S. 1188 did not include the ''technical

amendments'' in section 104(c) of the Act.

On July 10, 2003, the Senate Committee on Veterans' Affairs held a hearing on a number of the bills that would become the sources of S. 1132. Persons who testified at that hearing included Daniel L. Cooper, VA's Under Secretary for Benefits, whose statement to the Committee included the following comment concerning S. 1188:

> In addition, we note one technical change needed in section 2 of S. 1188 should it be enacted. The comma in current section 5121(a) following ''existing ratings or decisions'' should be deleted to clarify, for purposes of 38 U.S.C. §§ 5121(b) and (c) and 5122, that the term ''accrued benefits'' includes both benefits that have been awarded to an individual in existing ratings or decisions but not paid before the individual's death, as well as benefits that could be awarded based on evidence in the file at the date of death.

S. Rep. No. 108–169, at 46–47.

Further, in its discussion of section 105 of S. 1132, the Committee noted that:

> At the Committee's hearing on July 10, 2003, Under Secretary Cooper commented as follows: ''The distinction the Bonny decision draws between the two categories of claimants—those whose claims had been approved and those whose entitlement had yet to be recognized when they died—is really one without a difference. In either case, a claimant's estate is deprived of the value of benefits to which the claimant was, in life, entitled.''

Id. at 8.

Based on this legislative history, we conclude that Congress' purpose in removing the comma from the introductory paragraph of 38 U.S.C. 5121(a) was to provide for only one type of benefit under section 5121, removing the distinction between accrued benefits and benefits awarded, but unpaid at death, that resulted from the *Bonny* decision.

The interplay between *Bonny* and section 104 of the Act is also affected by the fact that different portions of section 104 of the Act became effective at different times. Because there is no specific effective date in the Act for section 104(c) (the ''technical amendments'' which include removal of the comma that was a basis for the CAVC's interpretation of 38 U.S.C. 5121 in *Bonny*), that portion of the Act became effective when the Act was signed into law on December 16, 2003. On the other hand, under section 104(d) of the Act, the amendment to 38 U.S.C. 5121(a), removing the provision restricting benefits to those that were due and unpaid ''for a period not to exceed two years'' applies to deaths occurring on or after December 16, 2003.

These factors lead to consideration of what, if any, viability the *Bonny* distinctions between accrued benefits and benefits awarded, but unpaid at death, still have. For the reasons discussed in the following paragraphs, we conclude that these distinctions are still applicable in a very limited number of cases. Particularly because of the differences in effective date provisions for different provisions of section 104 of the Act, sorting this out involves looking at the time line for when the deceased beneficiary died and when claims for 38 U.S.C. 5121 benefits were received and decided. (For purposes of this discussion, ''deceased beneficiary'' has the meaning we propose in § 5.550(e) (''the deceased person whose VA benefits are being claimed as accrued benefits or benefits awarded, but unpaid at death'').)

Based on the plain language of the Act, we believe the *Bonny* division of 38 U.S.C. 5121 benefits clearly does not apply if the deceased beneficiary died on or after December 16, 2003. Effective on that date, the statutory basis for *Bonny*'s interpretation of 38 U.S.C. 5121 as creating two different types of VA benefits was removed. In any event, there would be little benefit to claimants for preserving the distinction in such cases because the 2-year benefit limitation has been repealed in cases where the deceased beneficiary died on or after December 16, 2003.

For claims filed on or after December 16, 2003, VA must apply 38 U.S.C. 5121 as amended by the Act. However, the 2-year limitation applies to all 38 U.S.C. 5121 accrued benefit claims VA received on or after December 16, 2003, if the deceased beneficiary died before December 16, 2003. This is true because (1) the Act removed the statutory underpinnings of the *Bonny* decision effective on December 16, 2003, but (2) Congress very clearly intended the removal of the 2-year limitation in amended 38 U.S.C. 5121 to be effective only where the deceased beneficiary died on or after December 16, 2003.

The last question is how VA should apply 38 U.S.C. 5121 to those cases where the deceased beneficiary died before December 16, 2003, and a claim for § 5121 benefits was pending on December 16, 2003. For the following reasons, we propose not to apply the Act's amendments in such cases.

VA's General Counsel addressed retroactive application of a statute in VAOPGCPREC 7–2003, holding:

> In *Kuzma* v. *Principi,* 341 F.3d 1327 (Fed. Cir. 2003), the United States Court of Appeals for the Federal Circuit overruled *Karnas* v. *Derwinski,* 1 Vet. App. 308 (1991), to the extent it conflicts with the precedents of the Supreme Court and the Federal Circuit. *Karnas* is inconsistent with Supreme Court and Federal Circuit precedent insofar as *Karnas* provides that, when a statute or regulation changes while a claim is pending before the Department of Veterans Affairs (VA) or a court, whichever version of the statute or regulation is most favorable to the claimant will govern unless the statute or regulation clearly specifies otherwise. Accordingly, that rule adopted in *Karnas* no longer applies in determining whether a new statute or regulation applies to a pending claim. Pursuant to Supreme Court and Federal Circuit precedent, when a new statute is enacted or a new regulation is issued while a claim is pending before VA, VA must first determine whether the statute or regulation identifies the types of claims to which it applies. If the statute or regulation is silent, VA must determine whether applying the new provision to claims that were pending when it took effect would produce genuinely retroactive effects. If applying the new provision would produce such retroactive effects, VA ordinarily should not apply the new provision to the claim. If applying the new provision would not produce retroactive effects, VA ordinarily must apply the new provision.

As to the first criterion, the Act does not ''identif[y] the types of claims to which it applies.'' The question then becomes whether applying the Act's provisions to claims pending before VA on December 16, 2003, would produce a ''genuinely retroactive'' effect. For the reasons stated below, we believe that it would. Therefore, VA will not apply the Act's amendments to claims for 38 U.S.C. 5121 benefits pending before VA on December 16, 2003.

As discussed at some length in VAOPGCPREC 7–2003, determining whether applying changes in the law would produce a genuinely retroactive effect is a complex undertaking. However, we believe that the principles discussed in the following portion of paragraph 17 of the General Counsel's opinion control the question at hand and call for application of 38 U.S.C. 5121 as it existed prior to the Act to claims pending on December 16, 2003:

> [S]tatutes or regulations that restrict the bases for entitlement to a benefit might have disfavored retroactive effects as applied to some claims that were pending when they took effect. For example, if a veteran was entitled to benefits based on the law existing when he or she filed an application with VA, and a restrictive change in the governing law occurs before VA adjudicates the claim, application of the new restriction might retroactively extinguish the claimant's previously existing right to benefits for periods before the new law took effect. In those circumstances, *Landgraf* [v. *USI Film Products,* 511 U.S. 244 (1994)] indicates that the intervening restriction would not apply in determining the claimant's rights for such periods.

Applying the technical amendment to section 5121(a) made by the Act to pending claims would limit the amount of accrued benefits some claimants could receive under *Bonny.* We believe this would constitute a genuine retroactive effect. We propose to amend the regulations so as to avoid such an effect.

Accordingly, we propose to provide in § 5.550(a)(2) and (3) that:

(2) ''Accrued benefits'' also includes benefits awarded, but unpaid at death:

(i) If the deceased beneficiary died on or after December 16, 2003;

(ii) If the deceased beneficiary died prior to December 16, 2003, but VA received the claim for benefits under 38 U.S.C. 5121 on or after December 16, 2003; and

(iii) For purposes of § 5.558, ''Special rule for certain cases involving deaths prior to December 16, 2003.''

(3) ''Accrued benefits'' does not include benefits awarded, but unpaid at death, when the deceased beneficiary died prior to December 16, 2003, and a claim for benefits under 38 U.S.C. 5121 was pending before VA on December 16, 2003. (For purposes of paragraph (a)(3) of this section, VA will consider a claim to be pending if there was no final decision on that claim as of December 16, 2003. *See* [regulation that will be published in a future Notice of Proposed Rulemaking] (defining a final decision)).

Proposed § 5.550(c) addresses the definition of ''child.'' Because ''child'' is defined in great detail in § 3.57, we believe that the material should not be repeated here. Therefore, the definition in proposed § 5.550(c) consists of a simple cross-reference to § 3.57, together with text preserving the intent of the current rule in § 3.1000(d)(2) stating that a ''child'' includes ''an unmarried child over the age of 18 but not over 23 years of age, who was pursuing a course of instruction within the meaning of § 3.57 at the time of the payee's death.'' This is accomplished by reference to ''the age range specified by § 3.57(a)(1)(iii).'' (Note that current § 3.57(a)(1)(iii) correctly describes the relevant age range while current § 3.1000(d)(2) is potentially misleading in this regard. *See* 38 U.S.C. 101(4)(A)(iii).)

The United States Court of Appeals for the Federal Circuit clarified another aspect of benefits under 38 U.S.C. 5121 in *Jones* v. *West,* 136 F.3d 1296, 1299 (Fed. Cir. 1998):

Reading [38 U.S.C.] 5101 and 5121 together compels the conclusion that, in order for a surviving spouse to be entitled to accrued benefits, the veteran must have had a claim pending at the time of his death for such benefits or else be entitled to them under an existing rating or decision.

Proposed § 5.550(d) defines a ''claim for VA benefits pending on the date of death'' as ''a claim filed with VA which had not been finally adjudicated by VA on or before the date of death.'' That is, VA would consider the claim to have been pending on the date of death if it had not been adjudicated or, if the claim had been adjudicated, the time to appeal had not expired or there is no final decision by the Board of Veterans' Appeals (BVA).

We note this definition does not preclude a survivor from filing an accrued benefits claim based on a decedent's claim that had been judicially appealed. In that case, the CAVC typically vacates the BVA decision in order to preserve potential accrued benefits claims. For example, the CAVC noted the following in *Sagnella* v. *Principi,* 15 Vet. App. 242, 246 (2001):

This Court held in *Landicho* [v. *Brown,* 7 Vet. App. 42 (1994)] that the appropriate remedy [when a veteran dies while his or her BVA decision is on appeal] is to vacate the Board decision from which the appeal was taken and to dismiss the appeal. *Landicho,* 7 Vet. App. at 54. This ensures that the Board decision and the underlying VA regional office (RO) decision(s) will have no preclusive effect in the adjudication of any accrued-benefits claims derived from the veteran's entitlements. It also nullifies the previous merits adjudication by the RO because that decision was subsumed in the Board decision.

Consistent with long-standing VA practice, § 5.550(d) also provides that such a claim may include a deceased beneficiary's claim to reopen a finally disallowed claim based upon new and material evidence or a deceased beneficiary's claim of clear and unmistakable error in a prior rating or decision.

Proposed § 5.550(e) defines ''deceased beneficiary.'' This would provide a convenient way to refer to the deceased VA beneficiary throughout these proposed regulations and to distinguish that person from the living beneficiary claiming survivors' benefits.

The proposed definitions of ''dependent parent'' at § 5.550(f) and of ''evidence in the file on the date of death'' at § 5.550(g) are plain language restatements of the definitions of those terms in current § 3.1000(d).

Next, in § 5.550(h), we propose to replace the definition of ''spouse'' in current § 3.1000(d)(1) with a definition of ''surviving spouse.'' Section 3.1000(d)(1) provides that a ''spouse'' is the surviving spouse of a veteran whose marriage meets the requirements of § 3.1(j) or § 3.52. ''Surviving spouse'' is defined in § 3.50(b), which also requires compliance with either § 3.1(j) or § 3.52. Therefore, subject to one exception, we propose to define ''surviving spouse'' by reference to § 3.50(b). The exception arises because § 3.50(b)(1) imposes a requirement for the surviving spouse to have lived with the veteran continuously from the date of marriage to the date of the veteran's death, except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse. Section 3.1000(d)(1), in part, specifies that ''[w]here the marriage meets the requirements of § 3.1(j) date of marriage and continuous cohabitation are not factors.'' In § 5.550(h)(2), we propose to preserve this exception from the § 3.50(b)(1) continuous cohabitation requirements and various potentially applicable date-of-marriage requirements.

5.551 Persons Entitled to Accrued Benefits or Benefits Awarded, but Unpaid at Death

In the next proposed regulation, § 5.551, we propose to recognize the category of ''benefits awarded, but unpaid at death,'' where appropriate. We also propose to clarify several points.

We propose in § 5.551(a) to state the scope of this section, including cross-references to several special provisions applicable to accrued benefits and benefits awarded, but unpaid at death.

One clarification, in proposed § 5.551(b), concerns the references to the veteran's spouse, children, and dependent parents in current § 3.1000(a)(1). Proposed § 5.551(b)(2) specifies that this means the surviving spouse, surviving children, and surviving dependent parents. This is not a substantive change. It is implicit in the current regulation and in its authorizing statute (38 U.S.C. 5121(a))(2)), both of which require that the claimants be living.

Proposed 5.551(c) clarifies provisions of current § 3.1000(f), which provides rules for distributing unpaid dependents' educational assistance allowance or special restorative training allowance, authorized by 38 U.S.C. chapter 35, when the recipient of those benefits dies. Current § 3.1000(f) contains two different rules concerning distribution of those benefits when the deceased beneficiary is the veteran's spouse. This is necessary because, under 38 U.S.C. 5121(a), the disposition of benefits differs depending on whether the veteran was or was not living at the time of the death of the veteran's spouse.

Upon the death of a surviving spouse, the spouse's benefits go first to the surviving children of the deceased veteran. *See* 38 U.S.C. 5121(a)(3). If there are no surviving children, the

accrued benefits may be paid as necessary to reimburse the person who bore the expense of the last sickness and/or burial of the deceased spouse. *See* 38 U.S.C. 5121(a)(6). On the other hand, there is no specific rule in 38 U.S.C. 5121(a) for distribution of benefits when the spouse of a living veteran dies. In that case, the default provision of 38 U.S.C. 5121(a)(6) applies and the accrued benefits may be paid only as necessary to reimburse the person who bore the expense of the last sickness and/or burial of the deceased spouse.

We propose to make these distinctions much clearer in § 5.551(c) by using two separate paragraphs. One would be applicable when the deceased beneficiary was the surviving spouse of a deceased veteran, and one would be applicable when the deceased beneficiary was the spouse of a living veteran. In fact, these distinctions would apply generally if the deceased beneficiary was the veteran's spouse, not just in cases involving chapter 35 educational benefits, and that broader application is also reflected in proposed § 5.551(c).

Section 104(b) of the Act amends 38 U.S.C. 5121(a) to provide that surviving parents may claim accrued benefits upon the death of a child who had claimed benefits under 38 U.S.C. chapter 18. Under section 104(d) of the Act, this amendment applies when the child dies on or after December 16, 2003. Proposed § 5.551(d)(3) reflects this change.

A consequence of the *Bonny* decision construing 38 U.S.C. 5121(a) to provide for two different kinds of benefits is that statutory provisions that explicitly apply to only one of those benefits necessarily do not apply to the other. One of those provisions (38 U.S.C. 5121(a)(5) prior to the Act, but now 38 U.S.C. 5121(a)(6)) provides that, if there is no other qualified claimant, ''only so much of the accrued benefits may be paid as may be necessary to reimburse the person who bore the expense of [the deceased beneficiary's] last sickness and burial.''

Because it expressly applies to ''accrued benefits,'' it could not, prior to the Act, have applied to the category of benefits recognized by the *Bonny* decision we propose to call ''benefits awarded, but unpaid at death.'' In keeping with the previous discussion of the extent to which *Bonny* is still applicable, we propose to provide in § 5.551(e) that ''[b]enefits awarded, but unpaid at death, are not payable under this paragraph if the deceased beneficiary died prior to December 16, 2003, and a claim for such benefits was pending before VA on December 16, 2003.''

5.552 Claims for Accrued Benefits or Benefits Awarded, but Unpaid at Death

Proposed § 5.552 provides rules for claims for accrued benefits. These proposed rules also apply to claims for benefits awarded, but unpaid at death, if the deceased beneficiary died prior to December 16, 2003, and a claim for such benefits was pending on December 16, 2003. Proposed § 5.552(a) clarifies that proposed § 5.552 does not apply to claims for the proceeds of benefit checks a deceased beneficiary failed to negotiate prior to death (*see* proposed § 5.564), or to claims for benefits under § 3.816 by members of a certain class-action litigation.

Proposed § 5.552(b) states rules concerning the time limit for filing claims for accrued benefits and the absence of a time limit for filing claims for benefits awarded, but unpaid at death. Proposed § 5.552(b)(1), based on 38 U.S.C. 5121(c), states that ''[a] claim for accrued benefits must be filed within one year after the date of the deceased beneficiary's death.'' Under both proposed § 5.552(b)(1) and 38 U.S.C. 5121(c), the one-year time limit only applies to ''accrued benefits.'' Therefore, as provided in proposed § 5.552(b)(2), it does not apply to claims for ''benefits awarded, but unpaid at death.'' However, as the previous discussion concerning the interplay between *Bonny* v. *Principi* and the Act shows, ''benefits awarded, but unpaid at death'' now exists as a separate category of benefits in only very limited circumstances. Therefore proposed § 5.552(b)(2) states the following:

Benefits awarded, but unpaid at death. There is no time limit for filing a claim for benefits awarded, but unpaid at death, if the deceased beneficiary died prior to December 16, 2003, and a claim for such benefits was pending before VA on December 16, 2003. Paragraph (b)(1) of this section applies where ''accrued benefits'' includes ''benefits awarded, but unpaid at death.'' *See* § 5.550(a)(2).

5.553 Notice of Incomplete Claims

The provisions of proposed § 5.553 are similar to those of current § 3.1000(c)(1) with modifications to reflect the structure of proposed part 5.

5.554 Evidence of School Attendance in Claims by a Veteran's Children for Accrued Benefits or Benefits Awarded, but Unpaid at Death

Proposed § 5.554 is based on current § 3.667(e). We propose to include information about the new category of ''benefits awarded, but unpaid at death'' within the scope of its provisions, to correct an error in current § 3.667(e), and to clarify the rule concerning when verification of school attendance is required.

Current § 3.667(e) refers to ''a veteran's child over 18 but under 23 years of age, who was pursuing a course of instruction at the time of the payee's death.'' This description of the beginning point of this age range may be misleading. The relevant statutory provision is found at 38 U.S.C. 101(4)(A)(iii), which includes within the definition of ''child'' a person who otherwise qualifies as a child and ''who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years), is pursuing a course of instruction at an approved educational institution.'' The statutory period begins when the child attains the age of 18. The current regulation could be read as suggesting that the child must be age 19. Proposed § 5.554(a) clarifies this by referring to ''a veteran's child who has attained the age of 18, but is under the age of 23.''

Current § 3.667(e) provides that school attendance need not be confirmed when a claim for accrued benefits is filed by, or on behalf of, a child within a specified age range who was pursuing a course of instruction at the time of the payee's death and only payment of accrued benefits is involved. It also provides that ''[w]hen the payee's death occurred during a school vacation period, the requirements [of the section] will be considered to have been met if the child was carried on the school rolls on the last day of the regular school term immediately preceding the date of the payee's death.'' Of course, it may be necessary to obtain information from the school in order for VA to know whether the child was carried on the school's rolls at the relevant time. Proposed § 5.554(b) and (c) have been drafted to allow for this contingency.

5.555 What VA Benefits Are Potentially Payable as Accrued Benefits or Benefits Awarded, but Unpaid at Death?

We propose in § 5.555 to state which benefits are potentially available as accrued benefits or benefits awarded, but unpaid at death, and which benefits are not.

The terms of 38 U.S.C. 5121(a) provide that benefits included as accrued benefits must be ''periodic monetary benefits (other than insurance and servicemen's indemnity) under laws administered by the Secretary.'' This would clearly include VA pension, compensation, and DIC. Medal of Honor special pension under 38 U.S.C. 1562

and monetary benefits for veterans' children under 38 U.S.C. 1805, 1815, and 1821 are also ''periodic monetary benefits * * * under laws administered by the Secretary.'' Therefore, we propose to explicitly include all such benefits as qualifying benefits in § 5.555(b).

Section 156 of Pub. L. 97–377, 96 Stat. 1920–22, restored certain Social Security benefits that were reduced or terminated by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, 95 Stat. 357. Benefits payable under section 156 are commonly called REPS (Restored Entitlement Program for Survivors) benefits. We also propose to add REPS benefits to the list of those benefits that qualify as accrued benefits. REPS benefits are periodic monetary benefits because they are monthly payments, and, in the language of 38 U.S.C. 5121(a), they are paid ''under laws administered by the Secretary.'' Pub. L. 97–377 provides that these payments are to be paid by ''the head of the agency'' and it defines the term ''head of the agency'' as ''the head of such department or agency of the Government as the President shall designate to administer the provisions of this section.'' (Sec. 156(i)(1), Pub. L. 97–377, 96 Stat. 1922). Executive Order 12436, 48 FR 34929 (Aug. 2, 1983), designated ''the Administrator of Veterans' Affairs' (now ''the Secretary of Veterans Affairs'') to administer the provisions of section 156 of Pub. L. 97–377. Therefore, we propose to include REPS benefits in the list of qualifying benefits in proposed § 5.555(b)(8).

Various benefits are excluded because they are not ''periodic monetary benefits.'' The CAVC has determined that VA assistance in acquiring automobiles and adaptive equipment under 38 U.S.C. chapter 39 (*see Gillis* v. *West,* 11 Vet. App. 441 (1998)) and assistance in acquiring specially adapted housing under 38 U.S.C. Chapter 21 (*see Pappalardo* v. *Brown,* 6 Vet. App. 63 (1993)) are not ''periodic monetary benefits.'' We propose to include these benefits as exclusions in § 5.555(c)(1) and (2).

Next, we propose to include insurance benefits as § 5.555(c)(3) in the list of benefits that do not qualify as potential accrued benefits or benefits awarded, but unpaid at death, because such benefits are specifically excluded by 38 U.S.C. 5121(a). The proposed exclusion of Naval pension in § 5.555(c)(4) is based on current § 3.803(d).

The list of exclusions we propose also includes a special allowance authorized by 38 U.S.C. 1312(a). This allowance is payable to the survivors of certain veterans who die while in service or as the result of a service-connected disability incurred after September 15, 1940, and who were not fully and currently insured individuals under title II of the Social Security Act (42 U.S.C. 401 *et seq.*).

The special allowance payable under section 1312(a) is not available as accrued benefits because 38 U.S.C. 5121 applies to ''periodic monetary benefits * * * under laws administered by the Secretary [of Veterans Affairs].'' Under 38 U.S.C. 1322(a), as amended by the Act, it is the Commissioner of Social Security, not the Secretary of Veterans Affairs, who primarily determines whether any survivor is entitled to the section 1312(a) special allowance and, if so, the amount of those benefits. Therefore, we propose to exclude this special allowance from the list of benefits available under 38 U.S.C. 5121 in proposed § 5.555(c)(5).

We propose to omit reference to an obsolete category of benefits referred to in current § 3.1000(a) as ''servicemembers' indemnity.'' In particular, the Servicemen's Indemnity Act of 1951, Pub. L. 82–23, 65 Stat. 34, authorized VA to pay indemnity in the form of $10,000 automatic life insurance coverage to the survivors of members of the Armed Forces who died in service. However, the Act authorizing such benefits was repealed in 1956 by section 502(9) of the Servicemen's and Veterans' Survivor Benefits Act, Pub. L. 84–881, 70 Stat. 886. Therefore, we propose to remove the obsolete reference to this benefit.

5.556 Period for Which Accrued Benefits Are Paid

In keeping with the provisions of section 104 of the Act, proposed § 5.556(a) provides that, if the deceased beneficiary died prior to December 16, 2003, accrued benefits are limited to a period not to exceed 2 years. Note that through operation of the definitions in proposed § 5.550(a) and (b), this limitation would not apply to claims for benefits awarded, but unpaid at death, that were pending on December 16, 2003.

Historically, VA understood the 2-year limitation on payment of accrued benefits to mean a limitation to benefits accruing during the 2 years immediately preceding the veteran's death. In *Terry* v. *Principi*, No. 03–7107, 2004 U.S. App. LEXIS 9056, at *13 (Fed. Cir. May 10, 2004), the United States Court of Appeals for the Federal Circuit held that 38 U.S.C. 5121(a), prior to its amendment by the Act, ''only limits a survivor's recovery of accrued veteran's benefits to a maximum two-year period of benefits accrued at any time during the veteran's life.'' We propose to state in § 5.556(a) that ''[i]f benefits accrued for a period in excess of 2 years during the beneficiary's life, VA will pay benefits for the period of 24 consecutive months that produces the highest payment to the accrued benefits claimant.''

Finally, proposed § 5.556(b) calls attention to a special exception to the 2-year limitation rule in § 3.816 concerning payments related to a certain class-action lawsuit.

5.557 Relationship Between Accrued Benefits Claim and Claims Filed by the Deceased Beneficiary

This Notice of Proposed Rulemaking addresses another key court decision concerning the nature of accrued benefits claims and the interpretation of 38 U.S.C. 5121. In *Zevalkink* v. *Brown*, 102 F.3d 1236, 1241 (Fed. Cir. 1996), *cert. denied,* 521 U.S. 1103 (1997), the court stated the following concerning claims for accrued benefits:

> A claim for accrued benefits under [38 U.S.C.] § 5121, as the Court of Veterans Appeals [now Court of Appeals for Veterans Claims] correctly held, is a separate claim from the veteran's claim for service connection because it is based on a separate statutory entitlement for which an application must be filed in order to receive benefits. See 38 U.S.C. § 5121(c) (''Applications for accrued benefits must be filed within one year after the date of death.''). At the same time, however, an accrued benefits claim is derivative of the veteran's claim for service connection, *i.e.*, the claimant's entitlement is based on the veteran's entitlement.

The concepts explained in *Zevalkink* are incorporated in proposed § 5.557. Specifically, proposed § 5.557(a) provides that while an accrued benefits claim is a separate claim, the claimant's entitlement is based on the deceased beneficiary's entitlement.

