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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH63

List of Approved Spent Fuel Storage Casks: NUHOMS®–24PT4 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc., Standardized Advanced NUHOMS® System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 1 to Certificate of Compliance Number (CoC No.) 1029. Amendment No. 1 will add another Dry Shielded Canister (DSC), designated NUHOMS®–24PT4, to the authorized contents of the Standardized Advanced NUHOMS® System. Also, the rule will be amended to correct a typographical error that incorrectly states the expiration date of the CoC.

DATES: The final rule is effective May 16, 2005, unless significant adverse comments are received by March 30, 2005. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH63) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking website at *http://ruleforum.llnl.gov.* Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML043650049.

CoC No. 1029, the revised Technical Specifications (TS), the underlying SER for Amendment No. 1, and the Environmental Assessment (EA), are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov,* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on January 6, 2003 (68 FR 463), that approved the Transnuclear, Inc. (TN), Standardized Advanced NUHOMS® System cask design and added it to the

list of NRC-approved cask designs in § 72.214 as CoC No. 1029.

Discussion

On April 30, 2003, and as supplemented on March 12, July 2, and September 14, 2004, the certificate holder, TN, submitted an application to the NRC to amend CoC No. 1029 to add another DSC, designated NUHOMS®–24PT4, to the authorized contents of the Standardized Advanced NUHOMS® System. This canister is designed to accommodate 24 intact Pressurized Water Reactor fuel assemblies with or without integral burnable poison rods or integral fuel burnable absorber rods, or up to 12 damaged fuel assemblies in lieu of an equal number of intact assemblies. It is designed for use with the existing Advanced NUHOMS® Horizontal Storage Module and transfer in the NUHOMS® OS197H transfer cask, with a maximum heat load of 24 kilowatts (kW), under a general license. The specific changes requested in Amendment No. 1 to CoC No. 1029 are listed in the SER. No other changes to the Standardized Advanced NUHOMS® System design were requested in this application. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Standardized Advanced NUHOMS® System cask design listing in § 72.214 by adding Amendment No. 1 to CoC No. 1029. The amendment consists of changes to the TS as described above. The particular TS which are changed are identified in the NRC staff's SER for Amendment No. 1. Also, the NRC staff is revising the rule text to correct a typographical error that incorrectly states the expiration date of the CoC. The correct expiration date, as listed in CoC No. 1029 for the Standardized Advanced NUHOMS® System, is February 5, 2023.

The amended Standardized Advanced NUHOMS® System, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1029 is revised by adding the effective date of Amendment Number 1 and changing the expiration date of the CoC to February 5, 2023.

Procedural Background

This rule is limited to the changes contained in Amendment 1 to CoC No. 1029 and does not include other aspects of the Standardized Advanced NUHOMS® System cask design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on May 16, 2005. However, if the NRC receives significant adverse comments by March 30, 2005, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**, in a subsequent final rule.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal 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 otherwise impractical. In this direct final rule, the NRC is revising the Standardized Advanced NUHOMS® System design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Standardized Advanced NUHOMS® System within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to add another DSC, designated NUHOMS®–24PT4, to the authorized contents of the Standardized Advanced NUHOMS® System. This canister is designed to accommodate 24 intact Pressurized Water Reactor fuel assemblies with or without integral

burnable poison rods or integral fuel burnable absorber rods, or up to 12 damaged fuel assemblies in lieu of an equal number of intact assemblies. It is designed for use with the existing Advanced NUHOMS® Horizontal Storage Module and transfer in the NUHOMS® OS197H transfer cask, with a maximum heat load of 24 kW. Also, the expiration date of the CoC will be changed to correct a typographical error. Specifically, the expiration date will be changed to February 5, 2023, as listed in CoC No. 1029 for the Standardized Advanced NUHOMS® System.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement 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 (OMB), Approval Number 3150–0132.

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

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On January 6, 2003 (68 FR 463), the NRC issued an amendment to Part 72 that approved the Standardized Advanced NUHOMS® System by adding it to the list of NRC-approved cask designs in § 72.214. On April 30, 2003, as supplemented on March 12, July 2, and September 14, 2004, the certificate holder, TN, submitted an application to the NRC to amend CoC No. 1029 to modify the present cask system design to add another DSC, designated NUHOMS®–24PT4, to the authorized contents of the Standardized Advanced NUHOMS® System. This canister is designed to accommodate 24 intact Pressurized Water Reactor fuel assemblies with or without integral burnable poison rods or integral fuel burnable absorber rods, or up to 12 damaged fuel assemblies in lieu of an equal number of intact assemblies. It is designed for use with the existing Advanced NUHOMS® Horizontal Storage Module and transfer in the NUHOMS® OS197H transfer cask, with a maximum heat load of 24 kW.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and TN. 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 out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

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, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ 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 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR–RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also

issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1029 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1029.

Initial Certificate Effective Date: February 5, 2003.

Amendment Number 1 Effective Date: May 16, 2005.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized Advanced NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1029.

Certificate Expiration Date: February 5, 2023.

Model Number: Standardized Advanced NUHOMS®–24PT1, NUHOMS®–24PT4.

Dated at Rockville, Maryland, this 14th day of February, 2005.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 05–3738 Filed 2–25–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH64

List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Holtec International HI–STORM 100 cask system listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 2 to Certificate of Compliance Number (CoC No.) 1014. Amendment No. 2 will modify the cask design to include changes to materials used in construction, changes to the types of fuel that can be loaded, changes to shielding and confinement methodologies and assumptions, revisions to various temperature limits, changes in allowable fuel enrichments, and other changes to reflect current NRC staff guidance and use of industry codes, under a general license.

DATES: The final rule is effective May 16, 2005, unless significant adverse comments are received by March 30, 2005. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH64) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML043640359.

CoC No. 1014, the revised Technical Specifications (TS), the underlying SER for Amendment No. 2, and the Environmental Assessment (EA), are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov,* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a

general license by publishing a final rule in 10 CFR Part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241), that approved the Holtec International HI–STORM 100 cask design and added it to the list of NRC-approved cask designs in § 72.214 as CoC No. 1014.