A consequence of this principle is addressed in proposed § 5.557(b). The court set out the following explanation in *Zevalkink*, 102 F.3d at 1242:

> If the existing decisions were adverse, then no benefits are payable. While living, the veteran was bound by those existing decisions and could not have had them reconsidered absent new and material evidence. Sections 5108 and 7104 of title 38 expressly preclude the [regional office] and [the Board of Veterans' Appeals] from considering a prior adjudicated claim unless new and material evidence is presented * * *
>
> Appellants have presented no compelling argument, nor pointed to any statutory language, showing why existing ratings and decisions should be reopened without such new and material evidence. Appellants argue, in effect, that the clause that states that

accrued benefits may be ''based on evidence in the file at date of death'' allows them to reopen, and have a new adjudication of, any existing decision or rating. As shown, however, this would be inconsistent with the other provisions of § 5121 and with the central purpose of the statute which is to pay accrued benefits based on ''existing ratings and decisions.'' Thus, we interpret the clause relied on by appellants as permitting the new adjudication of a prior claim only if there is new and material evidence in the file which has not previously been considered.

Proposed § 5.557(b) incorporates the court's holding by providing that a claimant for accrued benefits is bound by any existing VA decisions to the same extent as the deceased beneficiary would have been bound.

5.558 Special Rule for Certain Cases Involving Deaths Prior to December 16, 2003

As previously discussed in this NPRM, VA regulations in effect at the time of the *Bonny* decision apply if the deceased beneficiary died prior to December 16, 2003, but VA received a claim for 38 U.S.C. 5121 benefits on or after December 16, 2003. This is because, effective on December 16, 2003, the basis for the *Bonny* court's interpretation of 38 U.S.C. 5121(a) is no longer viable.

Therefore, we propose to provide in § 5.558 that if the deceased beneficiary died prior to December 16, 2003, but VA received a claim for benefits under 38 U.S.C. 5121 on or after that date, the claim will be adjudicated under the provisions of 38 CFR 3.1000, and sections cited therein, in effect on December 16, 2003. Because of the definition of ''accrued benefits'' in proposed § 5.550(a), § 3.1000 and the sections it cites would be applied uniformly to accrued benefits and to benefits awarded, but unpaid at death, in these cases.

5.559 Accrued Benefits Reference Table

The interrelationships of the proposed regulations concerning benefits under 38 U.S.C. 5121 are necessarily very complex, given the *Bonny* decision as modified by the provisions of the Act. Therefore, we propose to provide a table, with appropriate cross-references concerning differences in application of the one-year time limit to file a claim and the 2-year limitation on the benefit payable, as well as a list of potential benefit claimants.

Death Compensation

The second major portion of this NPRM concerns death compensation.

5.560 Eligibility Criteria for Payment of Death Compensation

The first regulation concerning death compensation is proposed § 5.560, a revision of current 38 CFR 3.4(a). In its current form, § 3.4(c)(2) informs readers that death compensation is available if the veteran died on or after May 1, 1957, and before January 1, 1972, if at the time of death a policy of United States Government Life Insurance (USGLI) or National Service Life Insurance (NSLI) was in effect under waiver of premiums pursuant to 38 U.S.C. 1924, ''In-service waiver of premiums,'' unless the waiver was granted under the first provision of section 622(a) of the National Service Life Insurance Act of 1940 (now 38 U.S.C. 1924), and the veteran died before or within 120 days of return to military jurisdiction. We propose to remove this provision because it is obsolete.

The DIC program was established in 1956 by Pub. L. 84–881, 70 Stat. 862, which provided that DIC, rather than death compensation, would be payable for service-related deaths after December 31, 1956. However, section 501(a)(3)(B) of Pub. L. 84–881, 70 Stat. 880, provided that DIC could not be paid in cases when an NSLI or USGLI policy was in effect under a waiver of premiums based on section 622 of the National Service Life Insurance Act of 1940. Section 501(a)(3)(B) stated that death compensation could be paid in those cases, even though the death occurred after December 31, 1956. In 1958, this provision was codified, as amended, at 38 U.S.C. 417(a). Also in 1958, Congress enacted 38 U.S.C. 321 and 341 (now 38 U.S.C. 1121 and 1141, respectively) to provide that death compensation could be paid when a veteran died before January 1, 1957 ''(or after April 30, 1957, under the circumstances described in section 417(a) of this title).'' Secs. 321, 341, Pub. L. 85–857, 72 Stat. 1122–23.

In 1971, Congress removed 38 U.S.C. 417(a) and amended sections 321 and 341 by removing the provision authorizing death compensation for deaths after April 30, 1957. *See* secs. 5, 6, Pub. L. 92–197, 85 Stat. 662. Congress also provided that any person who was receiving or entitled to receive death compensation on December 31, 1971, would continue to receive that compensation unless they elected to receive DIC. Sec. 8, Pub. L. 92–197, 85 Stat. 662.

As the foregoing indicates, there is currently no authority to award death compensation for deaths on or after January 1, 1957. After that date, VA compensation for such deaths is governed exclusively by the DIC provisions in chapter 13 of title 38, United States Code. Therefore, we propose to remove current § 3.4(c)(2).

Proposed § 5.560(d) provides that VA will apply the same rules for determining the dependency of parents for death compensation purposes that it uses to determine the dependency of parents for the purpose of awarding additional compensation to a veteran with a dependent parent. The rules are the same and, particularly in view of the fact that there are now relatively few death compensation claimants, we believe this is preferable to repeating the complex rules for determining dependency in proposed subpart G of part 5.

5.561 Time of Marriage Requirement for Death Compensation Claims

Proposed § 5.561, based on relevant portions of current § 3.54, provides rules related to the time of marriage requirement for surviving spouses claiming entitlement to death compensation. As explained in proposed § 5.561(a), a marriage between the veteran and the veteran's surviving spouse that occurred before or during the veteran's military service meets time of marriage requirements for death compensation purposes.

A surviving spouse who married the veteran after service may meet the time of marriage requirement for death compensation eligibility under 38 U.S.C. 1102 in four ways, as explained in proposed § 5.561(b) and (c), which are based on current § 3.54(b). The first way is stated in proposed § 5.561(b), which preserves the provisions of the introductory paragraph of current § 3.54(b) and 38 U.S.C. 1102(b) that permit a surviving spouse to qualify for death compensation if the surviving spouse would have qualified under the law in effect on December 31, 1957.

Proposed § 5.561(c)(1) addresses the second way a surviving spouse may meet the time of marriage requirements for death compensation. As stated in 38 U.S.C. 1102(a)(1), this is for the marriage to have occurred ''before the expiration of fifteen years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated.'' We propose to include a provision, based on 38 U.S.C. 103(b) and current § 3.54(e), that states that ''[w]here the surviving spouse has been married legally to the veteran more than once, the date of the original marriage will be used in determining whether this requirement has been met.''

We have not included the introductory clause in the first sentence

of current § 3.54(e) in proposed § 5.561(c)(1). That clause limits the scope of § 3.54(e) to ''periods commencing on or after January 1, 1958.'' January 1, 1958, is the effective date of the Veterans' Benefits Act of 1957 (1957 Act), Pub. L. 85–56, 71 Stat. 83. The 1957 Act primarily served to consolidate laws concerning veterans' benefits into one statute. The text of one of the 1957 Act's provisions is similar to current 38 U.S.C. 103(b). *See* sec. 103, Pub. L. 85–56, 71 Stat. 90. However, the law in effect prior to passage of the 1957 Act also permitted using the original date of marriage to determine if date of marriage requirements had been met in death compensation cases where the surviving spouse and the veteran had been married more than once. *See* sec. 3, Pub. L. 78–483, 58 Stat. 804.

We also propose to clarify in § 5.561(c)(1) that ''period of service'' in this context means a period of active military service from which the veteran was discharged under other than dishonorable conditions. Death compensation is payable to the surviving spouse of a ''veteran'' and, except for persons who die in service, a veteran is a person who was discharged or released from service under conditions other than dishonorable. 38 U.S.C. 101(2).

The third way in which a surviving spouse who married the veteran after service may meet the time of marriage requirements is to have been married to the veteran for a year or more. The statutory provision that sets the one-year marriage requirement relating to death compensation claims, 38 U.S.C. 1102(a)(2), is silent as to whether the one year of marriage must have been continuous. We propose to permit adding periods of marriage together to determine whether the one-year requirement has been met in cases where the surviving spouse and the veteran were married more than once. The one-year marriage requirement is designed to prevent abuse by sham ''death bed'' marriages to obtain benefits. We believe that there is much less risk of such abuse where the veteran and the surviving spouse have had an ongoing close relationship demonstrated by previous marriage.

Finally, a surviving spouse who married the veteran after service may meet the time of marriage requirement for death compensation if a child was born of the marriage, or born before the marriage. Proposed § 5.561(c)(3) includes this rule and refers the user to § 3.54(d) for definitions of ''child born of the marriage'' and child ''born '' before the marriage.''

5.562 Eligibility Criteria for Special Monthly Death Compensation

Proposed § 5.562, based on current § 3.351(a)(6), (b), and (c), provides for payment of increased death compensation based on the need for regular aid and attendance. We propose to correct an omission from current § 3.351(a)(6), which provides for increased death compensation only for a surviving spouse who is in need of aid and attendance. The underlying statute, 38 U.S.C. 1122(b), provides for special monthly death compensation for dependent parents in need of aid and attendance, as well as for surviving spouses. Proposed § 5.562(a) clarifies that both classes of claimants are potentially eligible. While the correction of the omission in the regulation is new, this does not represent a change in VA practice, inasmuch as VA complies with the authorizing statute.

Special Provisions

The next section of this NPRM contains proposed regulations that set out special provisions concerning the disposition of the proceeds of certain VA benefits upon the death of the person receiving those benefits.

5.563 Special Rules When a Beneficiary Dies While Receiving Apportioned Benefits

The first proposed regulation in this group, § 5.563, is based on current § 3.1000(b). Proposed § 5.563(a) would implement the broad authority given to VA under 38 U.S.C. 5121(a)(1): ''Upon the death of a person receiving an apportioned share of benefits payable to a veteran, all or any part of such benefits [shall be paid] to the veteran or to any other dependent or dependents of the veteran, as may be determined by the Secretary.''

The current regulation provides that when a person receiving an apportioned share of a veteran's benefits dies, all or any part of an unpaid apportionment is payable to the veteran or to the veteran's surviving dependents. However, it does not specify how VA makes determinations concerning surviving dependents. Proposed § 5.563(a), following long-standing VA practice, provides for payment of the unpaid apportionment to the veteran, if the veteran survives, or to the surviving dependents of a deceased veteran. We propose to use the same order of priority specified in 38 U.S.C. 5121(a)(2), which is applicable to accrued benefits and benefits awarded, but unpaid at death, to determine which dependents of a deceased veteran are entitled to these funds. This is accomplished through a cross-reference to proposed § 5.551(b).

5.564 Special Rules When VA Benefit Checks Have Not Been Negotiated Prior to the Beneficiary's Death

The second proposed regulation in this group of special provisions is § 5.564, which is based on current § 3.1003. This regulation provides rules concerning the disposition of VA benefit checks that were not negotiated at the time of the death of the beneficiary. We propose to use the term ''beneficiary,'' rather than ''payee'' as currently used in § 3.1003, to clarify that the provisions of this proposed section would not apply to payees who die and who are not VA beneficiaries themselves, such as fiduciaries who receive VA benefit checks on behalf of a minor or incompetent VA beneficiary. In VAOPGCPREC 8–96, VA's General Counsel noted that the statutory scheme and the legislative history of 38 U.S.C. 5122, the statutory authority for this regulation, suggest that the statute applies only when the individual actually entitled to VA benefits has died before a VA check in payment of such benefits has been negotiated.

Proposed § 5.564(a)(1) states the general rule that non-negotiated VA benefit checks must be returned to the office that issued the checks upon the death of the beneficiary. Proposed § 5.564(a)(2) provides an exception to the general rule, which is currently found in 38 CFR 3.20(c)(2), that under certain circumstances a surviving spouse may negotiate a veteran's check for compensation or pension for the month in which the veteran died.

5.565 Special Rules for Payment of VA Benefits on Deposit in a Special Deposit Account When a Payee Living in a Foreign Country Dies

The next regulation in this proposed rulemaking is comprised of rules for disposition of funds deposited in an account called ''Secretary of the Treasury, Proceeds of Withheld Foreign Checks'' (''special deposit account'') upon the death of the payee. Such accounts are necessary because of provisions in 31 U.S.C. 3329, ''Withholding checks to be sent to foreign countries,'' and 31 U.S.C. 3330, ''Payment of Department of Veterans Affairs checks for the benefit of individuals in foreign countries.''

Under 31 U.S.C. 3329, the Secretary of the Treasury must prohibit Federal payments from being sent to a foreign country when the Secretary of the Treasury decides that there is no reasonable assurance the payee will receive it or, if they receive it, will be

able to negotiate it for its full value. Subject to certain conditions, the funds are deposited in the special deposit account.

A companion statute, 31 U.S.C. 3330, provides special rules for implementing 31 U.S.C. 3329 when the Federal payment in question involves VA benefit checks. Among other things, section 3330 limits the amount to be deposited in the special deposit account to $1,000 and provides rules for disposition of the money in that account when the payee dies.

The rules for disposition of funds in the special deposit account upon the death of the payee are the subject of current § 3.1008. The current section, however, refers to obsolete legal authorities. In addition, the current section omits practical details about how the funds in the special deposit account are distributed, information about statutory time limits for filing a claim for the funds and filing supporting evidence, and other information that would be helpful to users of the regulation. Proposed § 5.565 addresses all of these concerns.

In § 5.565(b)(3) we propose to provide that ''[i]f the deceased payee was the recipient of an apportioned share of the veteran's pension or compensation, [the funds in the special deposit account are payable] to the veteran to the extent the special deposit account consists of such apportionment payments.'' This is based upon our interpretation of language in 31 U.S.C. 3330(c)(3):

> (c) If the payee of a check for pension, compensation, or emergency officers' retirement pay under laws administered by the Secretary of Veterans Affairs dies while the amount of the check is in the special deposit account, the amount is payable (subject to section 3329 of this title and this section) as follows:
>
> * * * * *
>
> (3) after the death of an apportionee of a part of the veteran's pension, compensation, or emergency officers' retirement pay but before all of the apportioned amount is paid to the veteran, the apportioned amount not paid.

The original statutory language in section 3(c) of Pub. L. 76–828, 54 Stat. 1087, was clearer. It provided that:

> * * * upon the death, prior to disbursement of all or any part of the apportioned amount, of an apportionee of a part of the veteran's pension, compensation, or emergency officers' retirement pay, such apportioned amount not disbursed shall be payable to the veteran.

This language was codified as part of 31 U.S.C. 125 and carried forward for many years. *See, e.g.*, 31 U.S.C. 125 (1976).

Pub. L. 97–258 completely recodified title 31, United States Code. Among other things, it substituted the current language of 31 U.S.C. 3330(c) for the pertinent provisions of former 31 U.S.C. 125. Pub. L. 97–258, 96 Stat. 954. The United States Code Congressional and Administrative News includes the House Report submitted with this legislation. The commentary concerning section 3330 does not explain the changes introduced in section 3330(c)(3). H.R. Rep. No. 97–651, at 107 (1982), *reprinted* in 1982 U.S.C.C.A.N. 1895, 2001. Nevertheless, the statement of the purpose of the legislation indicates that ''[t]he purpose of the bill is to restate in comprehensive form, *without substantive change*, certain general and permanent laws related to money and finance and to enact those laws as title 31, United States Code.'' H. Rep. No. 97–651, at 1, *reprinted in* 1982 U.S.C.C.A.N. at 1895 (emphasis added). Particularly in view of this legislative history, we believe that proposed § 5.565(c)(3) accurately interprets 31 U.S.C. 3330(c)(3) and is clearer.

We also propose to omit the reference to ''servicemembers indemnity'' found in current § 3.1008. As explained in the discussion of proposed § 5.555, this is an obsolete VA benefit program.

Paragraph (c) of proposed § 5.565 contains rules regarding filing requirements for claims under this section and follows language in 31 U.S.C. 3330(d). Under 31 U.S.C. 3330(d)(1)(A), claims for VA benefits in the special deposit account when the payee dies must be ''filed with the Secretary of Veterans Affairs by the end of the first year after the date of the death of the individual entitled to payment.'' As with the language discussed earlier concerning the disposition of accrued benefit payments in the special deposit account, the claim-filing deadline was clearer in Pub. L. 76–828 and its original codification. ''[N]o disbursement shall be made unless claim therefor be filed in the Veterans' Administration within one year from the date of the death of the person entitled.'' 31 U.S.C. 125 (1976). Again, the legislative history shows no intent to make any substantive change in the 1982 recodification. Therefore, we propose to state that ''[a] claim for the funds in the special deposit account must be received by VA within one year after the date of the payee's death.''

Proposed § 5.565(d) provides rules relating to two restrictions on claims governed by proposed § 5.565. The first, a restriction on payments to amounts due at the time of death under ratings or decisions existing at the time of the death in paragraph (d)(1), is based on 31 U.S.C. 3330(d)(2). The second, a restriction concerning the loyalty of the claimant and the deceased beneficiary to the United States in paragraph (d)(2), is based on the last sentence of current § 3.1008. This restriction is consistent with provisions of 38 U.S.C. 6104, ''Forfeiture for treason.''

5.566 Special Rules for Payment of Gratuitous VA Benefits Deposited in a Personal Funds of Patients Account When an Incompetent Veteran Dies

The final regulation in this section governs disposition of certain VA benefits upon the death of a veteran who was unable to conduct his or her own financial affairs. One way to safeguard VA benefits awarded to a mentally incompetent institutionalized veteran is to order that the funds be held in a personal funds of patients (PFOP) trust fund account and disbursed for the benefit of the veteran or the veteran's dependents. *See* 38 U.S.C. 5502(d) and 5504. Proposed § 5.566, based on current § 3.1009, sets out how benefits described in 38 U.S.C. 5502(d) as ''gratuitous'' VA benefits in the PFOP account are distributed when the veteran dies.

Proposed § 5.566(b) includes a cross-reference to a proposed new definition of the statutory term ''gratuitous VA benefits'' that will appear in another NPRM as part of the Project. Proposed § 5.566(b) also clarifies that the section only applies to funds on deposit in the PFOP account at the date of the veteran's death.

Proposed § 5.566(c)(1) provides that the section does not apply to funds that were deposited in the PFOP account by the veteran or others (as opposed to benefits deposited in the PFOP account by VA). Proposed § 5.566(c)(2) states that this section does not apply to earned interest or similar increases in value following the original deposit by VA. As to the latter exclusion, we adopt the rationale stated in VAOPGCPREC 6–91:

> 16. The third question in subparagraph c. of your memorandum is as to the applicability of the provisions of Section 3202(d) to the interest earned on U.S. Savings Bonds purchased by a Manager on behalf of a veteran from gratuitous VA benefits in a PFOP account where the bonds are redeemed during the veteran's lifetime. It must be accepted as a fact that such interest is not a gratuitous benefit under the laws administered by the VA within the meaning of the language in Section 3202(d), as defined in paragraph D.3.a. of Interim Issue (CONTR–169), quoted supra. The portions of H.R. Report No. 303 quoted in paragraphs 9 and 12 of this memorandum show that the Committee used the term ''derived'' from veterans' benefits to describe the funds to

which Section 3202(d) relates and, as stated in paragraph 13 hereof, the Congress appears to have used that phrase with its usual or ordinary meaning. It would, therefore, appear to be a proper construction that the term was intended to mean the source or origin of the particular thing under consideration (gratuitous VA benefits here), and hence, not an increased value of the gratuitous benefits but only their value at the original source. Accordingly, it is the opinion of this office that such interest should not be considered to be subject to disposition in accordance with the provisions of Section 3202(d) of Title 38, U.S.C., as amended.

Proposed § 5.566(d) governs entitlement to the funds in the PFOP account upon the death of the veteran. Consistent with the authorizing statute, 38 U.S.C. 5502(d), we propose to clarify that the recipient must be living at the time of settlement and that in this context ''settlement'' means the time when VA pays out the PFOP account.

Current § 3.1009(a) lists the persons eligible for funds in the PFOP account upon the veteran's death. It gives the highest priority to the veteran's spouse and incorporates the definition of spouse in current § 3.1000(d)(1) by reference. For the reasons noted in the discussion of proposed § 5.550(h), we have proposed replacing the § 3.1000(d)(1) definition of ''spouse'' with a definition of ''surviving spouse.'' This is clearly appropriate because the authorizing statute specifies surviving spouse. Therefore, we propose providing that the potential recipient with the highest priority is ''[t]he veteran's surviving spouse, as defined in § 5.550(h).''

Effective Dates

5.567 Effective Dates for DIC or Death Compensation Awards

Proposed § 5.567 is based on portions of current §§ 3.400(c) and 3.402(a).

Current § 3.400(c)(4)(ii), the basis for proposed § 5.567(d), states that the effective date for the award of DIC to a child is the ''[f]irst day of the month in which entitlement arose if claim is received within 1 year after the date of entitlement; otherwise, date of receipt of claim.'' Because a number of VA effective date regulations use various language concerning the ''date entitlement arose,'' VA will be proposing a new centralized definition of ''date entitlement arose'' as part of a separate rulemaking document published for public comment at another time. Therefore, where applicable, we have cross-referenced the proposed new centralized definition.

With respect to § 3.400(c)(4), the omission of a proposed rule based on § 3.400(c)(4)(iii) is intentional. Current § 3.400(c)(4)(iii) concerns the effective date of awards of DIC to persons who elect DIC in lieu of death compensation in certain cases involving veterans who died from May 1, 1957, to January 1, 1972. *See also* current §§ 3.5(b)(3) and 3.702(a). For the reasons discussed earlier, see the supplementary information concerning proposed § 5.560, the provisions that once permitted the award of death compensation for death occurring on or after May 1, 1957, are now obsolete. Therefore, § 3.400(c)(4)(iii) is also obsolete. Persons who are still receiving death compensation under the old law because of the death of a veteran from May 1, 1957, to January 1, 1972, and who now elect DIC in lieu of death compensation would be covered by the general DIC election effective date in proposed § 5.567(c).

5.568 Effective Date for Discontinuance of DIC or Death Compensation Payments to a Person No Longer Recognized as the Veteran's Surviving Spouse.

Current § 3.657 addresses two different effective date and payment adjustment scenarios that may arise when an individual is recognized as the surviving spouse and is awarded DIC or death compensation. The first scenario is addressed in § 5.568 and the second in § 5.569.

The first scenario occurs when VA is paying DIC or death compensation to one person who claims to be the surviving spouse of a veteran, but another person later claims DIC or death compensation and successfully establishes that he or she is actually the veteran's lawful surviving spouse. Current § 3.657(a) governs the effective date for the discontinuance of the award to the person previously recognized as the veteran's surviving spouse.

Proposed § 5.568(b) is taken from current § 3.657(a) with two exceptions. First, 38 U.S.C. 5112(b)(6) provides that the effective date for a reduction or discontinuance of compensation, DIC, or pension ''by reason of change in law or administrative issue'' or a ''change in interpretation of a law or administrative issue'' will be ''the last day of the month following sixty days from the date of notice to the payee (at the payee's last address of record) of the reduction or discontinuance.'' *See also* current § 3.114(b). We propose to add this exception as § 5.568(b)(3). Second, current § 3.657(a)(1) and (2) refer to payments to the legal surviving spouse being effective either prior to or from the date of ''filing claim.'' The operative effective date is not the date of filing, but the date VA receives the claim. *See* 38 U.S.C. 5110(a). Therefore, we propose to clarify the relevant language so that it refers to date of receipt, rather than date of ''filing.''

5.569 Effective Date for Award, or Termination of Award, of DIC or Death Compensation to a Surviving Spouse Where DIC or Death Compensation Payments to Children Are Involved

Proposed § 5.569 addresses the second effective date and payment adjustment scenario in current § 3.657. It concerns DIC or death compensation effective dates and payment adjustments when a veteran is survived by a spouse and a child or children. (In the remainder of this discussion concerning proposed § 5.569, ''children'' means a child or children.)

This scenario, in turn, involves two possible situations: (1) The surviving spouse is awarded DIC or death compensation, and a separate award for the surviving children therefore terminates; or (2) the surviving spouse's eligibility for DIC or death compensation terminates (by remarriage, for example), and the veteran's surviving children are eligible to receive DIC or death compensation because of termination of the surviving spouse's entitlement, but the surviving spouse continues to receive DIC or death compensation after termination of his or her entitlement.

The current rules for situation (2) are not as comprehensive as those for situation (1). For situation (1), current § 3.657(b)(1) provides effective date and payment adjustment rules that apply where the rate for the children is lower than the rate for the surviving spouse and where the rate for the children is the same as or higher than the rate for the surviving spouse. Current § 3.657(b)(2) provides effective date rules that apply to situation (2) where the children's rate is lower than the rate for the surviving spouse and where the children's rate is higher than the rate for the surviving spouse. However, there is no guidance about what to do if the rates are the same. We propose, in § 5.569(c)(3), to add rules that would apply in situation (2) when the children's rate is the same as the rate for the surviving spouse.

We believe that this proposed change would produce a correct and equitable result. Current § 3.657 essentially looks at the overall family unit for setting rules for these payment adjustments and effective dates. Section 3.657(b)(2) provides that when the rate for the children is lower than the rate for the surviving spouse, payments to the surviving spouse are retroactively reduced to the children's rate effective

from the date the surviving spouse's entitlement terminated. The award for the children is effective from the day following the date of last payment to the surviving spouse. If the rate for the children is higher than the rate for the surviving spouse, the award to the surviving spouse is terminated as of the date of the last payment to the spouse. The award for the children consists of an amount equal to the difference between the children's rate and the surviving spouse's rate from the date the surviving spouse's entitlement terminated until the date of last payment to the surviving spouse, and then the full rate thereafter. These rules result in benefits flowing to the family unit as a whole in the amounts properly payable to the various family members.

When the rates for the children and surviving spouse are the same, we propose to terminate the award to the surviving spouse on the date of last payment and to make the award to the children effective the following day. This would also achieve the same result. That is, benefits would flow to the overall family unit in the amounts properly payable to the family members.

5.570 Effective Date for Reduction in DIC—Surviving Spouses

Proposed § 5.570 is based on the introductory paragraph and paragraphs (a) and (b) of current § 3.502. We propose to omit the references to § 3.500(n)(3) that appear in current § 3.502(a)(1) and (2) because § 3.500(n)(3) does not deal with the situations described in proposed § 5.570.

5.571 Effective Dates for an Award or Increased Rate Based on Amended Income Information—Parents' DIC

Proposed § 5.571, based on current § 3.660(b), provides information regarding effective dates for increases or awards of parents' DIC following the submission of amended income information.

Current § 3.660(b)(1) provides that if payments were not made, or were made at a lower rate, on the basis of anticipated income, parents' DIC may be awarded or increased ''in accordance with the facts found but not earlier than the beginning of the appropriate 12-month annualization period if satisfactory evidence is received within the same or the next calendar year.''

It has been VA's historical procedure to make income determinations for entitlement to parents' DIC on a calendar-year basis. Although the ''12-month annualization period,'' would include a calendar year, we believe that this language could be confusing to readers and adjudicators. Therefore, we propose to use the term ''calendar year'' instead of ''12-month annualization period.''

Another change has to do with the use of the term ''facts found'' in current § 3.660(b)(1). VA interprets ''facts found'' and another phrase used in several effective date rules, ''date entitlement arose,'' to have the same basic meaning. As explained previously, we propose to use only one of these terms, ''date entitlement arose,'' to improve consistency. Therefore, where applicable, we propose to replace the phrase ''in accordance with the facts found'' with a cross-reference to the proposed new standardized definition of ''date entitlement arose.''

Proposed § 5.571(c) refers to a regulation to be published in another NPRM. That proposed regulation will provide rules concerning the submission of amended income information by parents' DIC beneficiaries. Those rules will include the time limits for submitting amended income information currently found in § 3.660(b).

5.572 Effective Dates for Reduction or Discontinuance Based on Increased Income—Parents' DIC

The last regulation in this NPRM, based in part on current § 3.660(a), is § 5.572, which provides information regarding effective dates for parents' DIC reductions or discontinuances based on increased income.

Proposed § 5.572(c) addresses a gap in current § 3.660, which does not specify the effective date rule VA uses when it is unable to determine the month in which income increased. It has been VA's practice in such situations to reduce or discontinue the parent's award effective the beginning of the calendar year in which the income increased. We believe the regulation will be more comprehensive by including this information. We also believe that the stated rule is equitable because proposed § 5.572(c) provides that the effective date of the reduction or discontinuance will be adjusted accordingly if VA later receives information regarding the month income increased.

Removal of 38 CFR 3.400(h)(4) and 3.503(a)(9).

We next propose to remove current § 3.400(h)(4) as part of this NPRM. That section concerns the effective date for an award of VA death benefits based upon a difference of opinion with a prior denial of those benefits. Paragraph (h)(4) provides this rule:

> Where the initial determination for the purpose of death benefits is favorable, the commencing date will be determined without regard to the fact that the action may reverse, on a difference of opinion, an unfavorable decision for disability purposes by an adjudicative agency other than the Board of Veterans[']' Appeals, which was in effect at the date of the veteran's death.

We understand this provision to mean that VA will apply the normal effective date rule applicable to death benefit claims, rather than rules applicable to awards based on a difference of opinion, when it grants a dependant's claim for death benefits even though a claim from the veteran, based on similar facts, may have been denied during his or her lifetime. For example, if a veteran were denied service connection for a particular type of cancer, but a VA regional office later granted service connection for the cause of the veteran's death from that same type of cancer, VA would establish the effective date without regard to the fact that the veteran's claim had been denied in the past.

We propose to omit this provision from new part 5. Although it does not lead to an incorrect result, it is unnecessary. Further, it implies a relationship, which does not exist, between two entirely different types of claims: a veteran's disability claim and a survivor's claim for death benefits. (''Death benefits'' in this context include death compensation, DIC, and death pension. *See Zevalkink,* 102 F.3d at 1242.)

Certainly, as in the illustration about a veteran whose claim for service connection for cancer was denied while the survivor's claim for service connection for the cause of the veteran's death from the same illness was granted, a veteran's disability claim and a survivor's claim for death benefits can involve similar factual and legal issues. However, it is now quite clear that a veteran's disability claim does not survive his or her death. *Richard* v. *West*, 161 F.3d 719, 723 (Fed. Cir. 1998). A claim for death benefits by a survivor is considered a new, independent claim.

When a veteran dies from a service-connected disability, the veteran's surviving spouse is eligible for DIC. *See* 38 U.S.C. § 1310; 38 CFR § 3.5(a) (1995). Such a claim for DIC is generally treated as an original claim by the survivor, regardless of the status of adjudications concerning service-connected-disability claims brought by the veteran before his or her death.

Green v. *Brown,* 10 Vet. App. 111, 114 (1997).

Because the claims are separate, a denial of a veteran's disability claim followed by an award of a surviving dependent's claim for death benefits is not an award based on a difference of opinion, even though there may be some overlapping factual and legal issues. Therefore, because current § 3.400(h)(4) adds nothing substantive and could be a source of confusion, we propose its removal.

We also propose to remove current § 3.503(a)(9). The current regulation states, in pertinent part:

(a) The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a child, or to or for a veteran or surviving spouse on behalf of such child, will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

* * * * *

(9) *Surviving spouse becomes entitled.* Date of last payment. See § 3.657.

Because the subject matter of this rule would be adequately addressed in proposed § 5.569, ''Effective date for award, or termination of award, of DIC or death compensation to a surviving spouse where DIC or death compensation payments to children are involved,'' we believe § 3.503(a)(9) would become unnecessary and we propose to remove it.

Endnote Regarding Removals (Deletions) From Part 3 of 38 CFR

For the reasons shown in the preceding supplementary information, the amendments proposed in this document would, if adopted, result in removal of current §§ 3.1000 and 3.1002 through 3.1009, and portions of §§ 3.4, 3.54, 3.503, 3.351, 3.400, 3.657, 3.660, 3.667, 3.704, and 3.803. This would be the case because those part 3 sections, or portions of sections, would be replaced by new part 5 sections or they would be removed entirely. Readers are invited to comment both on these part 3 removals and on the proposed new part 5 rules at this time.

NPRMs frequently include formal ''amendatory language'' listing the sections, or portions of sections, that would be removed if the proposed amendments are adopted. However, we have not included such ''amendatory language'' in this NPRM because of the nature of this Project. Because of the very large scope of the Project, we are publishing proposed amendments in several NPRMs. Then, after public comments in response to all of the NPRMs making up the Project have been reviewed and considered, VA will propose to remove all of part 3, concurrent with the implementation of part 5.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

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

Executive Order 12866

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers for this proposal are 64.100–102, 64.104–110, 64.115, and 64.127.

List of Subjects in 38 CFR Part 5

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

Approved: June 18, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to further amend 38 CFR part 5, as proposed to be added at 69 FR 4832, January 30, 2004, by adding subpart G to read as follows:

PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS

Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary

Sec.

5.500–5.549 [Reserved]

Accrued Benefits

5.550 Definitions.
5.551 Persons entitled to accrued benefits or benefits awarded, but unpaid at death.
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5.557 Relationship between accrued benefits claim and claims filed by the deceased beneficiary.
5.558 Special rule for certain cases involving deaths prior to December 16, 2003.
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Death Compensation

5.560 Eligibility criteria for payment of death compensation.
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Special Provisions

5.563 Special rules when a beneficiary dies while receiving apportioned benefits.
5.564 Special rules when VA benefit checks have not been negotiated prior to the beneficiary's death.
5.565 Special rules for payment of VA benefits on deposit in a special deposit account when a payee living in a foreign country dies.
5.566 Special rules for payment of gratuitous VA benefits deposited in a personal funds of patients account when an incompetent veteran dies.

Effective Dates

5.567 Effective dates for DIC or death compensation awards.
5.568 Effective date for discontinuance of DIC or death compensation payments to a person no longer recognized as the veteran's surviving spouse.
5.569 Effective date for award, or termination of award, of DIC or death compensation to a surviving spouse where DIC or death compensation payments to children are involved.
5.570 Effective date for reduction in DIC—surviving spouses.
5.571 Effective date for an award or increased rate based on amended income information—parents' DIC.
5.572 Effective dates for reduction or discontinuance based on increased income—parents' DIC.

5.573–5.579 [Reserved]

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary

§§ 5.500–5.549 [Reserved]

Accrued Benefits

§ 5.550 Definitions.

The following definitions apply to §§ 5.551 through 5.559:

(a) *Accrued benefits.* (1) ''Accrued benefits'' means unpaid periodic monetary VA benefits to which an individual was entitled, based on the evidence in the file on the date of his or her death, from a claim for VA benefits pending on the date of death.

(2) ''Accrued benefits'' also includes benefits awarded, but unpaid at death:

(i) If the deceased beneficiary died on or after December 16, 2003;

(ii) If the deceased beneficiary died prior to December 16, 2003, but VA received the claim for benefits under 38 U.S.C. 5121 on or after December 16, 2003; and

(iii) For purposes of § 5.558, ''Special rule for certain cases involving deaths prior to December 16, 2003.''

(3) ''Accrued benefits'' does not include benefits awarded, but unpaid at death, when the deceased beneficiary died prior to December 16, 2003, and a claim for benefits under 38 U.S.C. 5121 was pending before VA on December 16, 2003. (For purposes of paragraph (a)(3) of this section, VA will consider a claim to be pending if there was no final decision on that claim as of December 16, 2003. *See* [regulation that will be published in a future Notice of Proposed Rulemaking] (defining a final decision)).

(b) *Benefits awarded, but unpaid at death,* means unpaid periodic monetary VA benefits awarded to an individual by a VA rating or decision before the individual died.

(c) *Child* means a child as defined in § 3.57 of this chapter. If qualification as a child for purposes of accrued benefits or benefits awarded, but unpaid at death, is based on pursuit of a course of instruction at an approved educational institution, the child must have been within the age range specified by § 3.57(a)(1)(iii) of this chapter on the date of the deceased beneficiary's death.

(d) *Claim for VA benefits pending on the date of death* means a claim filed with VA which had not been finally adjudicated by VA on or before the date of death. Such a claim may include a deceased beneficiary's claim to reopen a finally disallowed claim based upon new and material evidence or a deceased beneficiary's claim of clear and unmistakable error in a prior rating or decision. Any new and material evidence must have been in VA's possession on or before the date of the beneficiary's death.

(e) *Deceased beneficiary* means the deceased person whose VA benefits are being claimed as accrued benefits or benefits awarded, but unpaid at death.

(f) *Dependent parent* means a parent as defined in § 3.59 of this chapter who was dependent within the meaning of § 3.250 of this chapter at the date of the veteran's death.

(g) *Evidence in the file on the date of death* means evidence in VA's possession on or before the date of the deceased beneficiary's death, even if such evidence was not physically located in the VA claims folder on or before the date of death.

(h) *Surviving spouse.* (1) Except as provided in paragraph (h)(2) of this section, ''surviving spouse'' means a surviving spouse as defined in § 3.50(b) of this chapter.

(2) If the marriage between the veteran and the surviving spouse meets the definition of marriage in § 3.1(j) of this chapter, the following requirements do not apply:

(i) The marriage requirements for death pension in § 3.54(a) of this chapter, for dependency and indemnity compensation in § 3.54(c) of this chapter, and for death compensation in § 5.561; and

(ii) The continuous cohabitation requirement in § 3.50(b)(1) of this chapter.

(Authority: 38 U.S.C. 501(a), 5121(a); Sec. 104, Pub. L. 108–183, 117 Stat. 2656)

§ 5.551 Persons entitled to accrued benefits or benefits awarded, but unpaid at death.

(a) *Purpose.* This section provides the general rules for determining who is entitled to accrued benefits or benefits awarded, but unpaid at death. These general rules are subject to § 3.1001 of this chapter (concerning payment of certain amounts withheld from VA benefits awarded to hospitalized veterans); § 5.558, ''Special rule for certain cases involving deaths prior to December 16, 2003''; § 5.563, ''Special rules when a beneficiary dies while receiving apportioned benefits''; and § 5.565, ''Special rules for payment of VA benefits on deposit in a special deposit account when a payee living in a foreign country dies.'' *See also* § 3.816 of this chapter, ''Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure.''

(b) *Deceased beneficiary was the veteran.* If the deceased beneficiary was the veteran, benefits are payable to a living person, or persons, in the following order:

(1) The veteran's surviving spouse.

(2) The veteran's surviving children (in equal shares).

(3) The veteran's surviving dependent parents (in equal shares) or the surviving dependent parent if only one is living.

(c) *Deceased beneficiary was the veteran's spouse*—(1) *Surviving spouse of a deceased veteran.* If the deceased beneficiary was the surviving spouse or remarried surviving spouse of a deceased veteran, then VA will pay benefits to the veteran's children in equal shares. If there are no such children, then VA will pay accrued benefits as stated in paragraph (e) of this section.

(2) *Spouse of a living veteran.* If the deceased beneficiary was the spouse of a living veteran, then VA will pay accrued benefits as stated in paragraph (e) of this section.

(d) *Deceased beneficiary was the veteran's child*—(1) *General rule.* If the deceased beneficiary was the veteran's child, then VA will pay benefits to the veteran's surviving children who are entitled to death pension, death compensation, or dependency and indemnity compensation.

(2) *Surviving child who elected 38 U.S.C. chapter 35 educational benefits.* A surviving child who has elected dependents' educational assistance under 38 U.S.C. chapter 35 may receive benefits under paragraph (d)(1) of this section for periods prior to the commencement of benefits under chapter 35.

(3) *Deceased child's 38 U.S.C. chapter 18 benefits.* If a child claiming benefits under 38 U.S.C. chapter 18 dies on or after December 16, 2003, any accrued benefits resulting from such a claim are payable to the child's surviving parent(s). If there is no surviving parent, such accrued benefits are payable to the extent provided in paragraph (e) of this section.

(e) *No other eligible claimant survives.* If there are no eligible claimants under paragraphs (b) through (d) of this section, then VA will pay accrued benefits to the person who bore the expense of the deceased beneficiary's last sickness and/or burial, but only to the extent necessary to reimburse that person for such expense. VA will not pay accrued benefits due under this paragraph to any political subdivision of the United States, as defined in § 3.1(o)

of this chapter (for example, a State government). Benefits awarded, but unpaid at death, are not payable under this paragraph if the deceased beneficiary died prior to December 16, 2003, and a claim for such benefits was pending before VA on December 16, 2003.

(f) *Effect of failure to claim benefits, or waiver of benefits, on rights of other claimants.* The fact that a claimant with a higher priority claim to benefits under the provisions of this section fails to file a timely claim for such benefits, or waives rights to such benefits, does not create a right to the benefits in a claimant with a lower priority. The fact that one or more claimants falling within the same category of claimants (children, for example) fails to file a timely claim for accrued benefits, or waives rights to such benefits, will not increase the amount payable to any other claimant in the category.

(Authority: 38 U.S.C. 501(a), 5121(a); Sec. 104, Pub. L. 108–183, 117 Stat. 2656)

§ 5.552 Claims for accrued benefits or benefits awarded, but unpaid at death.

(a) *Scope.* This section applies to claims for accrued benefits. It also applies to claims for benefits awarded, but unpaid at death, if the deceased beneficiary died prior to December 16, 2003, and a claim for such benefits was pending on December 16, 2003. It does not apply to claims for the proceeds of a benefit check the deceased beneficiary did not negotiate prior to death (*see* § 5.564, ''Special rules when VA benefit checks have not been negotiated prior to the beneficiary's death''), or for benefits under § 3.816 of this chapter, ''Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure.''

(b) *Time limit for filing*—(1) *Accrued benefits.* A claim for accrued benefits must be filed within one year after the date of the deceased beneficiary's death.

(2) *Benefits awarded, but unpaid at death.* There is no time limit for filing a claim for benefits awarded, but unpaid at death, if the deceased beneficiary died prior to December 16, 2003, and a claim for such benefits was pending before VA on December 16, 2003. Paragraph (b)(1) of this section applies where ''accrued benefits'' includes ''benefits awarded, but unpaid at death.'' *See* § 5.550(a)(2).

(c) *Other claims accepted as a claim for accrued benefits or benefits awarded, but unpaid at death.* A claim filed with VA by, or on behalf of, an apportionee, surviving spouse, child or parent for any of the following benefits will also be accepted as a claim for accrued benefits and, if applicable, for benefits awarded, but unpaid at death:

(1) Death pension,

(2) Death compensation, or

(3) Dependency and indemnity compensation. *See also* § 3.152(b) of this chapter.

(Authority: 38 U.S.C. 5101(b), 5121(c))

§ 5.553 Notice of incomplete claims.

If a claim for benefits is incomplete because the claimant has not furnished information necessary to establish that he or she is within the category of persons eligible for benefits under the provisions of § 5.551, ''Persons entitled to accrued benefits or benefits awarded, but unpaid at death,'' or § 5.563, ''Special rules when a beneficiary dies while receiving apportioned benefits,'' and if the claimant may be entitled to payment of all or part of any benefits which may have accrued, then VA will notify the claimant:

(a) Of the type of information required to complete the application;

(b) That VA will take no further action on the claim unless VA receives the required information; and

(c) That if VA does not receive the required information within one year of the date of the original VA notification of information required, no benefits will be awarded on the basis of that application.

(Authority: 38 U.S.C. 5121(c))

§ 5.554 Evidence of school attendance in claims by a veteran's children for accrued benefits or benefits awarded, but unpaid at death.

(a) *Scope.* This section applies to claims for accrued benefits or benefits awarded, but unpaid at death, filed by or on behalf of a veteran's child who has attained the age of 18, but is under the age of 23, who was pursuing a course of instruction at the time of the deceased beneficiary's death.

(b) *Confirmation by school not required.* Subject to paragraph (c) of this section, school confirmation of evidence of school attendance is not required to support a claim described in paragraph (a) of this section.

(c) *Death of deceased beneficiary during school vacation period.* When the deceased beneficiary's death occurred during a school vacation period, VA will consider the child to have been pursuing a course of instruction at the time of the death if school records show that the child was carried on the school rolls on the last day of the regular school term immediately preceding the date of the deceased beneficiary's death.

(Authority: 38 U.S.C. 101(4)(A), 501(a))

§ 5.555 What VA benefits are potentially payable as accrued benefits or benefits awarded, but unpaid at death?

(a) *Scope.* This section lists which VA benefits potentially qualify, and which do not qualify, for payment as accrued benefits or benefits awarded, but unpaid at death.

(b) *Qualifying benefits.* (1) Clothing allowance under 38 U.S.C. 1162.

(2) Compensation, including death compensation under 38 U.S.C. chapter 11.

(3) Dependency and indemnity compensation under 38 U.S.C. chapter 13.

(4) Dependents' educational assistance allowance or special restorative training allowance under 38 U.S.C. chapter 35.

(5) Medal of Honor special pension under 38 U.S.C. 1562.

(6) Monetary benefits for eligible children under 38 U.S.C. chapter 18.

(7) Pension, including death pension under 38 U.S.C. chapter 15.

(8) Restored Entitlement Program for Survivors (REPS) benefits (Pub. L. 97–377, § 156, 96 Stat. 1830, 1920–22 (1982)).

(9) Subsistence allowance under 38 U.S.C. chapter 31.

(10) Veterans' educational assistance under 38 U.S.C. chapters 30, 32, or 34 and 10 U.S.C. 1606.

(c) *Non-qualifying benefits.* (1) Assistance in acquiring automobiles and adaptive equipment under 38 U.S.C. chapter 39.

(2) Assistance in acquiring specially adapted housing under 38 U.S.C. chapter 21.

(3) Insurance under 38 U.S.C. chapter 19.

(4) Naval pension under 10 U.S.C. 6160.

(5) Special allowance under 38 U.S.C. 1312(a).

(Authority: 38 U.S.C. 5121(a))

§ 5.556 Period for which accrued benefits are paid.

(a) *Two-year limitation.* If the deceased beneficiary died prior to December 16, 2003, VA may only pay accrued benefits for a period during the beneficiary's life not to exceed 2 years. If benefits accrued for a period during the beneficiary's life which was in excess of 2 years, VA will pay benefits for the period of 24 consecutive months that produces the highest payment to the accrued benefits claimant.

(b) *Exception to 2-year limitation. See* § 3.816 of this chapter, ''Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure.''

(Authority: 38 U.S.C. 5121(a); Sec. 104, Pub. L. 108–183, 117 Stat. 2656)

§ 5.557 Relationship between accrued benefits claim and claims filed by the deceased beneficiary.

(a) *Claim for accrued benefits results from the deceased beneficiary's entitlement.* A claim for accrued benefits is a separate claim filed by a person eligible for such benefits under § 5.551, ''Persons entitled to accrued benefits or benefits awarded, but unpaid at death.'' However, the claimant's entitlement is based on the deceased beneficiary's entitlement.

(b) *Accrued benefits claimant bound by existing decisions.* A claimant for accrued benefits is bound by any existing VA benefits decision(s) on claims by the deceased beneficiary concerning those benefits to the same extent that the deceased beneficiary was bound.

(Authority: 38 U.S.C. 501(a), 5101, 5121, 7104(b), 7105(c))

§ 5.558 Special rule for certain cases involving deaths prior to December 16, 2003.

If the deceased beneficiary died prior to December 16, 2003, but VA received a claim for benefits under 38 U.S.C. 5121 on or after that date, the claim will be adjudicated under the provisions of § 3.1000 of this chapter, and sections cited therein, in effect on December 16, 2003.

(Authority: 38 U.S.C. 5121; Sec. 104, Pub. L. 108–183, 117 Stat. 2656)

§ 5.559 Accrued benefits reference table.

	Deceased beneficiary died prior to December 16, 2003		Deceased beneficiary died on or after December 16, 2003
	Claim pending on December 16, 2003	Claim received on or after December 16, 2003	
(a) Does the one-year time limit to file the claim apply?	(1) Yes for accrued benefits. *See* § 5.552(b)(1). (2) No for benefits awarded, but unpaid at death. *See* § 5.552(b)(2).	Yes for accrued benefits. *See* § 5.552(b)(1). In this situation ''accrued benefits'' includes benefits awarded, but unpaid at death. See §§ 5.550(a)(2)(ii), (iii), and 5.558.	Yes for accrued benefits. *See* § 5.552(b)(1). In this situation ''accrued benefits'' includes benefits awarded, but unpaid at death. *See* § 5.550(a)(2)(i).
(b) Does the two-year limitation on the benefit-payable period apply?	(1) Yes for accrued benefits. *See* § 5.556. (2) No for benefits awarded, but unpaid at death. *See* §§ 5.550(a)(3).	Yes for accrued benefits. *See* § 5.556 .. In this situation ''accrued benefits'' includes benefits awarded, but unpaid at death. *See* §§ 5.550(a)(2)(ii), (iii), and 5.558.	No. *See* § 5.556; sec. 104, Pub. L. 108–183, 117 Stat. 2656. This limitation does not apply if a deceased beneficiary died on or after December 16, 2003.
(c) Are accrued benefits and benefits awarded, but unpaid at death, potentially payable to beneficiaries described in § 5.551(b), (c), (d)(1), and (d)(2)?	Yes	Yes	Yes.
(d) Are accrued benefits and benefits awarded, but unpaid at death, potentially payable to beneficiaries described in § 5.551(d)(3)?	No	No	Yes.
(e) Are accrued benefits and benefits awarded, but unpaid at death, potentially payable to beneficiaries described in § 5.551(e)?	(1) Yes for accrued benefits (2) No for benefits awarded, but unpaid at death. *See* § 5.551(e).	Yes for accrued benefits In this situation ''accrued benefits'' includes benefits awarded, but unpaid at death. *See* §§ 5.550(a)(2)(ii), (iii), and 5.558.	Yes for accrued benefits, yes. *See* § 5.551(e). In this situation ''accrued benefits'' includes benefits awarded, but unpaid at death. *See* § 5.550(a)(2)(i).

(Authority: 38 U.S.C. 501(a), 5121; Sec. 104, Pub. L. 108–183, 117 Stat. 2656)

Death Compensation

§ 5.560 Eligibility criteria for payment of death compensation.

(a) *Definition. Death compensation* means a monthly payment made by VA to a surviving spouse, child or children, or dependent parent or parents of a veteran because of the service-connected death of the veteran.

(b) *Basic eligibility.* Death compensation may be payable to a surviving spouse, child or children, or dependent parent or parents if the veteran died before January 1, 1957. If the veteran was discharged or released from service, the discharge or release must have been under conditions other than dishonorable.

(c) *Exception—certain Federal employees.* VA cannot pay death compensation to any surviving spouse, child, or parent based on the death of a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration occurring on or after May 1, 1957, if any amounts are payable based on the same death under the Federal Employees' Group Life Insurance Act of 1954 (Pub. L. 598, 83d Cong., as amended).

(d) *Dependency of parents.* VA will apply the same rules for determining the dependency of parents for death compensation purposes that it uses to determine the dependency of parents for the purpose of awarding additional compensation to a veteran with a dependent parent. See § 3.250 of this chapter, ''Dependency of parents; compensation.''

(Authority: 38 U.S.C. 101(13), 1121, 1141)

§ 5.561 Time of marriage requirements for death compensation claims.

(a) *Marriage before or during service.* A surviving spouse who married the veteran before or during the veteran's military service meets the time of marriage requirements for death compensation. See also § 3.50(b) of this chapter (defining ''surviving spouse'').

(b) *Marriage after service—laws in effect on December 31, 1957.* A surviving spouse who, with respect to time of marriage, could have qualified as a surviving spouse for death compensation under any law administered by VA in effect on December 31, 1957, meets the time of marriage requirement for death compensation.