Discussion

On March 4, 2002, and as supplemented on October 31, 2002; August 6 and November 14, 2003; February 20, April 23, July 22, August 13, October 14, and December 3, 2004, the certificate holder, Holtec International, submitted an application to the NRC to amend CoC No. 1014 to permit a Part 72 licensee to modify the cask design to include changes to materials used in construction, changes to the types of fuel that can be loaded, changes to shielding and confinement methodologies and assumptions, revisions to various temperature limits, changes in allowable fuel enrichments, and other changes to reflect current staff guidance and use of industry codes, under a general license. The specific changes requested in Amendment No. 2 to CoC No. 1014 are listed in the SER. No other changes to the HI-STORM 100 cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the HI–STORM 100 cask design listing in § 72.214 by adding Amendment No. 2 to CoC No. 1014. The amendment consists of changes to the TS as described above. The particular TS which are changed are identified in the NRC staff's SER for Amendment No. 2.

The amended HI–STORM 100 cask system, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1014 is revised by adding the effective date of Amendment Number 2.

Procedural Background

This rule is limited to the changes contained in Amendment 2 to CoC No. 1014 and does not include other aspects of the HI–STORM 100 cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on May 16, 2005. However, if the NRC receives significant adverse comments by March 30, 2005, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal 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 otherwise impractical. In this direct final rule, the NRC would revise the HI–STORM 100 cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the HI–STORM 100 cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present

cask system design to include changes to materials used in construction, changes to the types of fuel that can be loaded, changes to shielding and confinement methodologies and assumptions, revisions to various temperature limits, changes in allowable fuel enrichments, and other changes to reflect current NRC staff guidance and use of industry codes, under a general license. The EA and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the EA and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, email *jmm2@nrc.gov.*

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement 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, Approval Number 3150–0132.

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

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to Part 72 that approved the HI–STORM 100 cask design by adding it to the list of NRC-approved cask designs in § 72.214. On March 4, 2002, and as supplemented on October 31, 2002; August 6 and November 14, 2003; February 20, April 23, July 22, August 13, October 14, and December 3, 2004, the certificate holder (Holtec International) submitted an application to the NRC to amend CoC No. 1014 to modify the present cask system design to include changes to materials used in construction, changes to the types of fuel that can be loaded, changes to shielding and confinement methodologies and assumptions, revisions to various temperature limits, changes in allowable fuel enrichments, and other changes to reflect current staff guidance and use of industry codes under a general license.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Holtec International. 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 out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

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, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ 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 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: June 1, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: May 16, 2005.

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: June 1, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 14th day of February, 2005.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 05–3739 Filed 2–25–05; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 905, 906, 925, 926, 931, 933, 944, 950, and 951

[No. 2005–03]

RIN 3069–AB29

Amendments to the Contractor Outreach Program for Businesses Owned by Minorities, Women, or Individuals With Disabilities

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is updating its regulation establishing a minority contractors outreach program to reflect changes in the agency's procurement process and organization, to include individuals with disabilities, and to make general editorial changes intended to simplify the rule. The Finance Board also is adding a new section to its Description of Organization and Functions regulation listing the control numbers and expiration dates for all agency information collections approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA).

DATES: The final rule will become effective on March 30, 2005.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Outreach Advocate, by electronic mail at *mcleanc@fhfb.gov,* by telephone at (202) 408–2537, by facsimile at (202) 408–2850; David A. Lee, Associate Director, Human Resources and Administration Division, Office of Management, by electronic mail at *leed@fhfb.gov,* by telephone at (202) 408–2514, by facsimile at (202) 408–2530; or Janice A. Kaye, Senior Attorney-Advisor, Office of General Counsel, by electronic mail at *kayej@fhfb.gov,* by telephone at (202) 408–2505, by facsimile at (202) 408–2580. You can send regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Minorities, Women and Individuals With Disabilities Contractor Outreach Program

A. Statutory and Regulatory Background

In 1989, Congress enacted a law requiring the Finance Board and other federal banking agencies to adopt regulations intended ''to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women * * * in all contracts entered into by the agency. * * * '' *See* 12 U.S.C. 1833e(c). In response, the Finance Board adopted a rule establishing a minority contractors outreach program.[1] The purpose of the outreach program is to identify and solicit the participation of businesses owned by minorities or women in the Finance Board's procurement process.

The Finance Board has not revised its contractor outreach program since 1993.[2] Under the current rule, the outreach program procedurally is more complex than necessary for an agency the size of the Finance Board. It also has been less effective in practice than anticipated in achieving the goal of increased participation by minority- and women-owned businesses in agency contracts. Additionally, since adoption of the rule in 1993, the Finance Board's contracting process and general organization have changed. This final rule will streamline the outreach program in an effort to improve its effectiveness and also update it to reflect the changes in agency organization and practice.

While not required by statute, the Finance Board is extending coverage of the outreach program to businesses owned by individuals with disabilities. This is consistent with the intent of the Rehabilitation Act of 1973, which, among other things, requires agencies to enhance the prospects for federal employment of qualified individuals with disabilities.[3] It also advances the goals of an Executive Order issued by the President on October 20, 2004, which is intended to strengthen opportunities in federal contracting for service disabled veterans.[4] Other agencies subject to the contractor outreach requirement have included businesses owned by individuals with disabilities in their program.[5]

The Finance Board also is making general editorial changes intended to simplify the rule and is using a more user-friendly question-and-answer format. While the Finance Board is adopting these changes in the form of a final rule, comments on ways to improve the outreach program are encouraged.

B. Analysis of the Final Rule

1. Purpose

Section 906.10 explains why the Finance Board has a contractor outreach program. Consistent with the principles of full and open competition and best value acquisition, the purpose of the outreach program is to ensure that businesses owned by minorities, women, and individuals with disabilities have the opportunity to participate to the full extent possible in all Finance Board contracts.