(c) *Marriage after service—other means of qualification.* A surviving spouse who married the veteran after the veteran's discharge or release from military service meets the time of marriage requirements for death compensation if at least one of the following conditions is met:

(1) The marriage occurred within 15 years from the date of termination of the period of service in which the injury or disease causing the veteran's death was incurred or aggravated. Where the

surviving spouse has been married legally to the veteran more than once, the date of the original marriage will be used in determining whether this requirement has been met. For purposes of this section, ''period of service'' means a period of active military service, as defined in [regulation that will be published in a future Notice of Proposed Rulemaking], from which the veteran was discharged under other than dishonorable conditions.

(2) The surviving spouse was married to the veteran for one year or more preceding the veteran's death. Multiple periods of marriage may be added together to meet the 1-year marriage requirement.

(3) A child was born of the marriage between the veteran and the veteran's surviving spouse or a child was born to them before the marriage. *See also* § 3.54(d) of this chapter (defining ''child born of the marriage'' and child ''born * * * before the marriage'').

(Authority: 38 U.S.C. 101(2), 1102)

§ 5.562 Eligibility criteria for special monthly death compensation.

(a) *Basic eligibility.* A surviving spouse or surviving dependent parent in receipt of death compensation is eligible for special monthly compensation if he or she is helpless, or so nearly helpless, as to need the regular aid and attendance of another person. Except as provided in paragraph (b) of this section, VA considers the presence of factors listed in § 3.352(a) of this chapter when determining whether a person demonstrates this degree of helplessness.

(b) *Automatic consideration.* VA automatically considers an individual to be in need of regular aid and attendance, without having to demonstrate the degree of helplessness described in paragraph (a) of this section, if the individual:

(1) Is blind or so nearly blind as to have corrected visual acuity of 5/200 or less, in both eyes, or has concentric contraction of the visual field to 5 degrees or less; or

(2) Is a patient in an approved nursing home because of mental or physical incapacity. *See* § 3.1(z) of this chapter (defining ''nursing home'').

(Authority: 38 U.S.C. 1122(b))

Special Provisions

§ 5.563 Special rules when a beneficiary dies while receiving apportioned benefits.

(a) *Person receiving apportioned share of veteran's benefits dies.* When a person receiving an apportioned share of a veteran's benefits dies, any unpaid benefits payable to that person will be paid to the veteran, if living, or to surviving dependents of the deceased veteran in the priority specified in § 5.551(b).

(b) *Payment to person receiving apportionment when the veteran dies.* When a person is receiving an apportioned share of a veteran's benefits and the veteran dies, that person will be paid their apportioned share of those benefits for periods prior to the last day of the month before the veteran's death.

(c) *Payment of child's apportionment of surviving spouse's death benefits when the child dies.* If an apportioned share of a surviving spouse's death pension, death compensation, or dependency and indemnity compensation was payable for a child and the child dies, VA will pay any unpaid apportioned share to the person who bore the expense of the deceased child's last sickness and/or burial under the provisions of § 5.551(e).

(Authority: 38 U.S.C. 5112(b)(1), 5121(a), 5502(d))

§ 5.564 Special rules when VA benefit checks have not been negotiated prior to the beneficiary's death.

(a) *Death of a beneficiary*—(1) *Disposition of non-negotiated VA benefit checks'general rule.* Upon the death of a beneficiary, non-negotiated VA benefit checks should be returned to the issuing office and canceled. VA will pay the amount represented by the returned checks, or any amount recovered following improper negotiation of the checks, to the person or persons indicated in § 5.551(b) through (e), as applicable. The amount payable does not include any payment for the month in which the beneficiary died. *See* § 3.500(g) of this chapter.

(2) *Exception.* The rule in paragraph (a)(1) of this section requiring return of non-negotiated VA benefit checks upon the death of the beneficiary is subject to § 3.20(c)(2) of this chapter (permitting, under specific circumstances, a surviving spouse to negotiate a check for a veteran's compensation or pension for the month in which the veteran died).

(b) *No time limit.* There is no limit on the retroactive period for which payment of the amount represented by the checks may be made, and no time limit for filing a claim to obtain the proceeds of the checks or for furnishing evidence to perfect a claim.

(c) *Payment to a claimant having a lower order of precedence.* In the case where there was a survivor having a higher order of precedence, VA will make payment to a claimant having a lower order of precedence under § 5.551(b) through (e), as applicable, if it is shown that the person or persons having a higher order of precedence are deceased at the time the claim is adjudicated.

(d) *Payment to estate.* Subject to the limitations in § 3.500(g) of this chapter, any amount not paid in the manner provided in paragraph (a) of this section will be paid to the estate of the deceased beneficiary, provided that the estate will not escheat (*e.g.*, revert to a governmental entity).

(e) *Payment of amounts withheld during hospitalization.* The provisions of this section do not apply to checks for lump sums representing amounts withheld under § 3.551(b) of this chapter (concerning reduction of benefits when a veteran is hospitalized), or withheld prior to December 27, 2001, under former § 3.557 of this chapter (concerning reduction of benefits when an incompetent veteran is hospitalized). These amounts are subject to the provisions of § 3.1001 of this chapter, ''Hospitalized competent veterans,'' and § 3.1007 of this chapter, ''Hospitalized incompetent veterans.''

(Authority: 38 U.S.C. 501(a), 5122)

§ 5.565 Special rules for payment of VA benefits on deposit in a special deposit account when a payee living in a foreign country dies.

(a) *Purpose.* VA benefit payments may not be sent to a payee living in a foreign country if the Secretary of the Treasury determines that there is no reasonable assurance the payee will receive the benefit check or will be able to negotiate it for full value. Up to $1,000.00 of such VA benefit payments may be deposited in an account entitled ''Secretary of the Treasury, Proceeds of Withheld Foreign Checks'' (special deposit account). This section provides information about who is entitled to the funds in that account when the payee dies, about claims for those funds, and about restrictions on payment.

(b) *Persons entitled to funds in special deposit account upon death of payee.* When the payee of a check for pension or compensation dies, the deceased payee's funds in the special deposit account are payable as follows:

(1) If the deceased payee was the veteran, to the surviving spouse or, if there is no surviving spouse, to children of the veteran under 18 years of age at the time of the veteran's death.

(2) If the deceased payee was the veteran's surviving spouse, to children of the spouse under 18 years of age at the time of the spouse's death.

(3) If the deceased payee was the recipient of an apportioned share of the veteran's pension or compensation, to the veteran to the extent the special

deposit account consists of such apportionment payments.

(4) In any other case, to the person who bore the expense of the burial of the payee, but only to the extent necessary to reimburse that person for such expenses.

(c) *Time limit for filing claims and evidence.* (1) A claim for the funds in the special deposit account must be received by VA within one year after the date of the payee's death.

(2) The claimant must submit necessary evidence in support of the claim within six months after the date VA requests that evidence.

(d) *Other restrictions.* (1) Payment made under this section is limited to amounts due at the time of the payee's death under ratings or decisions existing at the time of the death.

(2) Payment will be made under this section only if both the deceased beneficiary and the claimant have not been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies.

(Authority: 31 U.S.C. 3329, 3330; 38 U.S.C. 6104)

§ 5.566 Special rules for payment of gratuitous VA benefits deposited in a personal funds of patients account when an incompetent veteran dies.

(a) *Purpose.* This section provides rules relating to the disposition of certain funds on deposit in a personal funds of patients (PFOP) account for a veteran who was incompetent at the date of his or her death and who died after November 30, 1959.

(b) *Funds included.* The funds included are those on deposit in the PFOP account at the date of the veteran's death that were derived from gratuitous VA benefits deposited in the account by VA. *See* [regulation that will be published in a future Notice of Proposed Rulemaking] (defining ''gratuitous VA benefits''). Funds derived from such deposits are those that resulted from the VA deposits, even though there may have been an intervening change in the form of the asset. For example, if amounts representing gratuitous VA benefits deposited by VA are withdrawn to purchase bonds on the veteran's behalf and redeposited upon the maturity of the bonds, an amount equal to the amount withdrawn for the purchase will be considered as derived from the deposits.

(c) *Funds excluded.* This section does not apply to the disposition of:

(1) Amounts resulting from funds deposited in the PFOP account by the veteran or others besides VA, regardless of the source of the deposit.

(2) Amounts, such as interest, representing an increase in the value of funds originally deposited by VA.

(d) *Eligible persons.* The funds described in paragraph (b) of this section will be paid to a person, or persons, living at the time of settlement (that is, when VA pays out the PFOP account) in the following priority:

(1) The veteran's surviving spouse, as defined in § 5.550(h).

(2) The veteran's surviving children, as defined in § 3.57 of this chapter, in equal shares, but without regard to their age or marital status.

(3) The veteran's parents, as defined in § 3.59 of this chapter, who are dependent within the meaning of § 3.250 of this chapter, in equal shares, or the surviving parent if only one is living.

(4) If no recipient listed in paragraphs (d)(1) through (3) of this section is living at the time of settlement, the person who bore the expense of the veteran's last sickness and/or burial, but only to the extent necessary to reimburse that person for such expense.

(e) *Claims for funds governed by this section*— (1) *Time limit for filing.* A person eligible for the funds governed by this section must file a claim for the funds with VA within 5 years after the death of the veteran. However, if any person otherwise entitled is under legal disability at the time of the veteran's death, the 5-year period will run from the date of termination or removal of the legal disability.

(2) *Submission of evidence.* There is no time limit for submitting evidence of entitlement to the funds governed by this section.

(3) *Effect of failure to claim funds, or waiver of claim, on rights of other claimants.* The fact that a claimant with a higher priority claim to the funds governed by this section fails to file a timely claim for such funds, or waives rights to such funds, does not create a right to the funds for a claimant with a lower priority. The fact that one or more claimants falling within the same category of claimants (children, for example) fails to file a timely claim for the funds governed by this section, or waives rights to such funds, will not increase the amount payable to any other claimant in the category.

(Authority: 38 U.S.C. 5502(d))

Effective Dates

§ 5.567 Effective dates for DIC or death compensation awards.

(a) *Death in Service*— (1) *Claim received within one year from date of initial report or finding of death.* (i) *General.* If VA receives a claim for dependency and indemnity compensation (DIC) or death compensation within one year from the date the Secretary concerned makes an initial report of the veteran's actual death or finding of the veteran's presumed death in active military service, then benefits are payable from the first day of the month fixed by that Secretary as the month of death in the report or finding. *See* § 3.1(g) of this chapter (definition of ''Secretary concerned'') and [regulation that will be published in a future Notice of Proposed Rulemaking] (definition of ''active military service'').

(ii) *Exception.* Benefits are not payable under paragraph (a)(1)(i) of this section for any period for which the claimant received or was entitled to receive an allowance, allotment, or service pay of the veteran.

(2) *Claim received more than one year after date of initial report or finding of death.* If VA receives a claim for DIC or death compensation more than one year after the date of the initial report or finding of death described in paragraph (a)(1)(i) of this section, then benefits are payable from the date VA received the claim.

(b) *Service-connected death after separation from service*— (1) *Claim received within one year of death.* If VA receives a claim for DIC or death compensation within one year of the veteran's death, then benefits are payable from the first day of the month in which the veteran's death occurred.

(2) *Claim received more than one year after death.* If VA receives a claim for DIC or death compensation more than one year after the veteran's death, then benefits are payable from the date VA received the claim.

(c) *DIC elected in lieu of death compensation.* DIC is payable from the date VA receives the election of DIC in lieu of death compensation. *See* § 3.702 of this chapter (concerning election of DIC in lieu of death compensation).

(d) *DIC award to a child*— (1) *Claim received within one year from date entitlement arose.* If VA receives a claim for DIC within one year of the date entitlement arose, as defined in [regulation that will be published in a future Notice of Proposed Rulemaking], then benefits are payable from the first day of the month in which entitlement arose.

(2) *Claim received more than one year after date entitlement arose.* Except as otherwise provided in this part, if VA receives a claim for DIC more than one year after the date entitlement arose, as defined in [regulation that will be published in a future Notice of Proposed Rulemaking], then benefits are payable

from the date VA received the claim. *See also* § 3.403(a) of this chapter (concerning effective dates of awards to or for a child) and § 3.667 of this chapter (concerning effective dates of awards to certain children attending school after reaching 18 years of age).

(e) *Additional allowance for children.* Any additional allowance for children is payable beginning the date the surviving spouse's award is payable as provided in paragraphs (a), (b), or (c) of this section.

(Authority: 38 U.S.C. 5110(d)(1), (e)(1), (j))

§ 5.568 Effective date for discontinuance of DIC or death compensation payments to a person no longer recognized as the veteran's surviving spouse.

(a) *Purpose.* This section applies when VA is paying dependency and indemnity compensation (DIC) or death compensation to one person (''former payee'') as a veteran's surviving spouse and another person (''new payee'') establishes that he or she is the lawful surviving spouse entitled to those benefits. It provides the effective date for the termination of the payment of DIC or death compensation to the former payee. For information concerning the effective date of the award of DIC or death compensation to the new payee, see § 5.567, ''Effective dates for DIC or death compensation awards.''

(b) *Effective date for termination of payments to former payee.* For periods on or after December 1, 1962, DIC or death compensation payments to the former payee will be discontinued as follows:

(1) *Termination date of payments to the former payee if the award to the new payee is effective prior to the date VA received the new payee's claim.* Subject to paragraph (b)(3) of this section, if benefits are payable to the new payee from a date prior to the date VA received the new payee's claim, then the award to the former payee will be terminated the day preceding the effective date of the award to the new payee.

(2) *Termination date of the award to the former payee if the award to the new payee is effective the date VA received the new payee's claim.* Subject to paragraph (b)(3) of this section, if benefits are payable to the new payee from the date VA received the new payee's claim, then the award to the former payee will be terminated effective the date of receipt of the new payee's claim or the date of last payment to the former payee, whichever is later.

(3) *Exception if termination is due to a change in, or interpretation of, the law or an administrative issue.* An award to the former payee will be terminated on the last day of the month following sixty days from the date of notice of the termination to the former payee at his or her last address of record, if payments to the former payee are terminated because of:

(i) A change in the law or an administrative issue; or

(ii) A change in the interpretation of the law or an administrative issue.

See also § 3.114(b) of this chapter.

(Authority: 38 U.S.C. 5110(a), 5112(a), (b)(6))

§ 5.569 Effective date for award, or termination of award, of DIC or death compensation to a surviving spouse where DIC or death compensation payments to children are involved.

(a) *Purpose.* This section provides effective date and payment adjustment rules applicable when:

(1) A surviving spouse becomes entitled to dependency and indemnity compensation (DIC) or death compensation when VA is already paying DIC or death compensation to the veteran's child or children, or

(2) A surviving spouse's award of DIC or death compensation is terminated and the veteran's child or children are entitled to DIC or death compensation upon termination of the spouse's DIC or death compensation.

(b) *Surviving spouse establishes entitlement*—(1) *Rate for child or children lower than rate for surviving spouse*—(i) *Effective date.* If a veteran's child or children received DIC or death compensation at a rate lower than the rate payable to the surviving spouse, the award of DIC or death compensation to the surviving spouse is effective the date provided by § 5.567, ''Effective dates for DIC or death compensation awards.''

(ii) *Rate payable to the surviving spouse.* The initial amount of DIC or death compensation payable to the surviving spouse is the difference between the rate paid to the child or children and the rate payable to the surviving spouse. The full rate is payable to the surviving spouse effective the day following the date of last payment to or on behalf of the child or children.

(2) *Rate for child or children same as or higher than the rate for surviving spouse.* If a veteran's child or children received DIC or death compensation at a rate the same as or higher than the rate payable to the surviving spouse, the award of DIC or death compensation to the surviving spouse is effective the day following the date of last payment to or on behalf of the child or children.

(c) *Surviving spouse receives DIC or death compensation after his or her entitlement terminates and a veteran's child or children are entitled to DIC or death compensation*—(1) *Rate for child or children lower than rate for surviving spouse.* If a surviving spouse receives DIC or death compensation after his or her entitlement terminates and the veteran's child or children are entitled to a rate of DIC or death compensation lower than the rate paid to the surviving spouse, the award to the surviving spouse will be reduced to the rate payable to the child or children as if there were no surviving spouse. This reduced award is effective from the date the surviving spouse's entitlement terminated to the date of last payment to the surviving spouse. The award of DIC or death compensation to the child or children is effective the day following the date of last payment to the surviving spouse.

(2) *Rate for child or children higher than rate for surviving spouse.—(i) Effective date of termination of award to surviving spouse.* If a surviving spouse receives DIC or death compensation after his or her entitlement terminates and the veteran's child or children are entitled to rate higher than the rate paid to the surviving spouse, the termination of the award to the surviving spouse is effective the date of last payment to the surviving spouse.

(ii) *Effective date and rate for child or children.* The award to the veteran's child or children is effective the day following the date the surviving spouse's entitlement terminated. The initial amount is the difference between the rate payable to the child or children and the rate paid to the surviving spouse. The full rate is payable to or on behalf of the child or children effective the day following the date of last payment to the surviving spouse.

(3) *Rate for child or children same as rate for the surviving spouse.*

(i) *Effective date of termination of award to surviving spouse.* If a surviving spouse receives DIC or death compensation after his or her entitlement terminates and the veteran's child or children are entitled to the same rate as the rate paid to the surviving spouse, the termination of the award to the surviving spouse is effective the date of last payment to the surviving spouse.

(ii) *Effective date and rate for child or children.* The full rate is payable to or on behalf of the veteran's child or children effective the day following the date of last payment to the surviving spouse.

(Authority: 38 U.S.C. 501(a), 5110(a), 5112(a))

§ 5.570 Effective date for reduction in DIC ''surviving spouses.

(a) *General.* If the circumstances described in this section require a reduction in an award of dependency and indemnity compensation (DIC) payable to a surviving spouse, VA will pay the reduced rate effective the day following the date of discontinuance of the greater benefit.

(b) *Marriage of child(ren) for whom a surviving spouse receives an additional allowance of DIC*—(1) *Marriage prior to October 1, 1982.* If a child married prior to October 1, 1982, VA will reduce the surviving spouse's DIC effective from the earlier of the following dates:

(i) The day preceding the child's 18th birthday; or

(ii) The last day of the calendar year in which the marriage occurred (see § 3.500(n)(2)(i) of this chapter).

(2) *Marriage on or after October 1, 1982.* If a child married on or after October 1, 1982, VA will reduce the surviving spouse's DIC effective from the earlier of the following dates:

(i) The day preceding the child's 18th birthday; or

(ii) The last day of the month in which the marriage occurred (see § 3.500(n)(2)(ii) of this chapter).

(c) *Recertification of pay grade.* If recertification of a veteran's military pay grade results in reduced DIC, VA will reduce the award effective the date of the last payment.

(Authority: 38 U.S.C. 501(a); 5112(b)(2), (10); 1311(a))

§ 5.571 Effective date for an award or increased rate based on amended income information—parents' DIC.

(a) *Expected income.* Subject to paragraph (c) of this section, if payments of parents' dependency and indemnity compensation (DIC) were not made or if payments were made at a reduced rate for a particular calendar year because of expected income, the effective date of any later award or increase for that calendar year based on amended income information will be the date entitlement arose, as defined in [regulation that will be published in a future Notice of Proposed Rulemaking], but not earlier than the beginning of that calendar year.

(b) *Actual income.* Subject to paragraph (c) of this section, if payments of parents' DIC were not made or if payments were made at a reduced rate for a particular calendar year because of actual income, the effective date of any award or increase for the next calendar year based on amended income information will be the beginning of the next calendar year.

(c) *Time limit.* The effective dates in paragraphs (a) and (b) of this section are subject to the applicable time limit for the submission of amended income information in [regulation that will be published in a future Notice of Proposed Rulemaking]. If VA does not receive the amended income information within the time specified in that section, benefits may not be authorized for any period prior to the date of receipt of a new claim.

(Authority: 38 U.S.C. 501(a), 1315(e), 5110(a))

§ 5.572 Effective dates for reduction or discontinuance based on increased income—parents' DIC.

(a) *General.* If VA determines that a reduction or discontinuance of a running award of parents' dependency and indemnity compensation (DIC) is required because the parent's expected or actual income for a particular calendar year increased, VA will reduce or discontinue the award as provided in paragraphs (b) or (c) of this section, as applicable.

(b) *Effective date for reduction or discontinuance.* VA will reduce or discontinue the award effective the end of the month in which income increased.

(c) *Date of receipt or increase cannot be determined.* If the month in which income increased cannot be determined, VA will reduce or discontinue the award effective the beginning of the calendar year in which the income increased. If VA later receives evidence showing the month in which the income increased, VA will adjust the effective date accordingly.

(d) *Overpayments.* If an overpayment is created by retroactive discontinuance of benefits, the overpayment will be subject to recovery by VA if not waived. If DIC was being paid to two parents living together, the overpayment will be established on the award to each parent.

(Authority: 38 U.S.C. 501(a), 5112(b)(4))

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Federal Register

Friday,
October 1, 2004

Part IV

Securities and Exchange Commission

17 CFR Parts 228, 229, 232, 240, 249, and 270

XBRL Voluntary Financial Reporting Program on the EDGAR System; Enhancing Commission Filings Through the Use of Tagged Data; Proposed Rule and Notice

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 232, 240, 249 and 270

[Release Nos. 33–8496, 34–50453, 35–27894, 39–2498, IC–26622; File Number S7–35–04]

RIN 3235–AJ32

XBRL Voluntary Financial Reporting Program on the EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing rule amendments to enable registrants to submit voluntarily supplemental tagged financial information using the eXtensible Business Reporting Language (XBRL) format as exhibits to specified EDGAR filings under the Securities Exchange Act of 1934 and the Investment Company Act of 1940. Registrants choosing to participate in the voluntary program, expected to begin in early 2005, also would continue to file their financial information in HTML or ASCII format, as currently required. The voluntary program is intended to help us evaluate the usefulness of data tagging in general, and XBRL in particular, to registrants, investors, the Commission and the marketplace generally. A companion concept release also being issued today provides additional information on tagged data and solicits comment on the development of data tagging.

DATES: Comments should be received on or before November 1, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–35–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number S7–35–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: If you have questions about the proposed rules, please contact one of the following members of our staff: Brigitte Lippmann or Mark W. Green, Division of Corporation Finance (202–942–2910), Eric Schuppenhauer, Office of the Chief Accountant (202–942–4400), or Brian Bullard or Toai Cheng, Division of Investment Management (202–942–0590), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. If you have questions about the EDGAR system, please contact Richard Heroux, EDGAR Program Manager (202–942–8800), in the Office of Information Technology.

If you want to contact us about participating in the voluntary program, please contact either Brigitte Lippmann or Eric Schuppenhauer regarding non-investment companies or Toai Cheng regarding investment companies. If you are interested in participating in the voluntary program, we encourage, but do not require, you to contact us so that we can better assess the level of participation. Expressing interest is merely an indication of interest, not a commitment or a pre-condition to participate. To participate in the program, volunteers only would need to submit their XBRL format information in accordance with the proposed rules.

SUPPLEMENTARY INFORMATION: We propose to revise Rules 11,[1] 305,[2] 401[3] and 402[4] under Regulation S–T,[5] Rule 601[6] under Regulation S–K,[7] Rule 601[8] under Regulation S–B,[9] Rules 13a–14[10] and 15d–14[11] under the Securities Exchange Act of 1934 (''Exchange Act'')[12] and Rules 8b–1,[13] 8b–2[14] and 30a–2[15] under the Investment Company Act of 1940 (''Investment Company Act'').[16] We also propose to revise Forms 20–F[17] and 6–K[18] under the Exchange Act and add Rule 8b–33 under the Investment Company Act.

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I. Background

All registrants who file with the Commission are now generally required to file electronically on the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'').[19] The EDGAR

[1] 17 CFR 232.11.

[2] 17 CFR 232.305.

[3] 17 CFR 232.401.

[4] 17 CFR 232.402. We refer to revising Rules 401 and 402 even though they currently have no content because they are reserved in the Code of Federal Regulations.

[5] 17 CFR 232.10 *et seq.* We also propose to add a heading for Rules 401 and 402.

[6] 17 CFR 292.601.

[7] 17 CFR 229.10 *et seq.*

[8] 17 CFR 228.601.

[9] 17 CFR 228.10 *et seq.*

[10] 17 CFR 240.13a–14.

[11] 17 CFR 240.15d–14.

[12] 15 U.S.C. 78a *et seq.*

[13] 17 CFR 270.8b–1.

[14] 17 CFR 270.8b–2.

[15] 17 CFR 270.30a–2.

[16] 15 U.S.C. 80a–1 *et seq.*

[17] 17 CFR 249.220f.

[18] 17 CFR 249.306.

[19] Rules 100 and 101 of Regulation S–T (17 CFR 232.100 and 232.101).

database, accessible on our Web site at *http://www.sec.gov,* provides ready access to a broad range of registrant information. Electronic submission of a document is governed by Regulation S–T, in conjunction with the EDGAR Filer Manual[20] and the electronic filing provisions of applicable rules, regulations, and forms. Under the current system, EDGAR accepts as official filings only submissions using American Standard Code for Information Interchange (''ASCII'') or HyperText Markup Language (''HTML'').[21]

As discussed in the accompanying concept release, we are evaluating whether tagged data in Commission filings would provide a better means to provide and obtain necessary information and, if so, whether we should permit or require XBRL tagged data in Commission filings.[22] The Division of Corporation Finance, Office of the Chief Accountant, Division of Investment Management, and Office of Information Technology have formed a task force to assess the implications of tagged data for filers, investors, the Commission and other market participants.[23] In order to test and evaluate data tagging, we propose to allow registrants to supplement their Commission filings by furnishing financial data on EDGAR as an exhibit using eXtensible Business Reporting Language (''XBRL''), beginning with the 2004 calendar year-end reporting season. We currently expect to permit participation by any registrant without pre-approval merely by submitting the exhibit in the required manner. Depending on the level of interest, technical concerns or other factors, it may be necessary, however, to limit participation. We emphasize that the purpose of permitting the submission of the XBRL exhibits would be to allow registrants, the Commission and others to test and evaluate tagging technology. Although XBRL exhibits would be required to reflect the same information as appears in the corresponding part of the official filing to which they relate and would be disseminated publicly, they would be furnished rather than filed and investors and others should continue to rely on a registrant's official filings in making investment decisions rather than the XBRL exhibits. We expect to so caution users on the Commission's Web site.