2. Participants

Section 906.11 explains who can participate in the contractor outreach program. The definition of the term ''minority'' is based on guidance provided by the Equal Employment Opportunity Commission (EEOC) concerning the collection and presentation of data on race and ethnicity.[6] The rule adopts by reference the definition of the term ''disability'' used by the EEOC for purposes of the Rehabilitation Act of 1973.[7] Under this EEOC definition, an individual with a disability generally means any person who has a physical or mental impairment that substantially limits one or more of such person's major life activities, has a record of such an impairment, or is regarded as having such an impairment.

To ensure that the benefits of the program inure to minorities, women,

[1] *See* 12 CFR 906.5.

[2] 58 FR 19195 (April 13, 1993).

[3] *See* 29 U.S.C. 701 *et seq.*

[4] E.O. 13360, 69 FR 62549 (Oct. 26, 2004).

[5] *See, e.g.*, 12 CFR 4.61–4.66 (Office of the Comptroller of the Currency).

[6] EEOC guidance is available at: *http://www.eeoc.gov/stats/census/race_ethnic_data.html.*

[7] *See* 29 CFR 1630.2(g) and 1630.3.

and individuals with disabilities, the rule requires that participating businesses be unconditionally owned by one or more minorities, women, or individuals with disabilities. For purposes of the outreach program, ''unconditionally owned'' means ownership of at least 51 percent of a business by one or more members of a minority group, women, or individuals with disabilities. In the case of a corporation, it means ownership of at least 51 percent of each class of voting stock. In the case of a partnership, it means ownership of at least 51 percent of the partnership interest. This definition of unconditional ownership is consistent with the definition used by other agencies subject to the contractor outreach requirement.[8]

3. How the Outreach Program Works

Section 906.12 includes the elements of the outreach program. Under the program, the Finance Board will identify and solicit the participation in agency contracts of businesses owned by minorities, women, and individuals with disabilities. To identify businesses, the Finance Board will review contact lists provided by Federal agencies, trade groups, and other organizations, advertise contracting opportunities through targeted media, and participate in targeted business promotion events. After identifying businesses, the Finance Board will provide information about, and technical assistance to participate in, the contracting process. The Finance Board also will ensure that personnel involved in the contracting process understand and promote the outreach program.

4. Program Monitoring and Oversight

To maintain the effectiveness of the outreach program, § 906.13 requires the appointment of an ''Outreach Advocate'' who will be responsible for program advocacy, oversight, and monitoring. In addition, the Outreach Advocate will be responsible for providing the Finance Board with technical assistance and guidance on how best to facilitate the participation in the contracting process of minorities, women, and individuals with disabilities, and businesses unconditionally owned by them.

II. Paperwork Reduction Act Control Numbers

Under the PRA and the OMB implementing regulation, an agency may not sponsor or conduct, and a person is not required to respond to, an information collection unless the regulation collecting the information displays a currently valid OMB control number. *See* 44 U.S.C. 3507; 5 CFR 1320.5 and 1320.8. Currently, the expiration date of the OMB control numbers for Finance Board collections of information are scattered throughout the agency's regulations. For ease of reference, the Finance Board is changing how it provides information about OMB control numbers. The Finance Board now will display the OMB control numbers and expiration dates for all agency collections of information in chart form in a single new section—12 CFR 905.27—that will be updated as necessary. This reorganization makes no substantive changes to any of the information collections.

III. Notice, Public Participation, and Effective Date

The notice and publication requirements of the Administrative Procedure Act do not apply because this rule concerns only agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(3)(A). Therefore, the Finance Board is publishing these changes in the form of a final rule. As previously noted, however, the Finance Board welcomes suggestions for how to improve the contractor outreach program.

IV. Regulatory Flexibility Act

The Finance Board is adopting these amendments in the form of a final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2) and 603(a).

V. Paperwork Reduction Act

The final rule does not contain any collections of information under the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to OMB for review.

List of Subjects

12 CFR Part 905

Federal home loan banks, Organization and functions (Government agencies).

12 CFR Part 906

Assessments, Federal home loan banks, Government contracts, Mortgages, Reporting and recordkeeping requirements, Women and minority businesses.

12 CFR Part 925

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 926

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 931

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

12 CFR Part 933

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

12 CFR Part 944

Credit, Federal home loan banks, Intergovernmental relations, Trade practices.

12 CFR Part 950

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 951

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Finance Board amends 12 CFR, chapter IX, as follows:

PART 905—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

■ 1. Revise the authority citation for part 905 to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1422b(a) and 1423; 44 U.S.C. 3507; 5 CFR 1320.5 and 1320.8.

■ 2. Add § 905.27 to read as follows:

§ 905.27 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements contained in Finance Board regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and OMB regulations (5 CFR 1320.5 and 1320.8). The Finance Board may not sponsor or conduct, and a person is not required to respond to, an information collection unless the agency displays a currently valid OMB control number.

(b) *Display.*

12 CFR part or section where identified and described	OMB control No.	Expiration date
906.5	3069–0001	July 2007.
915.3	3069–0002	Nov. 2007.
915.4	3069–0002	Nov. 2007.

[8] *See, e.g.,* 12 CFR 4.62(c) and (e) (Office of the Comptroller of the Currency).

12 CFR part or section where identified and described	OMB control No.	Expiration date
915.5	3069–0002	Nov. 2007.
915.6	3069–0002	Nov. 2007.
915.7	3069–0002	Nov. 2007.
915.8	3069–0002	Nov. 2007.
915.10	3069–0002	Nov. 2007.
915.12	3069–0002	Nov. 2007.
925.2	3069–0004	May 2007.
925.3	3069–0004	May 2007.
925.5	3069–0004	May 2007.
925.6	3069–0004	May 2007.
925.7	3069–0004	May 2007.
925.8	3069–0004	May 2007.
925.9	3069–0004	May 2007.
925.11	3069–0004	May 2007.
925.12	3069–0004	May 2007.
925.13	3069–0004	May 2007.
925.15	3069–0004	May 2007.
925.16	3069–0004	May 2007.
925.17	3069–0004	May 2007.
925.18	3069–0004	May 2007.
925.22	3069–0004	May 2007.
925.24	3069–0004	May 2007.
925.26	3069–0004	May 2007.
925.31	3069–0004	May 2007.
926.1	3069–0005	Nov. 2005.
926.2	3069–0005	Nov. 2005.
926.3	3069–0005	Nov. 2005.
926.4	3069–0005	Nov. 2005.
926.5	3069–0005	Nov. 2005.
926.6	3069–0005	Nov. 2005.
931.3	3069–0059	Feb. 2007.
931.7	3069–0004	May 2007.
933.2	3069–0059	Feb. 2007.
944.2	3069–0003	Feb. 2006.
944.3	3069–0003	Feb. 2006.
944.4	3069–0003	Feb. 2006.
944.5	3069–0003	Feb. 2006.
950.17	3069–0005	Nov. 2005.
951.1	3069–0006	July 2007.
951.3	3069–0006	July 2007.
951.4	3069–0006	July 2007.
951.6	3069–0006	July 2007.
951.7	3069–0006	July 2007.
951.8	3069–0006	July 2007.
951.10	3069–0006	July 2007.
951.11	3069–0006	July 2007.
951.13	3069–0006	July 2007.
951.15	3069–0006	July 2007.
955.4	3069–0058	Mar. 2007.

■ 3. Revise part 906 to read as follows:

PART 906—OPERATIONS

Subpart A—Assessments on the Banks

Sec.
906.1 Assessment authority.
906.2 Assessment procedure.

Subpart B—Monthly Interest Rate Survey (MIRS)

906.5 Monthly interest rate survey.

Subpart C—Contractor Outreach Program for Businesses Owned by Minorities, Women, or Individuals With Disabilities

906.10 Why does the Finance Board have this outreach program?
906.11 Who may participate in the outreach program?
906.12 What outreach efforts are included in this program?
906.13 How does the Finance Board oversee and monitor the outreach program?

Authority: 12 U.S.C. 1422b, 1438(b), and 1833e.

Subpart A—Assessments on the Banks

§ 906.1 Assessment authority.

The Finance Board may impose a semiannual assessment on the Banks in an aggregate amount the Finance Board determines is sufficient to provide for the payment of its estimated expenses for the period for which it makes such assessment.

§ 906.2 Assessment procedure.

(a) At or near the end of each fiscal year, the Finance Board shall approve an annual budget of Finance Board expenses for the next fiscal year. The Finance Board shall promptly provide a copy of the approved budget to each Bank president.

(b) The Finance Board shall assess the Banks semiannually in an aggregate amount it determines is sufficient to pay the expenses approved under paragraph (a) of this section. The Finance Board shall offset the amount of the semiannual assessments it imposes on the Banks by any amount it determines is remaining from previous semiannual assessments. The Finance Board shall promptly notify each Bank president in writing of the amount on any assessment.

(c) Each Bank shall pay a *pro rata* share of the semiannual assessments imposed under paragraph (b) of this section. The Finance Board shall calculate each Bank's *pro rata* share based on the ratio between the total paid-in value of the Bank's capital stock and the aggregate total paid-in value of the capital stock of every Bank. The Finance Board shall promptly notify each Bank in writing of the amount of its *pro rata* share of any semiannual assessment.

(d) Unless otherwise instructed in writing by the Finance Board, each Bank shall pay to the Finance Board its *pro rata* share of an assessment in equal monthly installments during the semiannual period covered by the assessment.

Subpart B—Monthly Interest Rate Survey (MIRS)

§ 906.5 Monthly interest rate survey.

The Finance Board conducts its Monthly Survey of Rates and Terms on Conventional One-Family Non-farm Mortgage Loans in the following manner:

(a) *Initial survey*. Each month, the Finance Board samples savings institutions, commercial banks, and mortgage loan companies, and asks them to report the terms and conditions on all conventional mortgages (*i.e.*, those not federally insured or guaranteed) used to purchase single-family homes that each such lender closes during the last five working days of the month. In most cases, the information is reported electronically in a format similar to Finance Board Form FHFB 10–91. The initial weights are based on lender type and lender size. The data also is weighted so that the pattern of weighted responses matches the actual pattern of mortgage originations by lender type and by region. The Finance Board tabulates the data and publishes standard data tables late in the following month.

(b) *Adjustable-rate mortgage index*. The weighted data, tabulated and published pursuant to paragraph (a) of this section, is used to compile the Finance Board's adjustable-rate mortgage index, entitled the ''National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders.'' This index is the successor to the index maintained by the former Federal Home Loan Bank Board and is used for determining the movement of the interest rate on renegotiable-rate mortgages and on some other adjustable-rate mortgages.

Subpart C—Contractor Outreach Program for Businesses Owned by Minorities, Women, or Individuals With Disabilities

§ 906.10 Why does the Finance Board have this outreach program?

The Finance Board awards contracts consistent with the principles of full and open competition and best value acquisition. The purpose of this outreach program is to ensure that minorities, women, and individuals with disabilities, and businesses unconditionally owned by them, have the maximum practicable opportunity to participate fully in all contracts awarded by the Finance Board.

§ 906.11 Who may participate in the outreach program?

Minorities, women, and individuals with disabilities, and businesses unconditionally owned by them, may participate in the outreach program. As used in this subpart:

(a) *Disability* with respect to an individual has the same meaning as defined by the Equal Employment Opportunity Commission at 29 CFR 1630.2(g) and 1630.3.

(b) *Minority* means Black or African American, American Indian or Alaska

Native, Hispanic or Latino American, Asian American, and Native Hawaiian or Other Pacific Islander.