II. Development of Markup Languages

Since the EDGAR pilot program began in 1984, the Commission has required tagged data in document headers to accurately process filings.[24] Initially, the EDGAR filings employed ASCII text documents and tagged document headers using Standard Generalized Markup Language (''SGML'').[25] The SGML headers allowed us to segregate data about the filing's characteristics and the registrant from the underlying filed document. Tagging also allowed us to automatically perform basic validations, store tagged data in a database, and process filings.[26]

As technology improved, markup languages continued to develop and HTML[27] became widely used in the 1990s. In May 1999, as part of our initiative to modernize EDGAR, we began to accept filings submitted to EDGAR in HTML.[28] Use of HTML promoted the idea of a single-use document, allowing filers to avoid expending resources creating one document for their investors, another document for their Web sites, and a third document for submission to the Commission. In the late 1990s, building on the earlier mark-up languages, Extensible Markup Language (''XML'') was developed as a document markup language that assisted in automatically processing data.[29] XML-based languages define and name data and text through tags. Tags give data an identity and context that can be understood by a variety of different software applications that allow the data to interface with databases, financial reporting systems, and spreadsheets.[30]

In order to continue to reap the benefits of structured data, the EDGAR system migrated from SGML to XML in May 2000.[31] Since 2000, we have increased our use of XML for internal processing, replacing custom developed code. We also use XML for the headers[32] of documents filed on EDGAR[33] and in the body of Section 16(a) reports.[34]

In May 2003, as part of the Commission's implementation of the

[20] See Rule 301 of Regulation S–T (17 CFR 232.301). We originally adopted the EDGAR Filer Manual on July 1, 1993, with an effective date of July 26, 1993. Release No. 33–6986 (Apr. 1, 1993) [58 FR 18638]. We most recently updated the EDGAR Filer Manual on August 6, 2004, the current version of which can be found at *http://www.sec.gov/info/edgar.shtml.* See Release No. 33–8454 (Aug. 6, 2004) [69 FR 29803].

[21] Section 4.1 of EDGAR Release 8.8 EDGARLink Filer Manual (Volume I of the EDGAR Filer Manual).

[22] See the companion concept release (Release No. 33–8497 (September 27, 2004) (''Concept Release'')) soliciting comment on data tagging in general. Tags identify information in a manner that can be recognized and understood by disparate software products. We are evaluating whether by permitting or mandating formats through which financial data may be tagged in Commission filings, we may facilitate filing preparation and enable richer and faster analysis, which would assist both the financial marketplace and the Commission.

[23] See Press Release No. 2004–97 (July 22, 2004).

[24] Accompanying the adoption of operational EDGAR, we also relquired electronic filers to furnish a Financial Data Schedule (''FDS'') with their financial statements that tagged a limited amount of financial information not involving headers or a markup language (Release No. 33–6977 (Feb. 23, 1993) [58 FR 14628]). The schedule required tagging of a number of line items identical to items included in financial statements prepared in accordance with Generally Accepted Accounting Principles (''GAAP''). The FDSs were furnished as exhibits under former Item 601(b)(27) of Regulations S–K and S–B [17 CFR 229.601(b)(27) and 228.601(b)(27)]. The rules provided that the schedule would not be deemed ''filed'' for purposes of liability under the federal securities laws and not be subject to auditing standards. In April 2000, we adopted rules modernizing EDGAR (Release No. 33–7855 (April 24, 2000) [65 FR 24788]), which eliminated the FDS requirement. FDSs were also required for registered investment companies, as exhibits to certain investment company registration statements and reports on Form N–SAR (Release No. 33–6978 (Feb. 23, 1993) [58 FR 14848]). The FDS requirements were removed from the investment company registration forms in 1999 (Release No. 33–7684 (May 17, 1999) [64 FR 27888]), and were removed from Form N–SAR in 2000, at the same time the FDS requirement was eliminated for operating companies. See the Concept Release for additional discussion on the FDSs.

[25] The SGML document markup language was conceived in the 1970s and deployed in the 1970s and 1980s.

[26] We also disseminated the filed documents with the SGML header so that the subscribers who received the filing data could index the data properly according to a variety of information found and tagged in the header.

[27] HTML provides a standard to give documents and web pages on the Internet a consistent appearance when viewed through multiple browsers.

[28] We adopted rules to permit HTML filing in Release No. 33–7684 (May 17, 1999) [64 FR 27888]. Based on suggestions from the filing community, investors, and Commission staff, we allowed filers to submit their filing documents using a modified HTML 3.2 standard. This standard enabled filers to provide more professional presentation features in their documents and enabled improved readability. EDGAR has since upgraded the version of HTML that is acceptable from a modified HTML 3.2 to a modified HTML 3.2 with some HTML 4.0 standard attributes.

[29] Much of the support for software devoted to SGML had started to decline. Software vendors started concentrating on XML products, thus providing a robust environment for those who used the XML format. Internet browsers also began to translate XML data and style sheets.

[30] Tags are standardized through the development of taxonomies (classifications), which are essentially data dictionaries that describe individual pieces of information and mathematical and definitional relationships among the pieces, identify text labels, and refer to the authoritative sources for that information.

[31] EDGAR Release 7.0 marks the Commission's initial use of XML where header information was changed from SGML to Extensible Forms Description Language, a derivative of XML, using certain tags dedicated to screen presentation and validation. See Release No. 33–7858 (May 16, 2000) [65 FR 34079].

[32] Headers contain required basic information about an electronic filing's characteristics (*e.g.,* form type) and the registrant that filed it.

[33] See Section 4.4.1 of EDGAR Release 8.8 EDGARLink Filer Manual (Volume 1).

[34] See Sections 4.1.2 and 5.1 of EDGAR Release 8.8 OnlineForms Filer Manual (Volume III).

Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley Act''),[35] we activated a Web site that gathered data for those who had to file reports of their securities holdings and transactions in accordance with Section 16(a)[36] of the Exchange Act. These ownership reports (Forms 3, 4, and 5)[37] are submitted to the EDGAR system as XML files. Filers submit the reports either by accessing our EDGAR Online Forms Web site[38] and responding to questions to fill in fixed fields that tag information or by creating a customized form and filing it as a reduced content filing in which information also is tagged.[39] Users of EDGAR data are able to download these filings from the *http://www.sec.gov* Web site, import the filing data into their spreadsheets or databases and use that data for their analysis. With the use of a Commission sponsored style sheet, the XML data in these filings can be viewed by users inside a representation of the actual form.

III. Description of XBRL

XBRL is an open electronic standard that provides a format for tagging financial information. XBRL allows users to extract, exchange, analyze and display financial information. XBRL was developed and continues to be supported by XBRL International, a collaborative consortium of approximately 250 organizations representing many elements of the financial reporting community. Organizations in the consortium include issuers, public accounting firms, software companies, filing agents, data aggregators, stock exchanges, regulators, financial services companies, and industry associations. XBRL International and its related entities have been developing standard taxonomies[40] that they state classify and define financial information in accordance with U.S. GAAP and our regulations.[41]

IV. Voluntary Program

Since we adopted rules to implement the operational phase of EDGAR, we have sought to make EDGAR more useful to the investing public. XBRL provides a sophisticated system of data tagging and may offer an opportunity to enhance the analysis of information filed with us via EDGAR.

Proponents of the XBRL reporting standard assert that it offers benefits for all participants in the financial information supply chain, from registrants, who would benefit from improved transparency of their filings, resulting in broader analyst coverage, more market exposure and greater investor confidence, to regulators and investors, who would benefit from ready access to tagged financial data for analytical and review purposes.[42]

A. Objective

The purpose of the voluntary program is to further the Commission's ability to gather and analyze data that would assist us in assessing the feasibility and desirability of using tagged data on a more widespread and, possibly, mandated, basis in the future. The voluntary program also would enable preparers and users who are interested in the technology to test and evaluate data in the XBRL format. We propose to establish a program to accept XBRL tagged data into the EDGAR system on a voluntary basis as a supplemental exhibit to a registrant's filing. We believe that the voluntary program would better enable us to study the extent to which XBRL enhances the:

- Search capability of the EDGAR database to allow more efficient and effective extraction and analysis of specific data,
- Capability to perform financial comparisons among registrants within industries, and
- Ability to perform financial analysis of registrant financial data, such as for ratio analysis, and whether it would reduce the resources needed for data analysis.

In addition, we believe the program would enhance our ability to evaluate the:

- Impact on the staff's ability to review filings on a more timely and efficient basis,
- Use of tagged data for risk assessment and surveillance procedures, and
- Compatibility of XBRL with reporting quality, transparency, accounting principles, and other Commission reporting requirements.

Once we have gained experience with the XBRL technology, the development of taxonomies, and the manner in which XBRL is used, we will analyze the results and determine whether to terminate the voluntary program, continue it indefinitely or require some or all filers to use XBRL. If, in the future, we consider requiring filers to use XBRL, this would be the subject of a separate rulemaking proposal. We also may change the voluntary program based on our experience with the program. For example, we currently anticipate allowing all volunteers to submit XBRL data as an exhibit to specified filings under the Exchange Act and the Investment Company Act;[43] however, depending on the level of interest, technical concerns or other factors, it may be necessary to limit participation in some manner, such as by number of volunteers or types of XBRL submissions in the voluntary program.

B. Description

As part of our review and assessment of the benefits of tagged data reporting, we propose to add Rule 401 of Regulation S–T that would allow filers, on a voluntary basis, to furnish specified financial information using XBRL. Proposed Rule 401 generally would provide that a registrant participating in the voluntary program (a ''volunteer'') may submit XBRL-Related Documents[44] in electronic format. The XBRL-Related Documents must be furnished as an exhibit to either the related filing or, alternatively, a Form 8–K or revised Form 6–K[45] that references, and is submitted no earlier

[35] P.L. No. 107–204, 116 Stat. 745.

[36] 15 U.S.C. 78p(a).

[37] 17 CFR 249.103, 249.104 and 249.105. Forms 3 and 4 also are authorized under the Investment Company Act under 17 CFR 274.202 and 274.203.

[38] See *https://www.onlineforms.edgarfiling.sec.gov.*

[39] A reduced content filing is a filing that provides header information (*e.g.,* form type) and the tagged data for mandatory fields that we specify and otherwise complies with technical filing requirements.

[40] An XBRL taxonomy is a standard description and classification system for business reporting and financial data. Tags consist of specific financial data, such as the line items presented in the financial statements, and words or labels, such as headers in the notes to the financial statements. For example, a taxonomy may include a tag for the balance sheet line item ''inventory,'' as well as tags for inventory's component accounts, ''raw materials,'' ''work in process,'' and ''finished goods,'' which are often disclosed in the notes to the financial statements.

[41] XBRL International released version 2.1 taxonomies for public comment on September 20, 2004 with a request for comments to be submitted by November 19, 2004. See *http://www.xbrl.org.* See the Concept Release for a further description of XBRL.

[42] See *http://www.xbrl.org.*

[43] These filings are Forms 10–K, 10–Q, 8–K, 10, 10–KSB, 10–QSB and 10SB [17 CFR 249.310, 249.308a, 249.308, 249.210, 249.310b, 249.308b and 249.210b] for non-investment companies, Forms 20–F and 6–K for foreign private issuers and Forms N–CSR [17 CFR 249.331 and 274.128] and N–Q [17 CFR 249.332 and 274.130] for investment companies. In addition to domestic issuers, the voluntary program is available to foreign private issuers that otherwise file financial information prepared in accordance with U.S. GAAP.

[44] The proposed revision to Rule 11 of Regulation S–T would make ''XBRL-Related Documents'' a defined term that means documents related to presenting financial information in XBRL that are part of a voluntary submission in electronic format in accordance with proposed Rule 401.

[45] The Forms 8–K and 6–K alternative does not apply to investment company volunteers because they generally do not file Forms 8–K and do not file Forms 6–K.

than, the related filing.[46] In addition, the XBRL-Related Documents must reflect the same financial information,[47] prepared in accordance with U.S. GAAP, as appears in one or more of the following portions of the volunteer's official EDGAR filing:

- The complete set of financial statements;
- Earnings information (whether contained in the body of the related report or in an exhibit, and whether filed or furnished);
- Financial highlights or condensed financial information, as applicable (if the related filing has been filed under the Investment Company Act); or
- Schedule of investments (if the related filing has been filed under the Investment Company Act).[48]

The XBRL financial data should be furnished as an exhibit to specified Exchange Act or Investment Company Act filings. XBRL-Related Documents would be easily identifiable as Exhibit 100 to the filings, with appropriate extensions for the type of XBRL-Related Document, such as EX–100.XBRL–SCHEMA for the XBRL schema file.[49] The XBRL-Related Documents submitted would not replace the required HTML or ASCII version of the financial information they contain. Volunteers still would be required to file their official filings to ensure that all investors have access to information upon which to base their investment decisions.[50] The XBRL-Related Documents may be submitted either with the official EDGAR filing or a Form 8–K or Form 6–K [51] that references such filing or in an amendment to such filing or Form 8–K or Form 6–K at a later date; however, volunteers may not submit the XBRL-Related Documents before filing the related official document and would be encouraged to submit the XBRL-Related Documents with the initial filing.[52] Volunteers would be free to submit their XBRL exhibits regularly or from time to time and could stop or start as they choose. If a volunteer wants to amend XBRL-Related Documents it submitted earlier, it should amend the filing with which the XBRL-Related Documents appeared as an exhibit.[53]

We propose to open the program to all volunteers that use one of the following version 2.1 XBRL taxonomies in U.S. GAAP:

- Commercial and Industrial; [54]
- Banking and Savings Institutions;
- Insurance; and
- Investment Companies.[55]

By the end of 2004, we understand that the XBRL Consortium will have finalized these standard taxonomies after at least one review and comment period.[56] We expect that additional standard taxonomies will be permitted on the EDGAR system as they become available.[57] The standard taxonomies and related linkbases would be housed on our Web site at *http://www.sec.gov,* and volunteers would link their XBRL files to these taxonomies. Users of EDGAR data on *http://www.sec.gov* would be able to download the XBRL instance document, described below, to perform their own financial analysis.[58] We plan to develop an application, such as a style sheet, for volunteers so that users can view XBRL data in a rendered or human readable format via our website.[59] This application would convert XBRL files into a document that would look similar to traditional financial information such as a balance sheet or income statement. The volunteer would be required to reflect in the rendered document the same financial information included in the corresponding portion of the official HTML or ASCII version.[60]

C. Mechanics of Submitting Financial Information Using XBRL

Volunteers would likely include the following in their XBRL-Related Document submissions (described in more detail below): [61]

- An instance document,
- A schema file, and
- Linkbase files.

These files would be completely separate from the other data files comprising the official submission and

[46] If a volunteer submits the financial information using XBRL as an exhibit to a Form 8–K or Form 6–K that references the related filing, the Form 8–K or Form 6–K should so explain and a Form 8–K should provide the reference under item 8.01 of the Form 8–K.

[47] For purposes of the voluntary program, the financial statements, other than financial statements of investment company volunteers, should not include the related schedules. Audit opinions or interim review reports included with the audited or quarterly financial statements in the body of the official filing should also be omitted from the XBRL-Related Documents. Volunteers should label the XBRL-Related Documents (whether they are filed as an exhibit to the related official filing or to a Form 8–K or Form 6–K that references such filing) as either ''unaudited'' or, for quarterly financial statements, ''unreviewed.''

[48] These submissions would be made in accordance with the EDGARLink Filer Manual and the exhibit provisions of proposed Item 601(b)(100) of Regulation S–K or S–B, revised Form 20–F, revised Form 6–K or proposed Rule 8b–33 under the Investment Company Act, as applicable. The items and rule would list the Exchange Act and Investment Company Act filings, in addition to Forms 20–F and 6–K, with which volunteers could submit XBRL-Related Documents. We propose to revise Rules 8b–1 and 8b–2 under the Investment Company Act to reflect the proposed addition of Rule 8b–33. The proposed revision to Rule 305(b) of Regulation S–T would exempt the submissions from the formatting requirements of Rule 305(a) because the formatting requirements would not be needed in this context.

[49] Item 601(a)(2) of Regulations S–K and S–B [17 CFR 229.601(a)(2) and 228.601(a)(2)] require a filing's exhibit index to list the exhibits using the number of the Item 601(b) [17 CFR 229.601(b) and 228.601(b)] subparagraph that describes the exhibit (in this case, ''100''). In the case of foreign private issuers, revised Forms 20–F and 6–K also would require volunteers to designate XBRL-Related Documents as exhibit ''100.'' Finally, in the case of investment companies, proposed Rule 8b–33 would require them to name each XBRL-Related Document in the same way and submit these documents separately for each series of an investment company registrant and each contract of an insurance company separate account. For example, a registrant with five series would have five separate XBRL schema files. The Filer Manual would be revised to provide more detail on this point.

[50] Although a volunteer's XBRL-Related Documents would be required by proposed Rule 401 to reflect the same information contained in the corresponding portion of the related official filing, investors and others should continue to rely on the official filing rather than the XBRL-Related Documents.

[51] As further discussed below, XBRL-Related Documents generally would not be deemed filed or incorporated by reference regardless whether they are exhibits to a document incorporated by reference.

[52] A volunteer that submits XBRL-Related Documents with an amendment would be required to follow the same requirements as to the amendment process as would apply if the XBRL-Related Documents were any other type of exhibit.

[53] A volunteer would be required to amend XBRL-Related Documents it submitted earlier if, contrary to the requirements of proposed Rule 401, the XBRL-Related Documents did not reflect the same financial information as appears in the corresponding portion of the volunteer's official EDGAR filing. It would not matter whether the difference existed at the time the XBRL-Related Documents were submitted or arose later as a result of an amendment to the official EDGAR filing.

[54] This taxonomy has detailed financial reporting elements specific to commercial and industrial-type companies. If a registrant is not a bank, savings institution, insurance company, broker-dealer or investment company, it would likely use the commercial and industrial standard taxonomy. See *http://www.xbrl.org.*

[55] The investment companies taxonomy has not yet been released for public comment but we understand that that taxonomy will be available before the date we would plan to begin the voluntary program. See *http://www.xbrl.org.*

[56] See *http://www.xbrl.org.*

[57] XBRL–US also has under development additional industry specific taxonomies, including taxonomies for broker-dealers and oil and gas companies. See *http://www.xbrl.org.*

[58] In order to perform financial analyses based on the instance document, users would need to use their own software.

[59] Although we plan on developing a standard style sheet, it may not be ready before we would begin the voluntary program. In this situation, we propose commencing the voluntary program without rendering the data to begin evaluating the usefulness of software that identifies, extracts and analyzes tagged data. We would include a standard style sheet in the program as soon as it was developed.

[60] Volunteers could provide data in presentation linkbase files (see discussion below) to provide additional information to the standard style sheet.

[61] Schema and linkbase files would be necessary only if the volunteer adds extensions to the standard taxonomy.

would appear as Exhibit 100 to the form or report.[62] For example, if a volunteer wants to attach XBRL-based financial statements to its Form 10–Q, it would create the content for the Form 10–Q in the normal HTML or ASCII format. Then, in a separate action, the volunteer could use its current accounting software or another add-on product to create the financial information in XBRL format, which would be attached to the Form 10–Q as an exhibit or added later by amendment. We will not provide software, or reimburse volunteers for software, necessary to produce the XBRL-Related Documents.

1. Instance Document

The instance document, which is a machine readable form, pairs a tag from the taxonomy with the related piece of financial information.[63] For example, where a financial statement in an official filing reports $10 million in revenue, a ''revenue'' data tag from the taxonomy may be paired with a value of $10 million. Volunteers may use a software product to create an XBRL instance document.[64]

2. Schema File

The XBRL data file that the volunteer creates can adhere to either a standard taxonomy or a standard taxonomy with extensions. Extensions to the standard taxonomy further refine the data contained in the standard taxonomy so that the XBRL data reflects the same financial information presented in the corresponding portion of the related official filing. Such extensions would be included in a schema file. For example, the standard taxonomy might not contain tags that allow a volunteer to report revenue by segment or product line as it appears in its official filing. Revenue by segment or product line would be considered additional elements to the standard taxonomy. To use extensions for these additional elements, the volunteer likely would use taxonomy builder software to generate a schema file. The volunteer must use the appropriate extensions to present such revenue segment or product line data in the XBRL format.

3. Linkbase Files

If extensions to the standard taxonomy were necessary, a volunteer would need to create additional linkbase files to manage references, labels and relationships to the instance document.[65] Since the standard taxonomies would be housed on our Web site, all of the links between the instance documents and the standard taxonomies would be required to be modified by the volunteer to link to our Web site. There are at least five types of linkbase files:[66]

- Label links manage the text associated with taxonomy elements. For example, a <inc> reference in the taxonomy would be labeled as income. Translations to different languages may also be accomplished through label links.
- Presentation links shows the relationships between each element, including parent-child relationships and the order in which they appear. For example, raw material inventory would be a ''child'' to total inventory. Presentation links may also be used to display data in a specified order in a rendered document.
- Calculation links show how the elements are related by calculation, such as whether they are added or subtracted from each other. For example, cost of sales may be subtracted from revenues to show gross margin.
- Definition links define the type of element in the taxonomy. For example, depreciation would be defined as an expense.
- Reference links manage the references to authoritative literature.

Volunteers would not be required to furnish all of these five types of linkbase files to submit XBRL information. Volunteers may elect to file only label, presentation and calculation linkbase files to render their XBRL financial information with the same level of detail as their official filings.

4. XBRL Using EDGARLink

Once the XBRL files are created, volunteers may use the Commission client software, EDGARLink[67] or a third party product to create the submission much as they do today. First, they would enter header information into the browser based EDGARLink application. Then they would attach the filing and other attachments including the XBRL files. The volunteer would be required to attach each file that makes up the XBRL-Related Documents, leaving no unresolved links. Also, the XBRL-Related Documents would be required to either accompany or be submitted as an amendment to the form or report that contains the original financial data or accompany or be submitted as an amendment to a Form 8–K or Form 6–K that references such form or report. For example, a volunteer would create a Form 10–Q filing and then create XBRL-Related Documents that contain a representation of the financial statements contained in the Form 10–Q. The volunteer would bring up EDGARLink and enter the required header information into the browser interface, attach the Form 10–Q file as the primary document in the submission, and then attach the XBRL-Related Documents. The volunteer would log onto the filing Web site and follow the current process for transmitting its submission to the Commission.

D. Receipt and Acceptance

Once received by the Commission, the official filing and the attached XBRL-Related Documents would undergo technical validations. The official filing would continue to follow the normal process for receipt and acceptance. That is, it would be suspended if it fails its validation criteria. If the official filing meets its validation criteria, but any XBRL-Related Documents fail their own validation criteria, all XBRL-Related Documents would be removed and the official filing would be accepted and disseminated without the XBRL-Related Documents. The volunteer would be notified of the XBRL submission problem.

E. Liability Issues

Because the voluntary program is experimental, and to encourage volunteers to participate, the revised rules would provide limited protections from liability under the federal securities laws and exclude XBRL-Related Documents from being subject to certification requirements.[68]

Proposed Rule 402(a) generally would provide that XBRL-Related Documents

[62] In the case of investment companies, as noted earlier, proposed Rule 8b–33 would require registrants to label their XBRL-Related Document exhibits in the same manner and submit these documents separately for each series of an investment company registrant and each contract of an insurance company separate account.

[63] The instance document may also contain meta data, which is data that describes other data. Additional meta data added to XBRL-tagged numbers may include decimal precision, numeric context, dates, company identifiers, language, currency and links to concept definitions. Meta data may also contain guidelines to format a standard style sheet or other application for a standard template.

[64] Volunteers would not be required to use a software product to create the file. They could create a text file and enter the data themselves.

[65] The standard taxonomies already have linkbase files associated with their own elements.

[66] Additional linkbases may be developed, such as formula linkbases.

[67] EDGARLink will be changed to allow the attachment of .xml and .xsd files for this purpose. The EDGARLink Filer Manual will be updated with instructions on how to attach all files and how to link to the taxonomies on our Web site.

[68] If, in the future, we were to issue a separate proposal to mandate filing XBRL-Related Documents, we expect that we would not propose liability protection or an exclusion from the certification requirements as to these documents.

submitted in the program, regardless whether they are exhibits to a document incorporated by reference into a filing:

- Are not deemed filed for purposes of Section 18 of the Exchange Act,[69] Section 16 of the Public Utility Holding Company Act of 1935 (''Public Utility Holding Company Act''),[70] Section 323 of the Trust Indenture Act of 1939 (''Trust Indenture Act'') [71] or Section 34(b) of the Investment Company Act; [72]
- Are not deemed incorporated by reference;
- Are not otherwise subject to the liabilities of these sections; [73]
- Are subject to all other liability and anti-fraud provisions of these Acts; [74] and
- Are deemed filed for purposes of Rule 103 of Regulation S–T.[75]

Proposed Rule 402(b) generally would provide that a volunteer is not liable under these Acts for information in its XBRL-Related Documents that reflect the same information that appears in the corresponding portion of the official version of the related filing, to the extent that the information in the corresponding portion of the official filing was not materially false or misleading.[76] Proposed Rule 402(b) also generally would provide that, to the extent the information in a volunteer's XBRL-Related Documents does not reflect the same information, the information in the XBRL-Related Documents would be deemed to reflect the same information for purposes of proposed Rule 402(b) if the volunteer had made a good faith and reasonable attempt to reflect the same information and, as soon as reasonably practicable after the volunteer becomes aware of any difference, the volunteer amends the XBRL-Related Documents to cause them to reflect the same information.

Later in this release, we solicit comments on whether liability protections for XBRL data in the voluntary program should be increased beyond or decreased from that proposed.

Finally, proposed paragraph (h) of Rules 13a–14 and 15d–14 under the Exchange Act and proposed paragraph (d) of Rule 30a–2 under the Investment Company Act would exclude XBRL-Related Documents from being subject to the certification of disclosure requirements of the rule of which it is a part.

V. Specific Request for Comments

We request comment in general on the proposed voluntary program and rules. We also request comment in particular as follows:

1. Is the proposed rule permitting volunteer filers to furnish financial information in XBRL appropriate? Is there a better way to accomplish testing and analysis of XBRL data?

2. For purposes of the program, volunteers can furnish in XBRL format, among other types of financial information, a complete set of financial statements. Are there special issues or difficulties raised by providing notes to financial statements in XBRL format? If so, should we permit volunteers to furnish financial statements in XBRL format if they omit the related notes? Should we allow volunteers to furnish in XBRL format some but not all financial statements (*e.g.*, only a balance sheet)? Should we also allow tagging for other items, such as Management's Discussion and Analysis [77] or Management's Discussion of Fund Performance [78] that are part of existing taxonomies?

3. Are the standard taxonomies in the voluntary program sufficiently developed? If not, explain what further development would be necessary. Please address taxonomies with respect to specific industries or types of companies if you have information or views on these. Is the taxonomy builder software sufficiently developed that volunteers would be able to create extensions as needed?

4. What specific criteria should be applied to determine the adequacy of the standard taxonomies?

5. Should we include other standard taxonomies in the voluntary program? If so, specify which ones and explain why you believe such taxonomies are sufficiently developed.

6. Should we allow foreign private issuers or foreign governments who use non-U.S. GAAP standard taxonomies to participate in the voluntary program? If so, how should this be implemented? What adaptations, if any, would be needed? How would U.S. GAAP reconciliations be handled in a voluntary XBRL submission?

7. We plan to permit all filers to furnish XBRL data as an exhibit to Exchange Act and Investment Company Act filings so long as they use one of the specified standard taxonomies and form types. Should we further limit participation, such as by size or specific industry? Should we allow volunteers to furnish XBRL data with Securities Act filings?

8. We have proposed that XBRL data furnished by volunteers must be the same financial information as in the corresponding portion of the HTML or ASCII version. Should we allow volunteers to present less detailed financial information in their XBRL data?

9. In order for the XBRL version of the financial statements to have the same level of detail as the HTML or ASCII version, we expect most companies would file extensions to the standard taxonomy. If you expect that companies would file extensions to the standard taxonomy, explain why extensions would be necessary. Would there be some companies that do not expect to file extensions? If not, explain why. Would the use of extensions harm the comparability that otherwise would exist among volunteers that use the same standard taxonomy?

10. Are there any confidentiality concerns regarding submitting extensions? If so, what are they?

11. We are contemplating allowing volunteers to submit XBRL data as an amendment to their filings or with a Form 8–K or Form 6–K that references the filing that contains the financial information to which the XBRL data relates. Should we require volunteers to submit XBRL data at the same time or within a specified number of days from the time they submit their official filing? Would this present difficulties for volunteers? Should we require volunteers to submit XBRL data only as an exhibit to the filing to which the XBRL data relates (*i.e.*, remove the option to submit the XBRL data as an exhibit to an otherwise unrelated Form 8–K or Form 6–K)?

[69] 15 U.S.C 78r. Because the XBRL-Related Documents will not be filed under the Exchange Act, they will not be incorporated by reference into registration statements filed under the Securities Act of 1933 (''Securities Act'') [15 U.S.C 77a *et seq.*] or prospectuses they contain.

[70] 15 U.S.C. 79p.

[71] 15 U.S.C. 77www.

[72] 15 U.S.C. 80a–33(b).

[73] All of these statutory sections provide for filing-related liabilities. We expect to caution users on the Commission's Web site that, although XBRL-Related Documents are required to reflect the same information contained in the corresponding portion of the related official filing, they are furnished rather than filed and users should continue to rely on the official filing rather than the XBRL-Related Documents.

[74] Participants in the voluntary program still would be required to file the official financial information in HTML or ASCII that will be subject, as usual, to the liability provisions of the federal securities laws.

[75] 17 CFR 232.103. Rule 103 generally provides that an electronic filer is not subject to liability as to an error or omission in an electronic filing resulting solely from electronic transmission errors beyond the control of the filer if the filer corrects the problem through an amendment as soon as reasonably practicable after the filer becomes aware of the problem.

[76] Liability relief would not extend, however, to the information the official filing contains.

[77] See Item 303 of Regulations S–K and S–B [17 CFR 229.303 and 228.303].

[78] See Item 22(b)(7) of Form N–1A [17 CFR 239.15A and 274.11A].

12. We plan to develop and provide via our Web site an application for a standard template to render the XBRL information in human readable form. What are the advantages and disadvantages of our requiring the use of such a standard template? For example, could a standard template prevent a volunteer from presenting its XBRL data in as much detail as, and in a manner substantially similar to, the financial statements in its official filing? Should we only develop standard templates for certain industries? Instead, should we allow each volunteer to submit its own template for rendering the XBRL data?

13. As to the voluntary program, we propose to exclude XBRL-Related Documents from the certification requirements of Rules 13a–14 and 15d–14 under the Exchange Act and Rule 30a–2 under the Investment Company Act and we state that the XBRL-Related Documents should omit audit opinions and review reports. For purposes of the voluntary program, should officers of the company certify the XBRL data? If so, what should the certification criteria be? Should auditors be required to attest to the data? If so, what should their attestation requirements be? What are the advantages and disadvantages of requiring certification and attestation? [79] What complications would arise if a volunteer presented an audit or review report in its XBRL-Related Documents?

14. Should the XBRL data be considered filed or furnished for purposes of the voluntary program? Why? Would filers be more or less likely to participate in the voluntary program if the information were deemed filed? To encourage participation in the voluntary program, should liability protections be increased beyond that proposed? For the protection of investors, should liability protection be decreased from that proposed? Is there any reason to provide liability protections under the Securities Act if, as proposed, volunteers cannot submit XBRL data with Securities Act filings and XBRL data is deemed not incorporated by reference?

15. As proposed, the liability protection provisions require that information in the XBRL-Related Documents be the same as the corresponding information in the official filing and that information in the official filing not be materially false or misleading. Also as proposed, to the extent information in the XBRL-Related Documents differs, it would be deemed the same if the volunteer had made a good faith and reasonable attempt to make it the same and, as soon as reasonably practicable after the volunteer becomes aware of the difference, the volunteer amends the XBRL-Related Documents to make the information the same. Is it appropriate to deem the information the same under these conditions? Under what, if any, conditions should the information be deemed the same?

16. How should we determine how useful the tagged data is to users of the information?

17. What specific steps can we take to encourage registrants to participate in the voluntary program?

VI. General Request for Comments

We request comment not only on the specific issues we discuss in this release, but on any other approaches or issues that we should consider in connection with the voluntary program. We seek comment from any interested persons, including those required to file information with us on the EDGAR system, as well as investors, disseminators of EDGAR data, EDGAR filing agents, accountants and any other members of the public.

VII. Paperwork Reduction Act

The proposed new and amended rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995, or PRA.[80] We are submitting the proposals to the Office of Management and Budget, or OMB, for review in accordance with the PRA.[81] An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The title of the new collection of information is ''Voluntary XBRL-Related Documents'' (OMB Control No. 3235–XXXX). This collection of information stems from already existing regulations and forms adopted pursuant to the Exchange Act and Investment Company Act that set forth financial disclosure requirements for annual and quarterly reports as well as current reports. The proposed new and amended rules, if adopted, would allow registrants to furnish specified financial information in XBRL-Related Documents as exhibits to their current or periodic reports filed on EDGAR. The specified financial information already is required pursuant to existing periodic and annual report requirements, but would be tagged using XBRL. During the proposed voluntary program, registrants would continue to include this information in ASCII or HTML format in their official EDGAR filings, but also would furnish the XBRL tagged data as exhibits to these filings. The XBRL-Related Documents would consist of an instance document, a schema file, and linkbase files. Submission of XBRL-Related Documents would be voluntary and the information submitted would not be kept confidential.

A. Reporting and Cost Burden Estimate

1. Periodic and Current Reporting

Form 10–K (OMB Control No. 3235–0063) prescribes information that a registrant must disclose annually to the market about its business. Form 10–KSB (OMB Control No. 3235–0420) prescribes information that a registrant that is a ''small business issuer'' as defined under our rules must disclose annually to the market about its business. Form 20–F (OMB Control No. 3235–0288) is used by a foreign private issuer both to register a class of securities under the Exchange Act as well as to provide its annual report required under the Exchange Act. Form 10–Q (OMB Control No. 3235–0070) prescribes information that a registrant must disclose quarterly to the market about its business. Form 10–QSB (OMB Control No. 3235–0416) prescribes information that a registrant that is a ''small business issuer'' as defined under our rules must disclose quarterly to the market about its business. Form 8–K (OMB Control No. 3235–0060) prescribes information, such as material events or corporate changes, that a registrant must disclose. Form 8–K also may be used, at a registrant's option, to report any events that the registrant deems to be of importance to shareholders. Furthermore, companies may use Form 8–K to disclose the nonpublic information required to be disclosed by Regulation FD.[82] Form 6–K (OMB Control No. 3235–0116) is used by a foreign private issuer to report material information, such as required disclosure in its home jurisdiction, information regarding distributions and other material disclosure. Form N–CSR (OMB Control No. 3235–0570) is the form used by registered management investment companies to file certified shareholder reports semi-annually. Form N–Q (OMB Control No. 3235–0578) is the form used by registered management investment companies to file their complete portfolio schedules for the first and third fiscal quarters.

We are proposing a new collection of information, Voluntary XBRL-Related Documents, which would be furnished

[79] See Section III.D of the Concept Release regarding auditor attestation.

[80] 44 U.S.C. 3501 *et seq.*

[81] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[82] 17 CFR 243.100 through 243.103.

as a new exhibit to these forms to allow registrants to voluntarily furnish specified financial information using XBRL.[83] The compliance burden estimates for the proposed collection of information are based on several assumptions. First, while the proposed voluntary program would be open to any Exchange Act or Investment Company Act reporting company choosing to participate, we anticipate that only a small percentage of companies would choose to participate in the voluntary program. Based on discussions with several individuals who are familiar with the use of XBRL, we estimate that approximately 60 registrants would elect to participate in the voluntary program.

Participation in the voluntary program and the use of XBRL would not directly affect the burden of preparing the financial statements or the registrant's official EDGAR filings. In order to be able to provide XBRL-Related Documents, a registrant participating in the voluntary program would have to map the financial reporting to the XBRL standard taxonomy, potentially develop taxonomy extensions, map the notes to the financial statements and create an instance document. Based on discussions with data aggregators and registrants who have prepared their financial information as XBRL-Related Documents, the initial creation of XBRL-Related Documents would require on average approximately 130 burden hours. We estimate that subsequent preparation of the XBRL-Related Documents would require an average 10 burden hours. Because the PRA estimates represent the average burden over a three-year period, we estimate the average burden for disclosure for one set of XBRL-Related Documents furnished with a periodic or current report to be 20 hours.[84]

We would permit participants in the voluntary program to furnish XBRL-Related Documents with respect to their annual and quarterly reports as well as current reports, but we think the participants will generally only furnish XBRL-Related Documents with their annual and quarterly reports due to the additional burden of preparing the documents.[85] Based on a burden hour estimate of 80 hours per registrant participating in the voluntary program per year and 80 participants per year, we estimate that, in the aggregate, participants would incur an additional 6,400 burden hours to furnish the XBRL-Related Documents with their filings. We estimate that 75% of the burden is prepared by the company and that 25% of the burden is prepared by outside professionals or consultants retained by the company at an average cost of $300 per hour.[86] We estimate that, if the proposals are adopted, the additional filings would result in an added annual cost totaling $480,000 for all participating registrants.

2. Regulation S–K, Regulation S–B and Regulation S–T

Regulation S–K (OMB Control No. 3235–0071) specifies information that a registrant must provide in filings under both the Securities Act and the Exchange Act. Regulation S–B (OMB Control No. 3235–0417) specifies information that a small business issuer must provide in filings under the Securities Act and the Exchange Act. Regulation S–T (OMB Control No. 3235–0424) specifies the requirements that govern the electronic submission of documents.

The proposed changes to these items would add and revise rules under Regulations S–K, S–B and S–T. The filing requirements themselves, however, are included in the forms and we have reflected the burden for these new requirements in the burden estimate for the forms. These rules in Regulations S–K, S–B and S–T do not impose any separate burden. We assign one burden hour each to Regulations S–B, S–K and S–T for administrative convenience to reflect the fact that these regulations do not impose any direct burden on companies.

B. Request for Comments

We request comment to evaluate the accuracy of our estimates of the number of participants and the burden of the proposed collections of information and to determine whether there are ways to minimize the burden on respondents. Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, with reference to File No. S7–35–04. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–35–04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

VIII. Cost-Benefit Analysis

The proposed voluntary program reflects our desire to increase EDGAR's efficiency and utility. The tagging of financial and other information submitted to us through EDGAR has the potential to improve the analysis of that information. In order to evaluate data tagging, we have proposed allowing registrants to furnish XBRL-Related Documents as exhibits to their official EDGAR filings.

A. Benefits

We believe that tagged financial information may allow more efficient and effective retrieval, research and analysis of financial information through automated means. The proposed voluntary program would assist us in assessing whether using XBRL tagged financial information enhances the analysis of financial information included in Commission filings. The voluntary program also would facilitate our ability to assess the technical requirements of processing

[83] The proposed voluntary program would allow for XBRL-Related Documents to be furnished with Forms 10, 10SB and 20–F. We expect, however, that volunteers for the program will already be subject to Exchange Act reporting requirements and, as a result, do not include an analysis relating to Forms 10 and 10SB or, to the extent it can be used for Exchange Act registration, Form 20–F.

[84] To calculate an estimate of the amount of time it would take to prepare the XBRL-Related Documents we assumed that the initial creation would take 130 hours and that all future preparations of XBRL-Related Documents would take 10 burden hours. We calculated that a registrant other than an investment company would prepare one annual and three quarterly reports per year, and an investment company registrant would prepare two reports on Form N–CSR and two reports on Form N–Q per year. We added the burden hours for each report over the three-year period and divided by the number of periodic reports filed by each registrant (12), resulting in the estimate of 20 hours per report.

[85] We estimate that a participant would furnish XBRL-Related Documents with its annual report and each of its quarterly reports (or with each report on Form N–CSR and Form N–Q, in the case of an investment company) and will incur 20 burden hours for preparing the XBRL-Related Documents for each report.

[86] The staff estimated the average hourly rate for outside professionals and consultants, by contacting outside professionals and other persons regularly involved in the financial reporting process.

XBRL-Related Documents using EDGAR.

Today, a number of companies use the financial information provided on EDGAR to create databases of tagged information that they resell to users of the information. Allowing registrants to tag their own financial data would remove third parties from the tagging process and may reduce the cost of access to tagged information. Data tagging by registrants may make the tagging process more accurate. Additionally, the voluntary program may benefit registrants and the public by permitting experimentation with data tagged using XBRL. In the future, increased availability of accurate, tagged financial information could also reduce the cost of research and analysis and create new opportunities for companies that compile, provide and analyze data to provide more value added services. Enhanced access to tagged information has the potential to increase analyst coverage and investor interest in a registrant's securities, which could increase the liquidity in the market and lower the cost of capital. These benefits, however, are difficult to quantify.

B. Costs

The proposed voluntary program would lead to some additional costs for registrants choosing to furnish XBRL-Related Documents as exhibits to their periodic and current reports. Some companies may already tag their financial information using XBRL, in which case the additional cost of submitting XBRL-Related Documents would be minimal. The proposals do not dictate that companies follow any particular procedure, however some participants may choose to acquire additional software or hire consultants to assist them with data tagging. Based on discussions with software providers and others familiar with XBRL, we estimate that between 60 and 100 registrants will participate in the voluntary program, the cost of tagging software packages to be approximately $3,000, and, based on our PRA estimates, an annual cost of $20,000 per registrant.[87] Based on the foregoing discussion, we estimate the total cost to be between $1,380,000 and $2,300,000 in the first year.

Due to the recent development of the technology, we have limited data to quantify the cost of implementing data tagging using XBRL and seek comments and supporting data on our estimates. Further, methods of tagging data may vary considerably, making accurate cost estimates difficult. In the future, there may be additional costs to participants in the EDGAR data stream, including lower demand for data tagging and data dissemination. The availability of registrant tagged data, however, may provide these participants with alternative business opportunities.

C. Request for Comments

We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives, to the proposed rules. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Initial Regulatory Flexibility Analysis

We prepared this Initial Regulatory Flexibility Analysis, or IRFA, in accordance with the Regulatory Flexibility Act.[88] We are proposing rules to allow registrants, on a voluntary basis, to tag financial information in specified filings using XBRL. The proposed amendments set forth the method by which a registrant participating in the voluntary program may furnish XBRL-Related Documents as an exhibit to its official EDGAR filing.

A. Reasons for, and Objectives of, the Proposals

The purpose of the proposals is to further our ability to assess the feasibility and desirability of using tagged data on a more widespread and, possibly, mandated, basis in EDGAR filings. We believe the program to accept XBRL-Related Documents through EDGAR on a voluntary basis would better enable us to study the extent to which XBRL enhances the comparability of that data, its usefulness for financial analysis, and our staff's ability to review and assess filings. In addition, the voluntary program would help us assess the effect of XBRL data tagging on the quality and transparency of financial information as well as the compatibility of XBRL data tagging with the Commission's financial reporting requirements.

B. Legal Basis

We are proposing amendments to the rules under the authority set forth in Sections 19(a)[89] and 28[90] of the Securities Act, Sections 3,[91] 12,[92] 13,[93] 14,[94] 15(d),[95]23(a),[96] 35A[97] and 36[98] of the Exchange Act, Section 20(a) of the Public Utility Holding Company Act,[99] Section 319(a) of the Trust Indenture Act,[100] Sections 8,[101] 30[102] and 38[103] of the Investment Company Act and Section 3(a) of the Sarbanes-Oxley Act.

C. Small Entities Subject to the Proposed Rules

The voluntary program may have an impact on three broad categories of small entities: all filers; participants in the voluntary program; and non-filers that interact with EDGAR. Filers include operating companies and investment companies. A small operating company is defined by Rule 0–10[104] under the Exchange Act for purposes of the Regulatory Flexibility Act as an issuer, other than an investment company, that on the last day of its most recent fiscal year, has total assets of $5 million or less. We estimate there are approximately 2500 small operating company issuers. Under Rule 0–10 under the Investment Company Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. We estimate that there are approximately 186 investment companies that file reports on Forms N–CSR and N–Q that meet this definition. These and other filers may be affected by any change to the EDGAR system.

A smaller subset of those issuers may voluntarily participate in the program; however, we estimate that number will be very low. We are not aware of any small entities that are considering participating in the voluntary program.

Finally, the dissemination of XBRL data may have an impact on those entities that interact with the EDGAR data stream. We are aware that entities have developed certain products and services based on data in EDGAR; many entities disseminate, re-package, analyze and sell the information. The Commission does not regulate all these entities and therefore it is currently not

[87] To determine the annual cost we estimate that the incremental burden would result in 6,400 internal burden hours and $480,000 in external costs. Assuming a cost of $175 per hour for in-house professional staff, the total cost would be $1,120,000. Consequently, the aggregate cost estimate is $1,600,000 or $20,000 per registrant.

[88] 5 U.S.C. 603.

[89] 15 U.S.C. 77s(a).

[90] 15 U.S.C. 77z–3.

[91] 15 U.S.C. 78c.

[92] 15 U.S.C. 78*l*.

[93] 15 U.S.C. 78m.

[94] 15 U.S.C. 78n.

[95] 15 U.S.C. 78o(d).

[96] 15 U.S.C. 78w(a).

[97] 15 U.S.C. 78*ll*.

[98] 15 U.S.C. 78mm.

[99] 15 U.S.C. 79t(a).

[100] 15 U.S.C. 77sss(a).

[101] 15 U.S.C. 80a–8.

[102] 15 U.S.C. 80a–29.

[103] 15 U.S.C. 80a–37.

[104] 17 CFR 240.0–10.

feasible to accurately estimate the number or size of these potentially affected entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The voluntary program is an experiment to determine the feasibility of using XBRL on a broader, perhaps mandatory, basis. Therefore, the cost of participating, the burden on the EDGAR system and the possible effect on those entities that use the EDGAR data stream are somewhat speculative at this point.

As the proposal relates to a voluntary filing program, no registrant is required to file XBRL-Related Documents. If a voluntary participant already uses XBRL to tag data, it may incur no additional cost to participate. Other participants who wish to volunteer may have to purchase software or retain a consultant to assist in tagging data. The inclusion of XBRL-Related Documents on EDGAR may also have effects on other filers, including small entities, who use the system.

The voluntary program may have some effect on any entity that interacts with the data dissemination stream. Allowing filers to submit information in XBRL, even voluntarily, may have an impact on entities providing EDGAR-based services and products. The limited, voluntary nature of the program will help the Commission assess the impact, if any, on these entities.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap, or conflict with the proposals.

F. Agency Action to Minimize the Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. The purpose of the proposals is to further our ability to assess the feasibility and desirability of using tagged data on a more widespread and, possibly, mandated, basis. Provision of the XBRL-Related Documents is voluntary. We have considered different or simpler requirements for small entities. For tagged data to provide benefits such as ready comparability, however, the data tagging system cannot have alternative requirements. Similarly, in order to achieve the benefits of data tagging, use of a single data tagging technology is necessary. If we determine to require data tagging in the future, we will look to the results of the voluntary program to find alternatives to minimize any burden on small entities. We solicit comment on how the proposals could be modified to minimize the effect on small entities.

G. Request for Comments

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comment on the number of small entities that would be impacted by the proposals; the existence or nature of the potential impact of the proposals on small entities as discussed in the analysis; how to quantify the impact of the proposal; and how additional exemptions could be made for small entities while remaining consistent with our goal to assess tagged data. We ask commenters to describe the nature of any effect and provide empirical data and other factual support for their views, if possible. These comments will be considered in preparing the Final Regulatory Flexibility Analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposal.

X. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[105] a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposals on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 23(a)(2) of the Exchange Act106 requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b)107 of the Securities Act, Section 3(f)108 of the Exchange Act, and Section 2(c)109 of the Investment Company Act require us, when engaging in rulemaking where we are required 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.

The proposals seek to implement a voluntary program and are intended to help us evaluate the usefulness to registrants, investors and the Commission of data tagging in general, and XBRL in particular. We believe that the proposals would promote efficiency by allowing investors, registrants and the Commission to gain experience with tagged data in Commission filings. The data has the potential to facilitate analysis of that information. Because the proposals are designed to permit filers to provide information in a format that we believe would be more useful to investors, we believe the proposals are appropriate in the public interest and for the protection of investors.

We request comment on whether the proposals, if adopted, would promote efficiency, competition and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

XI. Statutory Basis and Text of Proposed Amendments

We propose the rule amendments outlined above under Sections 19(a) and 28 of the Securities Act, Sections 3, 12, 13, 14, 15(d), 23(a), 35A and 36 of the Exchange Act, Section 20(a) of the Public Utility Holding Company Act, Section 319(a) of the Trust Indenture Act, Sections 8, 30 and 38 of the Investment Company Act and Section 3(a) of the Sarbanes-Oxley Act.

List of Subjects in CFR Parts 228, 229, 232, 240, 249 and 270

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, 17 CFR is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

2. Amend § 228.601 by:

[105] 105 Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

a. Revising the exhibit table; and
b. Adding paragraph (b)(100).
The revisions read as follows.

§ 228.601 (Item 601) Exhibits.

(a) * * *

EXHIBIT TABLE

BILLING CODE 8010–01–P

EXHIBIT TABLE									
	Securities Act Forms					Exchange Act Forms			
	SB-2	S-2	S-3	S-4[3]	S-8	10-SB	8-K[5]	10-QSB	10-KSB
(1) Underwriting agreement	X	X	X	X			X		
(2) Plan of purchase, sale, reorganization, arrangement, liquidation or succession	X	X	X	X		X	X	X	X
(3) (i) Articles of Incorporation	X			X		X	X	X	X
(ii) Bylaws	X			X		X	X	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X
(5) Opinion on legality	X	X	X	X	X				
(6) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Correspondence from an independent accountant regarding non-reliance upon a previously issued audit report or completed interim review							X		
(8) Opinion on tax matters	X	X	X	X					
(9) Voting trust agreement and amendments	X			X		X			X
(10) Material contracts	X	X		X		X		X	X
(11) Statement re: computation of per share earnings	X	X		X		X		X	X
(12) No exhibit required	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(13) Annual report to security holders for the last fiscal year, Form 10-Q or 10-QSB or quarterly report to security holders[1]	X	X		X					X
(14) Code of ethics							X		X
(15) Letter on unaudited interim financial information	X	X	X	X	X			X	
(16) Letter on change in certifying accountant[4]	X	X		X		X	X		X
(17) Letter on departure of director							X		
(18) Letter on change in accounting principles								X	X
(19) Reports furnished to security holders								X	
(20) Other documents or statements to security holders or any document incorporated by reference								X	X
(21) Subsidiaries of the small business issuer	X			X		X			X

(22) Published report regarding matters submitted to vote of security holders								X	X
(23) Consents of experts and counsel	X	X	X	X	X		X[2]	X[2]	X[2]
(24) Power of attorney	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	X					
(26) Invitations for competitive bids		X	X	X	X				
(27) through (30) [Reserved]									
(31) Rule 13a-14(a)/15d-14(a) Certifications								X	X
(32) Section 1350 Certifications								X	X
(33) through (98)[Reserved]									
(99) Additional exhibits	X	X	X	X	X	X	X	X	X
(100) XBRL-Related Documents						X	X	X	X

[1] Only if incorporated by reference into a prospectus and delivered to holders along with the prospectus as permitted by the registration statement; or in the case of a Form 10-KSB, where the annual report is incorporated by reference into the text of the Form 10-KSB.

[2] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[3] An issuer need not provide an exhibit if: (1) an election was made under Form S-4 to provide S-2 or S-3 disclosure; and (2) the form selected (S-2 or S-3) would not require the company to provide the exhibit.

[4] If required under Item 304 of Regulation S-B.