(c) *Unconditional ownership* means ownership of at least 51 percent of a business by one or more members of a minority group, women, or individuals with disabilities. In the case of a corporation, it means ownership of at least 51 percent of each class of voting stock. In the case of a partnership, it means ownership of at least 51 percent of the partnership interest.

§ 906.12 What outreach efforts are included in this program?

The Finance Board's outreach program includes the following:

(a) Identifying businesses unconditionally owned by minorities, women, and individuals with disabilities by obtaining lists and directories that may be maintained by government agencies, trade groups, and other organizations;

(b) Contacting businesses unconditionally owned by minorities, women, and individuals with disabilities to provide information about, and technical assistance to participate in, the Finance Board contracting process;

(c) Advertising contracting opportunities with the Finance Board through media targeted to reach businesses unconditionally owned by minorities, women, and individuals with disabilities;

(d) Participating, to the extent practicable, in events such as conventions, seminars, and professional meetings that are intended primarily to promote business opportunities for minorities, women, and individuals with disabilities, and businesses unconditionally owned by them; and

(e) Ensuring that Finance Board contracting staff understand and promote the outreach program.

§ 906.13 How does the Finance Board oversee and monitor the outreach program?

The Chairperson will appoint an Outreach Advocate who will be responsible for program advocacy, oversight, and monitoring. In addition, the Outreach Advocate will be responsible for providing the Finance Board with technical assistance and guidance to facilitate identifying and soliciting participation in the contracting process of minorities, women, and individuals with disabilities, and businesses unconditionally owned by them.

PART 925—MEMBERS OF THE BANKS

■ 4. The authority citation for part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, and 1442.

§§ 925.2, 925.3, 925.5, 925.6, 925.7, 925.8, 925.9, 925.11, 925.12, 925.13, 925.15, 925.16, 925.17, 925.18, 925.22, and 925.31 [Amended]

■ 5. Amend §§ 925.2, 925.3, 925.5, 925.6, 925.7, 925.8, 925.9, 925.11, 925.12, 925.13, 925.15, 925.16, 925.17, 925.18, 925.22, and 925.31 by removing the parenthetical ''(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)'' at the end of each section.

§§ 925.24 and 925.26 [Amended]

■ 6. Amend §§ 925.24 and 925.26 by removing the parenthetical ''(The Office of Management and Budget has approved the information collection requirements contained in this section and assigned control number 3069–0004 with an expiration date of April 30, 2001)'' at the end of each section.

PART 926—FEDERAL HOME LOAN BANK HOUSING ASSOCIATES

■ 7. The authority citation for part 926 continues to read as follows:

Authority: 12 U.S.C. 1422b(a) and 1430b.

§§ 926.4, 926.5, and 926.6 [Amended]

■ 8. Amend §§ 926.4, 926.5, and 926.6 by removing the parenthetical ''(The Office of Management and Budget has approved the information collection requirements contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002)'' at the end of each section.

PART 931—FEDERAL HOME LOAN BANK CAPITAL STOCK

■ 9. The authority citation for part 931 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, and 1446.

§ 931.3 [Amended]

■ 10. Amend § 931.3 by removing the parenthetical ''(The Office of Management and Budget has approved the information collection requirements contained in this section and assigned control number 3069–0059 with an expiration date of November 30, 2003)'' at the end of the section.

§ 931.7 [Amended]

■ 11. Amend § 931.7 by removing the parenthetical ''(The Office of Management and Budget has approved the information collection requirements contained in this section and assigned control number 3069–0004 with an expiration date of April 30, 2001)'' at the end of the section.

PART 933—BANK CAPITAL STRUCTURE PLANS

■ 12. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1440, 1443, and 1446.

§ 933.2 [Amended]

■ 13. Amend § 933.2 by removing the parenthetical ''(The Office of Management and Budget has approved the information collection requirements contained in this section and assigned control number 3069–0059 with an expiration date of November 30, 2003)'' at the end of the section.

PART 944—COMMUNITY SUPPORT REQUIREMENTS

■ 14. The authority citation for part 944 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3)(B), 1422b(a)(1), and 1430(g).

§§ 944.2, 944.3, 944.4, and 944.5 [Amended]

■ 15. Amend §§ 944.2, 944.3, 944.4, and 944.5 by removing the parenthetical ''(The Office of Management and Budget has approved the information collection requirements contained in this section and assigned control number 3069–0003 with an expiration date of January 31, 2003)'' at the end of each section.

PART 950—ADVANCES

■ 16. The authority citation for part 950 continues to read as follows:

Authority: 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, and 1431.

§ 950.17 [Amended]

■ 17. Amend § 950.17 by removing the parenthetical ''(The Office of Management and Budget has approved the information collection requirements contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002)'' at the end of the section.

PART 951—AFFORDABLE HOUSING PROGRAM

■ 18. The authority citation for part 951 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

§§ 951.1, 951.3, 951.4, 951.6, 951.7, 951.8, 951.10, 951.11, 951.13, and 951.15 [Amended]

■ 19. Amend §§ 951.1, 951.3, 951.4, 951.6, 951.7, 951.8, 951.10, 951.11, 951.13, and 951.15 by removing the parenthetical ''(The Office of Management and Budget has approved the information collection requirements contained in this section and assigned control number 3069–0006 with an expiration date of June 30, 2004)'' at the end of each section.

Dated: February 9, 2005.

By the Board of Directors of the Federal Housing Finance Board.

Ronald A. Rosenfeld,

Chairman.

[FR Doc. 05–3718 Filed 2–25–05; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20424; Directorate Identifier 2004–NM–268–AD; Amendment 39–13986; AD 2005–04–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, 757–200CB, and 757–200PF Series Airplanes Equipped With Rolls Royce Model RB211 Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain Boeing Model 757–200, 757–200CB, and 757–200PF series airplanes. The existing AD currently requires repetitive detailed inspections to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings, and corrective action if necessary; or certain alternative actions that terminate the requirement for the repetitive inspections. This new AD continues to require those repetitive inspections; decreases the allowable tolerance for shim migration; and adds new repetitive detailed inspections for cracking of the entire mid-bulkhead, and repair if necessary. This new AD also adds additional airplanes to the applicability of the AD. This AD is prompted by reports of cracks in the mid-bulkhead lower vertical flange common to the lower chord and stiffener and reports of cracking at other locations on the mid-bulkhead. We are issuing this AD to detect and correct migration of shims at the joint of the mid-bulkhead and the upper link fittings and cracking of the mid-bulkhead, which could result in cracking of the strut and consequent loss of the strut and engine.