[5] A Form 8-K exhibit is required only if relevant to the subject matter reported on the Form 8-K report. For example, if the Form 8-K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

(b) * * *

(100) *XBRL-Related Documents.* An electronic filer that participates in the voluntary XBRL (eXtensible Business Reporting Language) program may submit, in electronic format as an exhibit to either the filing to which they relate or a Form 8–K (§ 249.308 of this chapter) that references such filing, XBRL-Related Documents (§ 232.11 of this chapter) that reflect the same information, prepared in accordance with U.S. generally accepted accounting principles, as appears in one or both of the complete set of financial statements or earnings information (whether contained in the body of the related filing or in an exhibit and whether filed or furnished) contained in the official version of such filing in accordance with the EDGARLink Filer Manual. An electronic filer may submit such exhibit with, or in an amendment to, either the filing to which it relates or a Form 8–K that references such filing if such Form 8–K is submitted no earlier than such filing is filed.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–

11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Amend § 229.601 by:

a. Revising the exhibit table; and

b. Adding paragraph (b)(100).

The revisions read as follows.

§ 229.601 (Item 601) Exhibits.

(a) * * *

Exhibit Table

Instructions to the Exhibit Table

* * * * *

BILLING CODE 8010–01–P

EXHIBIT TABLE

	Securities Act Forms										Exchange Act Forms			
	S-1	S-2	S-3	S-4[3]	S-8	S-11	F-1	F-2	F-3	F-4[3]	10	8-K[5]	10-Q	10-K
(1) Underwriting agreement	X	X	X	X	---	X	X	X	X	X	---	X	---	---
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	---	X	X	X	X	X	X	X	X	X
(3) (i) Articles of incorporation	X	---	---	X	---	X	X	---	---	X	X	X	X	X
(ii) Bylaws	X	---	---	X	---	X	X	---	---	X	X	X	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X	---	---	---	---
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review	---	---	---	---	---	---	---	---	---	---	---	X	---	---
(8) Opinion re tax matters	X	X	X	X	---	X	X	X	X	X	---	---	---	---
(9) Voting trust agreement	X	---	---	X	---	X	X	---	---	X	X	---	---	X
(10) Material contracts	X	X	---	X	---	X	X	X	---	X	X	---	X	X
(11) Statement re computation of per share earnings	X	X	---	X	---	X	X	X	---	X	X	---	X	X
(12) Statements re computation of ratios	X	X	X	X	---	X	X	X	---	X	X	---	---	X
(13) Annual report to security holders, Form 10-Q and 10-QSB, or quarterly report to security holders[1]	---	X	---	X	---	---	---	---	---	---	---	---	---	X
(14) Code of Ethics												X		X
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	X	X	---	---	X	---
(16) Letter re change in certifying accountant[4]	X	X	---	X	---	X	---	---	---	---	X	X	---	X

(17) Correspondence on departure of director	---	---	---	---	---	---	---	---	---	---	---	X	---	---
(18) Letter re change in accounting principles	---	---	---	---	---	---	---	---	---	---	---	---	X	X
(19) Report furnished to security holders	---	---	---	---	---	---	---	---	---	---	---	---	X	---
(20) Other documents or statements to security holders	---	---	---	---	---	---	---	---	---	---	---	X	---	---
(21) Subsidiaries of the registrant	X	---	---	X	---	X	X	---	---	X	X	---	---	X
(22) Published report regarding matters submitted to vote of security holders	---	---	---	---	---	---	---	---	---	---	---	---	X	X
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X	---	X[2]	X[2]	X[2]
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	X	---	X	X	X	X	X	---	---	---	---
(26) Invitations for competitive bids	X	X	X	X	---	---	X	X	X	X	---	---	---	---
(27) through (30) [Reserved]														
(31) Rule 13a-14(a)/15d-14(a) Certifications	---	---	---	---	---	---	---	---	---	---	---	---	X	X
(32) Section 1350 Certifications	---	---	---	---	---	---	---	---	---	---	---	---	X	X
(33) through (98) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(100) XBRL-Related Documents											X	X	X	X

[1] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10-K, where the annual report to security holders is incorporated by reference into the text of the Form 10-K.

[2] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[3] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S-4 or F-4 to provide information about such company at a level prescribed by Forms S-2, S-3, F-2 or F-3 and (2) the form, the level of which has been elected under Forms S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

[4] If required pursuant to Item 304 of Regulation S-K.

[5] A Form 8-K exhibit is required only if relevant to the subject matter reported on the Form 8-K report. For example, if the Form 8-K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

BILLING CODE 8010–01–C

(b) * * *

(100) *XBRL-Related Documents.* An electronic filer that participates in the voluntary XBRL (eXtensible Business Reporting Language) program may submit, in electronic format as an exhibit to either the filing to which they relate or a Form 8–K (§ 249.308 of this chapter) that references such filing, XBRL-Related Documents (§ 232.11 of this chapter) that reflect the same information, prepared in accordance with U.S. generally accepted accounting principles, as appears in one or both of the complete set of financial statements or earnings information (whether contained in the body of the related filing or in an exhibit and whether filed or furnished) contained in the official version of such filing in accordance with the EDGARLink Filer Manual. An electronic filer may submit such exhibit with, or in an amendment to, either the filing to which it relates or a Form 8–K that references such filing if such Form 8–K is submitted no earlier than such filing is filed.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

5. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

* * * * *

6. Amend § 232.11 by adding the following definition in alphabetical order.

§ 232.11 Definition of terms used in part 232.

* * * * *

XBRL-Related Documents. The term *XBRL-Related Documents* means documents related to presenting financial information in eXtensible Business Reporting Language that are part of a voluntary submission in electronic format in accordance with § 232.401.

7. Amend § 232.305 by revising paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

(a) * * *

(b) Paragraph (a) of this section does not apply to HTML documents or XBRL-Related Documents (§ 232.11).

8. Amend Part 232 by adding an undesignated center heading and text to §§ 232.401 and 232.402 to read as follows:

XBRL-Related Documents

§ 232.401 XBRL-Related Document submissions.

(a) An electronic filer that participates in the voluntary XBRL (eXtensible Business Reporting Language) program may submit, in electronic format as an exhibit to the filing to which they relate or, if the electronic filer is eligible to file a Form 8–K (§ 249.308 of this chapter) or a Form 6–K (§ 249.306 of this chapter), a Form 8–K or a Form 6–K, as applicable, that references such filing, XBRL-Related Documents (§ 232.11 of this chapter) that reflect the same information, prepared in accordance with U.S. generally accepted accounting principles, as appears in one or more of the portions specified in paragraph (b) of this section of the official version of such filing in accordance with the EDGARLink Filer Manual and, as applicable, one of Item 601(b)(100) of Regulation S–K (§ 229.601(b)(100) of this chapter), Item 601(b)(100) of Regulation S–B (§ 228.601(b)(100) of this chapter), Form 20–F (§ 249.220f of this chapter), Form 6–K or § 270.8b–33 of this chapter. An electronic filer may submit such exhibit with, or in an amendment to, either the filing to which it relates or, if the electronic filer is eligible to file a Form 8–K or a Form 6–K, a Form 8–K or a Form 6–K, as applicable, that references such filing if such Form 8–K or Form 6–K is submitted no earlier than such filing is filed.

(b) XBRL-Related Documents must reflect the same information, prepared in accordance with U.S. generally accepted accounting principles, as appears in one or more of the following portions of the official version of the related filing:

(1) The complete set of financial statements;

(2) Earnings information (whether contained in the body of the related filing or in an exhibit and whether filed or furnished);

(3) Financial highlights or condensed financial information, as applicable (if the related filing has been filed under the Investment Company Act); or

(4) Schedule of investments (if the related filing has been filed under the Investment Company Act).

Note to § 232.401: Although XBRL-Related Documents are required by this section to reflect the same information as appears in the corresponding portion of the official version of the filing to which they relate, investors and others should continue to rely on the official version of the filing rather than the XBRL-Related Documents.

§ 232.402 Liability for XBRL-Related Documents.

(a) *Not deemed filed for liability purposes.* XBRL-Related Documents, regardless whether they are exhibits to a document incorporated by reference into a filing:

(1) Are not deemed filed for purposes of section 18 of the Exchange Act (15 U.S.C. 78r), section 16 of the Public Utility Act (15 U.S.C. 79p), section 323

of the Trust Indenture Act (15 U.S.C. 77www) or section 34(b) of the Investment Company Act (15 U.S.C. 80–33(b));

(2) Are not deemed incorporated by reference;

(3) Are not otherwise subject to the liabilities of these sections;

(4) Are subject to all other liability and anti-fraud provisions of these Acts; and

(5) Are deemed filed for purposes of Item 103 of Regulation S–T (§ 232.103 of this chapter).

(b) *Accurate reflection of underlying documents.* An electronic filer is not liable under the Securities Act, Exchange Act, Public Utility Act, Trust Indenture Act or Investment Company Act for information in its XBRL-Related Documents that reflects the same information as appears in the corresponding portion of the official version of the filing to which they relate to the extent that such information was not materially false or misleading in such official version of the filing. To the extent the information in an electronic filer's XBRL-Related Documents does not reflect the same information as appears in the corresponding portion of the official version of the filing to which they relate, the information in the XBRL-Related Documents will be deemed to reflect the same information for purposes of this paragraph if the electronic filer makes a good faith and reasonable attempt to reflect the same information and, as soon as reasonably practicable after the electronic filer becomes aware that the XBRL-Related Documents do not reflect the same information, the electronic filer amends the XBRL-Related Documents and, as a result, they reflect the same information.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

10. Amend § 240.13a–14 by adding paragraph (h) to read as follows:

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(h) The certification requirements of this section do not apply to XBRL-Related Documents, as defined in § 232.11 of this chapter.

11. Amend § 240.15d–14 by adding paragraph (h) to read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(h) The certification requirements of this section do not apply to XBRL-Related Documents, as defined in § 232.11 of this chapter.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

12. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

13. Amend Form 20–F (referenced in (§ 249.220f) by reserving paragraphs 16 through 99 and adding paragraph 100 at the end of ''Instructions as to Exhibits'' to read as follows:

Note—The text of Form 20–F does not and this amendment will not appear in the Code of Federal Regulations.

FORM 20–F

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

16 through 99 [Reserved]

100. *XBRL-Related Documents.* XBRL-Related Documents (§ 232.11 of this chapter).

* * * * *

14. Amend Form 6–K (referenced in (§ 249.306) by adding paragraph (5) to General Instruction C to read as follows:

Note—The text of Form 6–K does not and this amendment will not appear in the Code of Federal Regulations.

Form 6–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. * * *

(1) * * *

(5) *XBRL-Related Documents.* XBRL-Related Documents (§ 232.11 of this chapter) can be submitted if listed as exhibit 100.

* * * * *

PART 270—GENERAL RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

15. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

16. Revise § 270.8b–1 to read as follows:

§ 270.8b–1 Scope of §§ 270.8b–1 to 270.8b–33.

The rules contained in §§ 270.8b–1 to 270.8b–33 shall govern all registration statements pursuant to section 8 of the Act [15 U.S.C. 80a–8], including notifications of registration pursuant to section 8(a), and all reports pursuant to section 30(a) or (b) of the Act [15 U.S.C. 80a–29(a) or 80a–29(b)], including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

§ 270.8b–2 [Amended]

17. Amend § 270.8b–2 by revising the phrase ''§§ 270.8b–1 through 270.8b–32'' to read ''§§ 270.8b–1 through 270.8b–33'' in the introductory text of the section.

18. Add § 270.8b–33 to read as follows:

§ 270.8b–33 XBRL-related documents.

An electronic filer that participates in the voluntary XBRL (eXtensible Business Reporting Language) program may submit, in electronic format as an exhibit to the filing to which they relate, XBRL-Related Documents that reflect the same information, prepared in accordance with U.S. generally accepted accounting principles, as appears in the complete set of financial statements, the financial highlights or condensed financial information, as applicable, or the schedule of investments prepared in response to Items 1 and 6 of Form N–CSR (§ 249.331 and § 274.128 of this chapter) or Item 1 of Form N–Q (§ 249.332 and § 274.130 of this chapter), in accordance with the EDGARLink Filer Manual. A registrant that submits XBRL-Related Documents as an exhibit to a Form must name each XBRL-Related Document ''EX–100'' as specified in the EDGARLink Filer Manual, and submit the XBRL-Related Documents separately for each series of an investment company registrant and each contract of an insurance company separate account. A registrant may submit such exhibit with, or in an amendment to, the filing to which it relates.

19. Amend § 270.30a–2 by adding paragraph (d) to read as follows:

§ 270.30a–2 Certification of Forms N–CSR and N–Q.

* * * * *

(d) The certification requirements of this section do not apply to XBRL-Related Documents, as defined in § 232.11 of this chapter.

By the Commission.

Dated: September 27, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–22034 Filed 9–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8497; 34–50454; 35–27895; 39–2429; IC–26623; File No. S7–36–04]

Enhancing Commission Filings Through the Use of Tagged Data

AGENCY: Securities and Exchange Commission.

ACTION: Concept release.

SUMMARY: Data tagging provides a method for searching, retrieving, and analyzing information through automated means. As part of our initiative to improve the filing, information collection and disclosure process, we are seeking to determine the impact and usefulness of tagged data generally and, more specifically, the adequacy and efficacy of Extensible Business Reporting Language (XBRL) as a format for reporting financial information. This concept release seeks comment on the use of tagged data in certain Securities Exchange Act and Investment Company Act filings.

DATES: Comments should be received on or before November 15, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/concept*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–36–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number S7–36–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/concept*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Questions about this release should be referred to Brigitte Lippmann or Steven Hearne, Division of Corporation Finance (202–942–2910), Brian Bullard or Toai Cheng, Division of Investment Management (202–942–0590), or Eric Schuppenhauer, Office of the Chief Accountant (202–942–4400), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

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I. Overview

On July 22, 2004, we issued a Press Release announcing that the Commission was undertaking an initiative to assess the benefits of tagged data and its potential for improving the timeliness, accuracy, and analysis of financial and other filed information.[1] Data tagging uses standard definitions to translate text-based information, such as information contained in Commission filings, into files that can be retrieved, searched, and analyzed through automated means. Data tags may enable investors and other market participants to more efficiently and effectively analyze data from different sources and automatically exchange financial information across various software platforms, including web services.

Data tagging appears to be gaining prominence as a format for enhancing financial reporting data. Substantial progress has been made in the private sector over the past five years in developing a data tagging language known as eXtensible Business Reporting Language, or XBRL.[2] XBRL is an open source specification for software that uses tags to identify and describe financial and other information and facilitate the preparation, publication, and analysis of that information.[3] In late 1999, the American Institute of Certified Public Accountants, or AICPA, along with development partners from the accounting, technical, and securities sectors, launched the XBRL initiative.[4] Today, XBRL International, the consortium developed to build the XBRL language and promote and support its adoption, claims more than 250 companies and organizations as members.[5]

Financial regulators have begun to assess the potential of XBRL to improve the timeliness and accuracy of reported financial information as well as the analysis of such information. The Federal Financial Institutions Examination Council, or FFIEC, which is the U.S. interagency bank regulatory standard-setting body, has undertaken a Call Report Modernization Initiative and developed a set of data standards using XBRL for the information that financial institutions must include in their Call Reports.[6] Moreover, in June 2004, the European Commission demonstrated its interest in the development of XBRL by signing a contract with XBRL International to accelerate the development and adoption of XBRL in the European Union.[7]

Since adopting rules to implement the operational phase of our Electronic Data

[1] Press Release No. 2004–97 (July 22, 2004).

[2] *See http://www.xbrl.org* for a more detailed description of XBRL.

[3] ''Open source'' means that the software can be used by anyone without charge and is being developed in an open and collaborative setting. ''Closed source'' reporting standards are developed for proprietary or private purposes, and the code is not publicly available.

[4] According to *http://www.xbrl.org*, the AICPA hosted the first meeting of the XBRL Steering Committee in October 1999.

[5] XBRL–US is the jurisdiction of XBRL International in the United States. XBRL International is made up of companies, associations, and agencies involved in providing or using business information and XBRL–US is composed of a subset of those organizations active in the United States. *See* ''About the Organization'' on *http://www.xbrl.org* for a discussion of the jurisdictions, steering committees and a list of members of XBRL International. XBRL International and its local jurisdictions have funded the development of XBRL through grants and annual fees provided by its members. *See http://www.xbrl.org.*

[6] *See http://www.ffiec.gov/FIND.* The FFIEC originally scheduled roll-out of the new XBRL-based data repository for October 1, 2004. While roll-out has been delayed, the FFIEC is moving forward with the initiative and announced that it will target implementation for one of the first two Call Report periods of 2005. *See* FDIC Press Release PR–90–2004 (Aug., 2004).

[7] *See* XBRL Press Release ''European Businesses Take Step Closer to Efficient Reporting'' (June 24, 2004).

Gathering, Analysis and Retrieval system, or EDGAR, we have continually sought to make EDGAR more useful to investors. XBRL provides a sophisticated system of data tagging that may offer an opportunity to improve the transparency and enhance the analysis of information filed with us. Throughout this release, we solicit comment on many issues to help us determine whether identifying or tagging specific information would improve the accuracy of, access to, and timely analysis of the information that registrants are required to include in their filings under the federal securities laws. We are seeking comment from investors, registrants, accountants, and any other parties that may be affected by the use of XBRL or other data tagging technologies in Commission filings. Commenters need not respond to all of the questions raised in this release—we welcome comment letters addressing some or all of these questions.

In a companion release also being issued today, we are proposing a voluntary program that would allow registrants to furnish financial information tagged using XBRL as an exhibit to specified Securities Exchange Act of 1934 [8] and Investment Company Act of 1940 [9] filings, enabling Commission staff to further evaluate the use of XBRL tagged data.[10] If, based on the public comment we receive in response to this release and our experience with the proposed voluntary program, we decide to propose rules relating to data tagging outside of the voluntary program, we will issue a subsequent proposing release that describes the specific requirements and provides an opportunity for public comment.

II. Tagged Data as Part of Our Initiative To Improve Analysis and Disclosure

Investors, large and small, seek out and analyze information about companies in which they have invested or in which they are considering investing. In response, many registrants, in addition to required filings with us, make information available to the public through dedicated sections of their Web sites, investor conference calls, Web casts, press releases, and earnings releases. Other parties provide services that aggregate and analyze registrant information and disseminate that information via e-mail, specialized software, and the Internet. While electronic media have increased the accessibility of registrant information, that information is generally not available in a format that investors and other users who wish to perform technical data analyses can easily download and process using software applications or Web services. In order to analyze financial information, these users of the information generally must either copy data from financial documents into spreadsheets or rely upon data that has been copied or otherwise extracted and summarized by third-party sources. In addition, if material financial information is contained in the narrative of a filing, such as in Management's Discussion and Analysis,[11] Management's Discussion of Fund Performance,[12] or in the notes to a registrant's financial statements,[13] users of the information may have to search through filings to retrieve the information they need to perform technical data analyses.[14] These activities may take time, result in additional cost, and cause errors through the inaccurate compilation of data.

We are considering the potential for the use of tagged data in registrants' EDGAR filings to improve the timeliness and accuracy of financial information included in those filings and to facilitate the analysis of such information. As part of our evaluation, we are requesting comment on the essential elements of data tagging, the impact of data tagging on disclosure, and its impact on users of the financial information included in Commission filings, as well as the type of information and specific filings that may be appropriate for data tagging. We are also exploring specific aspects of XBRL as a data tagging technology. While we are not aware of a more developed tagging technology for business and financial information than XBRL, we are requesting information and comments on other tagging technologies that may be used.

A. Development of Data Tagging at the Commission

We have relied upon data tagging to identify and extract information from our EDGAR system since its inception.[15] In 1984, the EDGAR pilot program required registrants to include tagged data in document headers to assist in accurately organizing filings.[16] These tagged headers used SGML, Standard Generalized Markup Language, to segregate data about the filing and the registrant from the underlying text. SGML tagging allowed us to automatically perform basic validations, store tagged data, and process filings. Following our adoption of EDGAR, we required electronic filers to furnish Financial Data Schedules as exhibits to their filings containing financial statements.[17] The Schedules required registrants to provide and tag a specified set of financial information essentially identical to certain items included in registrants' financial statements.[18] We permitted registrants to ''furnish'' rather than file the tagged financial data included in the Schedules, thereby limiting registrants' liability with regard to the tagged data.[19]

As part of an initiative to modernize and improve EDGAR in the late 1990s, we decided to eliminate the requirement to furnish Financial Data Schedules.[20] While registrants were required to furnish the Schedules until the end of 2000, the requirement was eliminated due to concerns over the reliability and usefulness of the tagged data included in the Schedules. The problems with the reliability of tagged data appeared to result primarily from the fact that data tagging was not fully integrated into the

[8] 15 U.S.C. 78a *et seq.*

[9] 15 U.S.C. 80a–1 *et seq.*

[10] Release No. 33–8496 (September 27, 2004).

[11] Item 303 of Regulation S–K [17 CFR 229.303].

[12] Item 22(b)(7) of Form N–1A [17 CFR 239.15A and 17 CFR 274.11A].

[13] 17 CFR 210 *et seq.* and 17 CFR 229.302.

[14] Examples of these users include, among others, financial analysts, investment advisors, institutional investors, mutual funds, and others who routinely use software and other technical tools to analyze companies, to compare specific companies to indices or peer groups, or to screen groups of companies for specific characteristics. The analyses performed by these users can have a significant impact on the capital markets due to the amount of funds managed by such users and the number of investors who rely on their advice. Making tagged data more accessible to users who perform technical data analyses will affect all investors, large or small, including investors who do not directly use the tagged data.

[15] Release No. 33–6977 (Feb. 23, 1993) [58 FR 14628].

[16] *See* Release No. 33–6977 and the EDGAR Filer Manual.

[17] *Id.* The Financial Data Schedule requirement initially was to become effective on November 1, 1993. The effective date was delayed, however, until September 1, 1994 to provide additional time to establish the EDGAR system's capacity to accept and process the Schedules. Release No. 33–7072 (July 8, 1994) [59 FR 36258].

[18] Release No. 33–6977.

[19] *Id.* The rules required electronic filers to furnish the Schedules, but did not deem them ''filed'' under the federal securities laws. Though the Schedules remained subject to the anti-fraud provisions of the federal securities laws, electronic filers that submitted Schedules were not otherwise liable under the federal securities laws to the extent their Schedules contained data accurately extracted from their financial statements and the underlying financial statements were not materially false or misleading.

[20] Initially, Financial Data Schedules were removed from investment company registration forms in 1999. Release No. 33–7684 (May 17, 1999) [64 FR 27888]. The Schedules were subsequently eliminated from all Commission rules and forms, including Form N–SAR, in early 2000. Release No. 33–7855 (Apr. 24, 2000) [65 FR 24788].

financial reporting process, creating difficulties for some registrants in determining which Financial Data Schedule tags to use for particular financial statement items.[21] In contrast, if, in the future, we required registrants to tag financial information using technology such as XBRL, we expect that such tagged information would become an integral part of the financial reporting process. Further, we anticipate that if we ever required the tagged data to be part of the registrant's official filings, it would become subject to all relevant liability provisions of the federal securities laws.

The initiative to modernize EDGAR was not limited to adjusting the Schedule requirement; it also sought to make better use of improved technology. As part of the initiative, we began to accept filings submitted to EDGAR using HTML, HyperText Markup Language.[22] By 1999, HTML had become a widely accepted standard for tagging data and text to present information on the Internet, and we began accepting filings using HTML with the expectation that HTML would eventually replace ASCII, American Standard Code for Information Interchange, for most filings.[23]

Since the EDGAR modernization initiative in the late 1990s, market participants have further developed and are continuing to improve data tagging technology. Today, data tagging primarily relies on XML, eXtensible Mark-up Language, and other XML-based standards. XML is a versatile, open source standard developed to assist in the automatic processing of data and to define and name data and text through tags.[24] XML tags give data an identity and context and organize it in a format that can be more easily read by software programs and analyzed across multiple companies and time periods.[25] In order to continue and expand on the benefits provided by tagged data, the EDGAR system changed document header tagging from SGML to XML in May 2000.[26] Since then, we have increased our use of XML for internal processing as well as for the document headers filed on EDGAR and Section 16(a)[27] beneficial ownership reports.

XML-based standards currently are being developed and used for a variety of data tagging purposes, such as FIXML, Financial Information Exchange Markup Language, to tag transaction-specific data, MDDL, Market Data Definition Language, to exchange market information regarding financial instruments, and XBRL to tag business and financial reporting information. XBRL allows users to prepare, publish in a variety of formats, exchange, and analyze information such as that contained in financial statements prepared in accordance with Generally Accepted Accounting Principles in the United States (''GAAP'').[28] XBRL has been developed to allow tagging of all of a company's financial information, allowing it to extend from a standard set of tags to meet its particular reporting needs. The extensions are able to connect back to, and collapse into, the more general, standard tags provided for all registrants, thereby mitigating a concern noted with respect to Financial Data Schedules, that data would be placed under an inappropriate, general tag.[29]

B. Essential Elements of Data Tagging

In order to be able to tag and use tagged data for disclosure and analysis, a data tagging system must include:

- The technology to administer the tags—a technology specification that provides the system's core concepts and language;
- Standard definitions to describe the tags—a set of tags agreed upon by users and preparers of information that give data an identity and context by providing an unique label to each specific data element; and
- A means of presenting and analyzing the tagged data—software programs that process the tagged data for presentation and analytical purposes.

Data tags can be applied through fixed field technology or through actively pairing data and tags. Fixed field technology requires preparers of information to provide data in a specialized form or template. Using fixed field technology, preparers fill out a form and each cell within the form is assigned a tag by the filing system. In this way neither preparers nor users actively participate in tagging the data. Our electronic filing system for Section 16(a) beneficial ownership reports relies in part on the use of fixed field technology to tag data.[30] An alternative approach requires preparers of information to actively pair data in a filing with tags, based on standardized definitions that have been agreed upon by both preparers and users of information.[31] This provides preparers with the opportunity to apply a greater degree of professional judgment regarding the items to be tagged. The proposed voluntary program would allow the submission of financial information using XBRL in reliance on an active pairing approach.

Questions for Commenters:

- What are the advantages and disadvantages of using the active pairing approach as compared with the fixed field technology approach? Are there Commission filings, in addition to Section 16(a) beneficial ownership reports, that would better rely on fixed field technology? If so, which filings or forms would best use that technology?

C. Impact on Disclosure

Investors frequently analyze information reported by registrants when making their investment decisions. We are considering whether and how tagged data would affect registrants' disclosure and the way investors use that disclosure. Until now, data tagging of financial information has generally occurred after a registrant has prepared its disclosure, as was the case with Financial Data Schedules. When third-party financial data providers tag data, the tagging is based on the registrants' reports filed with us. Using data tagging technology, information can be tagged by registrants at the source, improving the efficiency of the financial reporting process. Provision of such tagged data by registrants may

[21] Release No. 33–7684. In determining to eliminate the Schedules, we also noted that the Schedules were adopted primarily for the staff's use and that the staff increasingly relied on outside sources for the information provided by the Schedules. While acknowledging the concerns of some commenters who used the Schedules to analyze registrants, we determined to eliminate the requirement.

[22] *Id.*

[23] *Id.* HTML provides a superior standard for the presentation of information and promotes the concept of a single-use document, in which filers are able to avoid creating separate documents for dissemination to investors, posting on their Web sites, and submission to the Commission.

[24] *See http://www.w3.org/XML* and *http://www.xml.org.*

[25] Tags are standardized through the development of taxonomies, which are essentially data dictionaries that describe individual pieces of information and mathematical and definitional relationships among the pieces, identify text labels, and refer to authoritative sources for that information. *See* discussion in Section III.B. of this release.

[26] EDGAR Release 7.0 marked our initial use of XML to present header information in XFDL, Extensible Forms Description Language, a derivative of XML using certain tags dedicated to screen presentation and validation, rather than SGML format.

[27] 15 U.S.C. 78p(a).

[28] *See http://www.xbrl.org.*

[29] *See* the discussion of XBRL in Section III.B. where taxonomies and extension taxonomies are more fully discussed.

[30] Section 16(a) beneficial ownership reports lend themselves to this type of data tagging since the underlying forms are highly structured. *See* Release No. 33–8230 (May 7, 2003) [68 FR 25788] (mandating electronic filing and Web site posting of Forms 3, 4, and 5).

[31] In XBRL, these definitions are known as taxonomies.

increase the quality of that disclosure and better facilitate analysis of disclosure. The tagged data may enable registrants, as well as investors and regulators, to more easily examine the component parts of financial statement line items and view elements of the line items that are found in the notes to the financial statements. Registrant tagged data may also generally improve the ability to search for and locate particular data items by simply calling up the specified tags.

While tagged data has the potential to improve transparency and enhance analysis, the use of tagged data could result in investors' receiving less detailed disclosure. Any use of data tagging, no matter how detailed, might have the effect of causing registrants and users to focus on the tagged data and miss information that is not tagged or fail to take into account the aggregate or cumulative effect of the tagged information. Further, if registrants were to prepare and file their financial data based on a set of standard tags, they could limit their disclosure to the classifications under the standard tags, failing to disclose more detailed information that might otherwise have been presented. Data tagging using technology such as XBRL may mitigate this concern because, unlike Financial Data Schedules that were limited to a set of specified tags, XBRL is capable of being extended to provide more detailed information than that provided in a set of standard tags.

Questions for Commenters:

- What effect would tagged data have on the ability to use and analyze registrants' disclosure? Is the provision of tagged data in Commission filings preferable to the current system?
- Would tagged data have an effect on the quality of disclosure in Commission filings?
- Can the usefulness of disclosure be improved in ways other than the application of tagging technologies? For instance, are there alternative solutions (*e.g.*, software products) that reliably facilitate analysis of the text-based information contained in filings today?

III. XBRL and XBRL Tagged data

XBRL is an XML-based standard for use in business and financial reporting that was developed and is supported by XBRL International.[32] We are aware that XBRL data tagging initiatives are currently underway in a number of regulatory contexts, including initiatives by the FFIEC in the United States, the Financial Services Authority in the United Kingdom,[33] and the Australian Prudential Regulatory Authority.[34] Our proposed voluntary program to accept data tagged using XBRL as an exhibit to Commission filings would permit us to evaluate the XBRL technology specification, the standard taxonomies, and the types of extension taxonomies used by registrants and assess the feasibility of XBRL tagged data in Commission filings. While the voluntary program would only encompass registrants' financial information, taxonomies also could be developed to include labels for other non-financial information.

Although we are seeking comment on the ability of XBRL to add value to Commission filings, we are interested generally in the ability of data tagging to meet our objectives and are interested in receiving comments on alternative XML-based or other languages that we should consider. When commenting on other languages, please address the same general questions that we have outlined below for XBRL. Specifically, please address whether standard taxonomies have been developed, how they are maintained, who is responsible for updating the taxonomies, and whether extensions or some other mechanism can be used to allow flexibility in providing detailed financial information.

A. Technology Specification

XBRL International has developed XBRL specification 2.1 using XML and other World Wide Web Consortium specifications.[35] XBRL specification 2.1 was released in December 2003 and is the foundation upon which the consortium and third parties are currently developing software and taxonomies.[36] According to XBRL International, XBRL specification 2.1 will remain current until at least December 2005.[37] XBRL specification 2.1 is an open standard, available on a royalty-free basis allowing software providers to use the technology specification to develop XBRL-enabled products.[38] In the event that the technology specification changes, XBRL International has stated that it would propose changes to the specification and make those proposed changes available for public comment.[39]

Questions for Commenters:

- Is the XBRL specification 2.1 sufficiently developed to support the tagging of financial information? Explain whether the specification provides an effective and efficient means for tagging data in Commission filings.
- Although XBRL specification 2.1 is an open standard available on a royalty-free basis, are there limitations on the ability of filers, software providers or others to freely use the specification?

B. Taxonomies

An XBRL taxonomy is a standard description and classification system for business reporting and financial data. Tags consist of:

- Specific financial data, such as the line items presented in the financial statements; and
- Words or labels, such as headers in the notes to the financial statements.

For example, a taxonomy may include a tag for the balance sheet line item ''inventory'' as well as tags for inventory's component accounts, ''raw materials,'' ''work in process,'' and ''finished goods,'' which often are disclosed in the notes to the financial statements. Any item that is tagged can be retrieved and analyzed across multiple registrants and time periods by using software. In addition to being readily accessible for financial analysis, by using software, tagged information can be retrieved and formatted in any desired presentation, such as a traditional balance sheet and income statement or as a chart or graph.

XBRL–US, the jurisdiction of XBRL International in the United States, has developed the United States Financial Reporting Taxonomy Framework.[40] The taxonomy framework provides the foundation on which others can build taxonomies to meet their specific reporting and analytic needs. On September 20, 2004, using the taxonomy framework and XBRL specification 2.1, XBRL–US proposed for public comment three comprehensive industry-level

[32] We are not a member of XBRL International and have not served in an oversight role over XBRL International or its development of XBRL.

[33] *See* Financial Services Authority Press Release No. FSA/PN/031/2004 (Mar. 31, 2004) and Policy Statement No. PSO 4/9 (Mar. 2004).

[34] *See http://www.apra.gov.au.*

[35] *See* XBRL International, ''XBRL International White Paper: Improving XBRL Implementation & Interoperability, The Case for XBRL 2.1 Today'' (Mar. 23, 2004). According to the Web site, XBRL specification 2.0 was released by XBRL International in December 2001 and subsequently refined based on experience with the specification.

[36] *Id.*

[37] *Id.* XBRL International has expressed its intention to develop modules to improve the ability of XBRL to transition data prepared in prior versions of the specification and run more complex validation routines.

[38] *See http://www.xbrl.org/Specification/XBRL-RECOMMENDATION–2003–12–31+Corrected-Errata-2004–04–29.doc* for details relating to the specification.

[39] *See http://www.xbrl.org/Specifications.*

[40] For more information *see* the discussion on *http://www.xbrl.org* under Technical Information relating to the US Financial Reporting Taxonomy Framework.

taxonomies for tagging financial information:

- Commercial and industrial companies;
- Banking and savings institutions; and
- Insurance companies.[41]

These standard taxonomies were developed by XBRL–US based on input from accounting firms, technology companies, and other participants in XBRL–US that have financial reporting knowledge.[42] Neither the Public Company Accounting Oversight Board, the Financial Accounting Standards Board, nor the Commission participated in the taxonomy development. While the content of the standard taxonomies is based on GAAP and registrant disclosure practices, the taxonomies are not intended to be accounting standards or to require changes to current accounting standards or the content of reported information.[43] In developing the taxonomies, we understand that XBRL–US considered the following:

- Disclosure indicated in various financial reporting checklists prepared by the AICPA and major national accounting firms;
- Disclosure in sample financial statements included in accounting and auditing industry guides published by the AICPA; and
- Disclosure frequently found in financial statements filed by registrants.[44]

XBRL–US also has under development additional industry-specific taxonomies, including taxonomies for investment companies, broker-dealers, and oil and gas companies.[45]

In order for the standard taxonomies to provide the market with useful tagged data, the standard taxonomies must provide an appropriate level of detail for financial statement presentation and analytic purposes. The taxonomies' tags, definitions, and classifications also must conform to established standards (*i.e.*, GAAP and Commission rules). For example, a taxonomy would contain inaccuracies if ''raw materials,'' ''work in process,'' and ''finished goods'' were not classified as components of ''inventory'' or their definitions did not conform to GAAP. If additional tags are needed to satisfy a registrant's specific data requirements, a registrant using XBRL would be able to expand the standard taxonomy through what is known as an extension taxonomy.[46] Extension taxonomies enable any registrant or group of registrants to refine the standard taxonomy by creating additional tags to fit their particular circumstances. If a group of registrants all require similar additional data elements, an extension taxonomy could be created for the group or a new standard taxonomy could be developed.[47] Where a data element does not have a corresponding tag included in the standard or extension taxonomy, that item would not be able to be retrieved, analyzed or separately presented as a line item in the financial statements.

Questions for Commenters:

- What should the Commission's role be in taxonomy development? How could the taxonomies be assessed to determine whether they include the disclosures required by GAAP and Commission rules?
- Are the standard taxonomies sufficient for registrants to submit data tagged using XBRL without extensions? If not, should standard taxonomies be expanded to make extensions unnecessary? If standard taxonomies were expanded to make extensions unnecessary, would the standard taxonomies still be manageable, efficient and useful?
- What would be the advantages or disadvantages of permitting registrants (either individually or as part of an industry group) to develop, use, and submit their own extensions? If registrants were permitted to use their own extensions, would it result in better financial reporting with greater detail than reliance solely on standard taxonomies? Is there any potential that investors could be confused or misled by registrant-developed extensions?

C. Presentation and Analysis of Tagged Data

Data tagged using XBRL consists of tags paired with values in a computer readable document, known as an instance document. Software programs are able to read an instance document, analyze and manipulate the data, and display it in a desired format. For example, a style sheet can render an instance document into a traditional balance sheet and income statement or into a chart or graph. Other software programs are able to use the instance document and analyze the data.

Questions for Commenters:

- Would it be preferable for registrants to develop and submit their own style sheets to render tagged data into a specific format or for the Commission to provide a standard style sheet? Why or why not?
- What is the appropriate level of detail to be provided in rendered financial statements? What standards should be established to ensure a sufficient level of detail in the rendered financial statements?
- Are software analytical tools sufficiently developed to analyze the data? What are the fundamental features of such tools?

D. Attestation/Validation of Tagged Data

Under a tagged reporting system, it is important that filers properly tag items included in the standard and extension taxonomies. If items are not tagged properly, financial information generated from the instance document could be misleading or inaccurate and the ability to perform analysis on the tagged data could be impaired. An example of forms of accountant attestation that can be performed on tagged data is in the AICPA's interpretation to Section 101 of the Statements on Standards for Attestation Engagements titled, ''Attest Engagements on Financial Information Included in XBRL Instance Documents.''[48] Specifically, this interpretation sets forth procedures an accountant should consider when engaged to examine and report on the accuracy and completeness of an XBRL instance document.

Questions for Commenters:

[41] *See http://www.xbrl.org.*

[42] For more information *see* the discussion on *http://www.xbrl.org* under Technical Information relating to the United States Taxonomies and the Explanatory Notes to each of the US GAAP taxonomies.

[43] *See http://www.xbrl.org/faq.aspx#33.*

[44] *See* note 42 above.

[45] According to XBRL–US, standard taxonomies are generally developed by national jurisdictions, such as XBRL–US, and sent to XBRL International for comment. While XBRL International does not have a required notice and comment period and is not bound to consider comments, we understand its practice includes the circulation of a working draft of a standard taxonomy to members of XBRL International for a 30-day comment period and, once revised, the publication of a working draft on its Web site for a 60-day public comment period. While this practice could change, XBRL International has indicated that it will actively publicize and solicit public comment on the specification 2.1 taxonomies. Public comment is solicited on the Web site and comments are made available on request, but are not published. More information is available at its Web site at *http://www.xbrl.org.*

[46] *See* the discussion of Technical Information relating to the US Financial Reporting Taxonomy Framework and the US GAAP Commercial and Industrial extension taxonomy at *http://www.xbrl.org.*

[47] *Id.*

[48] *See* Interpretation No. 5 of Chapter 1, Attest Engagements, of Statement on Standards for Attestation Engagements (SSAE) No. 10: Attestation Standards: Revision and Recodification (AT Section 101), as amended, available at *http://www.aicpa.org/members/div/auditstd/announce/XBRL_09_16_03_FINAL.htm.* Its interpretation has not been adopted by the Public Company Accounting Oversight Board as part of their auditing standards.

• If we require or accept tagged data in Commission filings, should accountants attest to the accuracy and completeness of the tagged data? If so, what form should such an attestation take?

IV. Information for and Filing of Tagged Data

In a companion release, we are proposing a voluntary program to permit certain registrants to furnish financial information using XBRL in order to evaluate data tagging of financial statement information in general and the use of XBRL in particular.[49] In this release, we are considering the more general question of the usefulness of tagged data formats, like XBRL, in electronic filings and reports made by registrants under the federal securities laws. As part of our evaluation, we are considering whether tagged data should supplement text-based filings, currently provided in either ASCII or HTML formats, or replace them. The proposed voluntary program is the first step in evaluating this technology and determining its usefulness to investors. After reviewing the comments on this release and the proposed voluntary program release, we will consider whether to implement the voluntary program to permit electronic filers to furnish financial statement information using XBRL as an exhibit to certain Exchange Act and Investment Company Act filings on EDGAR.

A. Information Appropriate for Data Tagging

It is our understanding that it is possible for all information contained in Commission filings to be tagged. We wish to determine which information in those filings is most appropriate for such tagging. Currently, the standard taxonomies developed by XBRL–US provide tags and related definitions for registrants' financial statements, notes to the financial statements, industry guides and certain elements of management's discussion and analysis.[50] In the future, registrants may be able to tag not only particular line items from their financial statements and the notes to the financial statements but also relevant data from the body of a filed document (*e.g.*, executive compensation, fund performance information, beneficial ownership, legal proceedings, and risk factors).

Questions for Commenters:

• What information contained in Commission filings would be appropriate for tagging? Only the financial statements? The financial statements and the notes to the financial statements? Should management's discussion and analysis or management's discussion of fund performance also be included? Should Commission industry guide information be included? Should financial schedules be included? What about other information included in the periodic or current reports or other information collected by the Commission? Please provide an explanation for the information that you believe is appropriate for tagging.

• Are there specific industries for which data tagging would be easier to implement or the tagged data would be more useful?

• Should we consider tagging investment company information other than financial statements, such as the prospectus fee table or the table of sales loads and breakpoints? Should we consider tagging registrant or depositor financial statements for insurance company separate accounts issuing variable insurance products?

B. Filing of Tagged Data

If, after reviewing the comments on this release and the proposed voluntary program, we determine that the use of XBRL tagged data in Commission filings is in the interest of investors, we will need to determine how the tagged data should be provided and treated for liability purposes. Under the proposed voluntary program, we are considering whether to permit electronic filers to ''furnish'' rather than file the exhibit containing their XBRL tagged financial information, providing electronic filers with limited relief from liability under the federal securities laws.[51] We have proposed this limited relief due to the experimental nature of the voluntary program and to encourage registrants to volunteer to provide XBRL tagged data with their filings. We expect that the voluntary program will allow us to gather and analyze data and make conclusions regarding the feasibility and desirability of using XBRL tagged data in Commission filings. Experience with a voluntary program would better enable us to evaluate data tagging and determine whether to propose additional data tagging rules for electronic filers.

Any additional data tagging rules would be developed in a series of steps based upon our experience with the voluntary program. We may determine to extend the acceptance of voluntary filings of tagged information indefinitely, in which case we would need to determine whether to accept the tagged data as an alternate official filing similar to the approach used in accepting either ASCII or HTML, or to accept documents using tagged data as an unofficial part of the filing, similar to the way we currently accept PDF files.[52] We also may determine to require registrants to file the tagged information as their sole official filing. In any event, we would consider the liability that should attach under the federal securities laws to promote the reliability of tagged information provided by registrants.

Questions for Commenters:

• If we were to extend the acceptance of voluntary filings, would it be preferable to accept documents using tagged data as an alternate official filing similar to our current approach of accepting either ASCII or HTML formats? Would it be preferable for us to accept documents using tagged data as an unofficial part of the filing, similar to what is currently done with PDF files?

• Should tagged data be applied to only certain types of forms? If so, which forms? Should tagged data be applied only to periodic reports? If so, should it be applied only to annual reports on Forms 10–K[53] and N–CSR?[54] Should application extend to quarterly filings on Forms 10–Q[55] and N–Q?[56] Aside from periodic reports, should it be applied to information filed or furnished on Form 8–K?[57] Should it be applied to reports by investment companies on Form N–SAR?[58] Should tagged reporting for investment companies be different than for operating companies?

• What are the specific implications for the use of tagged data in filings made pursuant to the Securities Act of 1933?[59] Would using tagged data affect an issuer's ability to access the market or the timing of its offerings? If so, how?

V. Impact on Various Parties

We are requesting comments on how various parties may be affected by a decision to pursue data tagging in Commission filings, including the impact on: investors, registrants, accountants, and other parties generally

[49] Release No. 33–8496.

[50] *See* the discussion under Technical Information relating to the United States Taxonomies at *http://www.xbrl.org.*

[51] *See* Section IV. E. of the XBRL Voluntary Financial Reporting Program on the EDGAR System Proposing Release. Release No. 33–8496.

[52] *See* Release No. 33–7684 and Release No. 33–7855.

[53] 17 CFR 249.310.

[54] 17 CFR 249.331 and 274.128.

[55] 17 CFR 249.308a.

[56] 17 CFR 249.332 and 274.130.

[57] 17 CFR 249.308.

[58] 17 CFR 249.330 and 274.101.

[59] 15 U.S.C. 77a *et seq.*

involved in the financial reporting process.

A. Investors

Registrants provide their financial data in EDGAR text filings. As a result, anyone wishing to translate that data into spreadsheet or database software in order to analyze the data must either copy the data into a more usable form or purchase a subscription from a third-party financial data provider that has already tagged the data. If the data is purchased from a third party, the data provided may have been modified from the information filed by the registrant in order to conform it to the third party's database system.

Tagged data provides financial information in a format that is more readily usable for standard quantitative financial analysis. Investors and other parties who are interested in using tagged data to calculate financial ratios, compare companies to peers or indices, or otherwise use software to perform sophisticated technical analyses are likely to prefer tagged data provided directly by the registrant. Even investors that do not use the tagged data may receive better access to registrant information based on the provision of the tagged data to those parties who will undertake the detailed technical analysis and disseminate their results.

Questions for Commenters:

- What are the likely impacts of the provision of tagged data by registrants on financial analysts, institutional investors, or individual investors?
- Would the provision of tagged data by registrants result in time and cost savings to investors, such as through reduced data entry or formatting?

B. Registrants

In order to create a data tagging system, a registrant likely would incur expenses for software creation or acquisition, software customization and other start-up costs, such as training personnel and hiring consultants. While technology specifications, such as those provided by XBRL, are often in the form of an open standard that is available at minimal or no cost, registrants may need to upgrade their systems to use the new software, customize the open standard, or add extensions. Registrants may, however, benefit from the provision of tagged data to investors by improving the transparency of the information and investors' access to information for analytical purposes. This may, in turn, result in broader analyst coverage, increased liquidity of registrants' securities, and decreased price volatility.

Further, some registrants already may have acquired internal financial reporting software with data tagging capabilities. According to the Financial Executives Research Foundation, those registrants may be able to use that existing software to improve their internal financial reporting and controls by enhancing transparency of financial information and integrating disparate systems.[60]

Questions for Commenters:

- Are current accounting or reporting software programs able to tag data? Are the programs able to tag data using XBRL?
- What impact would data tagging have on a registrant's financial reporting process? What additional costs would a registrant incur to tag their financial reporting data?
- What would be the advantages and disadvantages of requiring small business issuers to tag data in their Commission filings? Should we exempt small business issuers from any data tagging initiatives? Alternatively, should small business issuers be given more time than larger issuers to transition to the use of tagged data?
- What would be the advantages and disadvantages of requiring foreign private issuers to tag data in their Commission filings? Are the implications different if the foreign private issuer reports using home country Generally Accepted Accounting Principles or International Financial Reporting Standards with a reconciliation to U.S. GAAP? Should we exempt foreign private issuers from any data tagging initiatives? Alternatively, should foreign private issuers be given more time to transition to the use of tagged data?
- What would be the advantages and disadvantages of requiring investment companies to tag data in their Commission filings? Are there types of investment companies that should be exempt from any data tagging initiatives? Alternatively, should certain investment companies be given more time than other investment companies to transition to the use of tagged data?

[60] *See, e.g.*, Financial Executives Research Foundation, Inc., *Everything You Wanted to Know About XBRL but Were Afraid to Ask: A CFO's Guide* (2003) and Financial Executives Research Foundation, Inc., *Corporate Reporting and the Internet—Understanding and Using XBRL* (2002).

C. Accountants

Data tagging may be integrated with internal accounting software packages, performed by third parties, or performed manually. In order to tag data and audit tagged data technology, internal control procedures and related audit procedures may need to change. Accountants may be affected by such changes due to the types of incremental assurance that they may be required to provide with respect to tagged data included in Commission filings.[61]

Question for Commenters:

- What effect, if any, would the use of tagged data have on the quality of and the time required to conduct audits and test internal controls?

D. Other Parties

Currently, many registrants use intermediaries, such as financial publishers and filing agents, to assist them in making their EDGAR filings. These intermediaries ensure that the filing is properly formatted and transmitted. Registrants similarly may choose to rely on third parties to assist them with data tagging. Other companies convert EDGAR filings into a database format, offering services to standardize disclosures, calculate financial ratios, filter and sort financial data, as well as provide data in a tagged format. If we were to require the submission of tagged data, the scope and value of the services provided by financial publishers, filing agents, data aggregators, and other parties may be affected.

Question for Commenters:

- What effect, if any, would the submission to and availability of tagged data on EDGAR have on other parties?

VI. General Request for Comment

Any interested person wishing to submit written comments on any aspect of the concept release, as well as on other matters that might have an impact on our consideration of the use of tagged data in Commission filings, is requested to do so.

By the Commission.

Dated: September 27, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–22035 Filed 9–30–04; 8:45 am]

BILLING CODE 8010–01–P

[61] *See* also the discussion and questions in Section III.D. of this release.

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Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]
Endangered and threatened species:
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INTERIOR DEPARTMENT

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Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

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2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 361/P.L. 108–304

Sports Agent Responsibility and Trust Act (Sept. 24, 2004; 118 Stat. 1125)

H.R. 3908/P.L. 108–305

To provide for the conveyance of the real property located at 1081 West Main Street in Ravenna, Ohio. (Sept. 24, 2004; 118 Stat. 1130)

H.R. 5008/P.L. 108–306

To provide an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through September 30, 2004, and for other purposes. (Sept. 24, 2004; 118 Stat. 1131)

S. 1576/P.L. 108–307

Harpers Ferry National Historical Park Boundary Revision Act of 2004 (Sept. 24, 2004; 118 Stat. 1133)

Last List September 9, 2004

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 2004

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 18	Nov 1	Nov 15	Nov 30	Dec 30
Oct 4	Oct 19	Nov 3	Nov 18	Dec 3	Jan 3
Oct 5	Oct 20	Nov 4	Nov 19	Dec 6	Jan 3
Oct 6	Oct 21	Nov 5	Nov 22	Dec 6	Jan 4
Oct 7	Oct 22	Nov 8	Nov 22	Dec 6	Jan 5
Oct 8	Oct 25	Nov 8	Nov 22	Dec 7	Jan 6
Oct 12	Oct 27	Nov 12	Nov 26	Dec 13	Jan 10
Oct 13	Oct 28	Nov 12	Nov 29	Dec 13	Jan 11
Oct 14	Oct 29	Nov 15	Nov 29	Dec 13	Jan 12
Oct 15	Nov 1	Nov 15	Nov 29	Dec 14	Jan 13
Oct 18	Nov 2	Nov 17	Dec 2	Dec 17	Jan 18
Oct 19	Nov 3	Nov 18	Dec 3	Dec 20	Jan 18
Oct 20	Nov 4	Nov 19	Dec 6	Dec 20	Jan 18
Oct 21	Nov 5	Nov 22	Dec 6	Dec 20	Jan 19
Oct 22	Nov 8	Nov 22	Dec 6	Dec 21	Jan 20
Oct 25	Nov 9	Nov 24	Dec 9	Dec 27	Jan 24
Oct 26	Nov 10	Nov 26	Dec 10	Dec 27	Jan 24
Oct 27	Nov 12	Nov 26	Dec 13	Dec 27	Jan 25
Oct 28	Nov 12	Nov 29	Dec 13	Dec 27	Jan 26
Oct 29	Nov 15	Nov 29	Dec 13	Dec 28	Jan 27