DATES: Effective March 15, 2005.

The incorporation by reference of Boeing Service Bulletin 757–54A0039, Revision 2, dated December 2, 2004; and Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005; as listed in the AD are approved by the Director of the Federal Register as of March 15, 2005.

On April 18, 2003 (68 FR 16200, April 3, 2003), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 757–54A0039, Revision 1, dated June 20, 2002.

We must receive any comments on this AD by April 29, 2005.

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.
- *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.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. You can examine this information 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 can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20424; the directorate identifier for this docket is 2004–NM–268–AD.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: On March 26, 2003, we issued AD 2003–07–08, amendment 39–13104 (68 FR 16200, April 3, 2003). That AD applies to certain Boeing Model 757–200, 757–200CB, and 757–200PF series airplanes. That AD requires repetitive detailed inspections to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings, and corrective action if necessary; or certain alternative actions that terminate the requirement for the repetitive inspections. That AD was prompted by reports of cracks in the mid-bulkhead lower vertical flange common to the lower chord and stiffener and reports of cracking at other locations on the mid-bulkhead on certain Boeing Model 757–200, 757–200CB, and 757–200PF series airplanes. The actions specified in that AD are intended to detect and correct migration of shims at the joint of the mid-bulkhead and the upper link fittings, which could result in cracking of the strut and consequent loss of the strut and engine.

Actions Since AD Was Issued

Since we issued that AD, we have received reports of cracking of the mid-bulkhead in the lower horizontal flange common to the lower chord. We have also received several reports of cracking of the mid-bulkhead in the lower vertical flange common to the lower chord and stiffener and at other areas remote from the lower flanges. Cracking of the mid-bulkhead could result in cracking of the strut and consequent loss of the strut and engine.

Relevant Service Information

We have reviewed Boeing Service Bulletin (SB) 757–54A0039, Revision 2, dated December 2, 2004; and Revision 3, dated January 13, 2005. The service bulletins describe the following:

- Part I of the Accomplishment Instructions describes procedures for performing repetitive detailed inspections of the laminated shims at the joint of the mid-bulkhead and upper link fittings to detect any vertical or horizontal movement of the shims.
- Part II of the Accomplishment Instructions describes procedures for performing a detailed inspection and high frequency eddy current (HFEC) inspection for cracking or deformation of the fittings and bolt holes and replacing the shim and sleevebolts with new shims and sleevebolts. Part II also contains procedures for accomplishing a general visual and HFEC inspections for cracking and deformation in the sleevebolt holes and in the fittings. Additionally, Part II recommends that operators contact Boeing if any shim cannot be removed, or if cracking or deformation of the fittings and bolt holes is found.
- Part III of the Accomplishment Instructions describes procedures for performing a one-time non-destructive test (NDT) inspection for cracking, and repair, including an insurance cut of the bolt holes (Figure 9 of the SBs) in the mid-bulkhead, if necessary.
- Part IV of the Accomplishment Instructions describes procedures for performing repetitive detailed inspections for cracking of the entire mid-bulkhead, and contacting Boeing for disposition of any cracking detected.

The SBs specify that accomplishing Part II and Part III of the Accomplishment Instructions eliminates the need for the Part I repetitive inspections.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. This AD is being issued to supersede AD 2003–07–08. This new AD continues to require repetitive detailed inspections to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings, and corrective action if necessary. This AD also decreases the allowable tolerance for shim migration. Additionally, this AD adds airplanes to the applicability of the AD. This AD also requires repetitive detailed inspections for cracking of the mid-bulkhead, and repair if necessary.

Differences Between the AD and the Service Information

Revisions 2 and 3 of the SB recommend that operators who have accomplished the actions described in Boeing Alert SB 757–54A0039, dated November 2, 2000, perform a one-time NDT and/or HFEC inspection for cracking of the mid-bulkhead as shown in Figure 9 of the ASB, and repair if necessary. Operators should note that this AD requires those operators to perform a detailed inspection for cracking rather than an NDT and/or HFEC inspection. We have determined that, for airplanes on which the actions specified in Parts I and II of the Accomplishment Instructions of Boeing Alert SB 757–54A0039, dated November 2, 2000, have been accomplished previously, a detailed inspection for cracking, and repair if necessary, within 90 days of the effective date of this AD, and repetitive detailed inspections, are adequate to continue to provide an acceptable level of safety for this interim action.

Operators also should note that, although the SBs specify that the manufacturer may be contacted for further instructions if a shim cannot be removed or for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by an Authorized Representative (AR) for the Boeing Delegation Option Authorization (DOA) Organization who has been authorized by the FAA to make those findings.

Changes to Delegation Authority

Since the issuance of AD 2003–07–08, Boeing has received a DOA. For the new requirements of this AD, we have specified the delegation of authority to approve an alternative method of compliance for any repair required by this AD to the AR for the Boeing DOA Organization, who has been authorized by the FAA to make these findings, rather than the Designated Engineering Representative, as specified in AD 2003–07–08.

Change to Existing AD

This AD would retain certain requirements of AD 2003–07–08. Since AD 2003–07–08 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2003–07–08	Corresponding requirement in this AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).
Paragraph (c)	Paragraph (h).
Paragraph (d)	Paragraph (i).
Paragraph (e)	Paragraph (j).
Paragraph (f)	Paragraph (k).
Paragraph (g)	Paragraph (l).
Paragraph (h)	Paragraph (m).

Interim Action

This is considered to be interim action. We discussed previously that this AD does not require certain HFEC inspections as specified in the referenced service bulletin. However, we are currently considering requiring those HFEC inspections for cracking in and around the bolt holes of the left and right side of the mid-bulkhead strut, and repair if necessary. However, the planned compliance time for the HFEC inspections is sufficiently long so that notice and opportunity for prior public comment will be practicable.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20424; Directorate Identifier 2004–NM–268–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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 our docket 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

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 regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

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 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 FAA amends § 39.13 by removing amendment 39–13104 (68 FR 16200, April 3, 2003) and adding the following new airworthiness directive (AD):

2005–04–14 Boeing: Docket No. FAA–2005–20424; Directorate Identifier 2004–NM–268–AD; Amendment 39–13986.

Effective Date

(a) This AD becomes effective March 15, 2005.

Affected ADs

(b) This AD supersedes AD 2003–07–08, amendment 39–13104 (68 FR 16200, April 3, 2003).

Applicability: (c) This AD applies to Boeing Model 757–200, 757–200CB, and 757–200PF series airplanes; certificated in any category; equipped with Rolls Royce Model RB211 engines; as identified in Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005.

Unsafe Condition

(d) This AD was prompted by reports of cracks in the mid-bulkhead lower vertical flange common to the lower chord and stiffener and reports of cracking at other locations on the mid-bulkhead. We are issuing this AD to detect and correct migration of shims at the joint of the mid-bulkhead and the upper link fittings and cracking on the mid-bulkhead, which could result in cracking of the strut and consequent loss of the strut and engine.

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.

Restatement of Certain Requirements of 2003–07–08

Inspection for Movement of Shims and Corrective Actions

(f) For Groups 1 and 2 airplanes, as identified in Boeing Alert Service Bulletin (ASB) 757–54A0039, Revision 1, dated June 20, 2002; Boeing Service Bulletin (SB) 757–54A0039, Revision 2, dated December 2, 2004; and Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005; with the exception of the airplanes specified in paragraph (j) of this AD: Within 90 days after April 18, 2003 (the effective date of AD 2003–07–08), perform a detailed inspection to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings, per Boeing ASB 757–54A0039, Revision 1, dated June 20, 2002; or Boeing SB 757–54A0039, Revision 2, dated December 2, 2004, or Revision 3, dated January 13, 2005.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(g) If all laminated shims have not moved, or if all laminated shims have moved less than 0.25 inch: Before further flight, perform the actions specified in either paragraph (g)(1) or (g)(2) of this AD, per Boeing ASB 757–54A0039, Revision 1, dated June 20, 2002; or Boeing SB 757–54A0039, Revision 2, dated December 2, 2004, or Revision 3, dated January 13, 2005.

(1) Perform the actions specified in paragraph 3.B.6 of the Accomplishment Instructions of the ASB (*e.g.*, measure and record movement of the shim, cut the exposed plies, and seal adjacent surfaces and edges), and repeat the detailed inspections at intervals not to exceed 12,000 flight cycles or 72 months, whichever occurs first. At each inspection interval, the previously recorded measurement must be added to the current measurement so that the cumulative total movement of the shim is recorded. If the cumulative total movement exceeds 0.25 inch but is less than 0.90 inch, before further flight, perform the actions specified in paragraph (h) of this AD. If the cumulative total movement measures 0.90 inch or more: Before further flight, perform the actions specified in paragraph (i) of this AD. Or,

(2) Perform the actions specified in paragraphs (l) and (m) of this AD.

(h) If any laminated shim has moved 0.25 inch or more but less than 0.90 inch: Before further flight, perform the actions specified in paragraph (h)(1) or (h)(2) of this AD, per Boeing ASB 757–54A0039, Revision 1, dated June 20, 2002; or Boeing SB 757–54A0039, Revision 2, dated December 2, 2004, or Revision 3, dated January 13, 2005.

(1) Before further flight, perform the actions specified in paragraph 3.B.6 of the Accomplishment Instructions of the ASB (*e.g.*, measure and record movement of the shim, cut the exposed plies and seal adjacent surfaces and edges), and repeat the detailed inspections at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first. At each inspection interval, the previously recorded measurement must be added to the current measurement so that the cumulative total movement of the shim is recorded. If the cumulative total movement measures 0.90 inch or more, before further flight, perform the actions specified in paragraph (i) of this AD. Or,

(2) Perform the actions specified in paragraphs (l) and (m) of this AD.

(i) If any laminated shim has moved 0.90 inch or more: Before further flight, perform the actions specified in paragraphs (l) and (m) of this AD.

Inspection of Lower Mid-Spar Bolts

(j) For airplanes on which the actions specified in Boeing Alert Service Bulletin (ASB) 757–54A0039, dated November 2, 2000, have been accomplished prior to April 18, 2003: Within 90 days after April 18, 2003, perform a detailed inspection for cracking around the four bolt heads, nuts, washers, and radius fillers specified in Figure 9 of Boeing ASB 757–54A0039, Revision 1, dated June 20, 2002; or Boeing SB 757–54A0039, Revision 2, dated December 2, 2004, or Revision 3, dated January 13, 2005.

(1) If no cracking is found, repeat the detailed inspection at intervals not to exceed 3,000 flight cycles.

(2) If any cracking is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings; or by an Authorized Representative (AR) for the Boeing Delegation Option Authorization (DOA) Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

Optional Terminating Action for Certain Requirements of This AD

(k) For Groups 1, 2, and 3, as identified in Boeing SB 757–54A0039, Revision 2, dated December 2, 2004; or Revision 3, dated January 13, 2005: Accomplishment of the actions specified in paragraphs (l) and (m) of this AD constitutes terminating action for the repetitive inspection requirements of paragraphs (g), (h), and (j)(1) of this AD. Accomplishment of paragraphs (l) and (m) of this AD also constitutes terminating action for paragraphs (o), (p), and (q), if accomplished prior to the effective of this AD.

(l) Replace any laminated shim with a solid shim; replace existing sleevebolts with new, oversized sleevebolts; and perform a general visual and high-frequency eddy current (HFEC) inspection to detect cracking and deformation in the sleevebolt holes and in the fittings, as shown in Part II, Figure 3, of Boeing Alert Service Bulletin 757–54A0039, Revision 1, dated June 20, 2002; or Boeing SB 757–54A0039, Revision 2, dated December 2, 2004, or Revision 3, dated January 13, 2005. If any shim cannot be removed, or if any cracking or deformation is found: Before further flight, repair per a method approved by the Manager, Seattle ACO, FAA; or per data meeting the type certification basis of the airplane approved by a Boeing DER who has been authorized by the Manager, Seattle ACO, to make such findings; or by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair to be approved, the approval must specifically reference this AD. No further action is required by this paragraph.

(m) Perform a one-time HFEC inspection for cracking in and around the bolt holes of the left and right side of the mid-bulkhead strut as shown in Part III, Figure 9, of Boeing ASB 757–54A0039, Revision 1, dated June 20, 2002; or Boeing SB 757–54A0039, Revision 2, dated December 2, 2004, or Revision 3, dated January 13, 2005.

(1) If no cracking is found during any inspection specified in paragraph (m) of this AD, before further flight, install oversized bolts per Figure 10 of the ASB. No further action is required by this paragraph.

(2) If any cracking is found during any inspection specified in paragraph (m) of this AD that is within the limits specified in the ASB: Before further flight, repair per the ASB.

(3) If any cracking is found during any inspection specified in paragraph (m) of this AD that is outside the limits specified by the ASB and the ASB specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle ACO, FAA; or per data meeting the type certification basis of the airplane approved by a Boeing DER who has been authorized by the Manager, Seattle ACO, to make such findings; or by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

New Requirements of This AD

Detailed Inspections of the Mid-Bulkhead

(n) For all airplanes: Prior to the accumulation of 8,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform a detailed inspection for cracking of the entire mid-bulkhead, in accordance with the Accomplishment Instructions of Boeing SB 757–54A0039, Revision 3, dated January 13, 2005.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

(2) If any cracking is detected, before further flight, repair in accordance with a method approved by the Manager, Seattle ACO, FAA; or according to data meeting the certification basis of the airplane approved by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight cycles.

Inspections for Migration of Shims for Certain Airplanes

(o) For Group 3 airplanes, as identified in Boeing SB 757–54A0039, Revision 3, dated January 13, 2005: Within 90 days after the effective date of this AD, perform a detailed inspection to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings; in accordance with the Accomplishment Instructions of the SB. If the total shim migration is 0.3 inch or less, repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles. Accomplishment of paragraphs (l) and (m) of this AD constitute terminating action for the requirements of this paragraph, if accomplished prior to the effective of this AD.

Inspections for Migration of Shims for Certain Other Airplanes

(p) For Groups 1 and 2 airplanes, as identified in Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005: If the total shim migration was 0.3 inch or less at the last inspection performed in accordance with paragraph (g)(1) of this AD, within 3,000 flight cycles after the last inspection performed, or within 90 days after the effective date of this AD, whichever occurs later, perform the next shim migration inspection in accordance with the Accomplishment Instructions of Revision 3 of the SB. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight cycles. Accomplishment of the initial inspection in accordance with Revision 3 terminates the requirements of paragraphs (g) and (h) of this AD. Accomplishment of paragraphs (l) and (m) of this AD constitute terminating action for the requirements of this paragraph, if accomplished prior to the effective of this AD.

For Shim Migration That Is More Than 0.3 Inch

(q) For Groups 1, 2, and 3 airplanes, as identified in Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005: If any total shim migration is more than 0.30 inch, prior to further flight or within 90 days after the effective date of this AD, whichever occurs later, perform the actions specified in paragraphs (t) and (u) of this AD. Accomplishment of paragraphs (l) and (m) of this AD constitute terminating action for the requirements of this paragraph, if accomplished prior to the effective of this AD.

Note 2: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Inspection of Lower Mid-Spar Bolts

(r) For Groups 1, 2, and 3 airplanes, identified in Boeing Service Bulletin 757–540039, Revision 3, dated January 13, 2005: Within 90 days after the effective date of this AD, or within 3,000 flight cycles after the last inspection of the lower mid-spar bolts required by paragraph (j) of this AD, whichever occurs later, perform a detailed inspection for cracking around the four bolt heads, nuts, washers, and radius fillers specified in Figure 9 of the Accomplishment Instructions of Boeing SB 757–54A0039, Revision 3, dated January 13, 2005.

(1) If no cracking is found, repeat the detailed inspection at intervals not to exceed 3,000 flight cycles.

(2) If any cracking is found, before further flight, repair per a method approved by the Manager, Seattle ACO, FAA; or per data meeting the type certification basis of the airplane approved by a Boeing an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight cycles.

Terminating Action for Certain Requirements

(s) For Groups 1, 2, and 3 airplanes, identified in Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005: Accomplishment of paragraphs (t) and (u) of this AD constitutes terminating action for the repetitive inspections of paragraphs (g), (h), (o), and (p) of this AD.

Replacement of Shims and Sleevebolts

(t) For Groups 1, 2, and 3 airplanes, identified in Boeing Service Bulletin 757–540039, Revision 3, dated January 13, 2005: Replace all laminated shims with solid shims; replace existing sleevebolts with new, oversized sleevebolts; and perform a general visual and HFEC inspection to detect cracking and deformation in the sleevebolt holes and in the fittings; as specified in Part II of the Accomplishment Instructions of Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005. If any shim cannot be removed, or if any cracking or deformation is found: Before further flight, repair in accordance with a method approved by the Manager, Seattle ACO, FAA; or according to data meeting the certification basis of the airplane approved by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

One-Time HFEC Inspection

(u) For Groups 1, 2, and 3, as identified in Boeing SB 757–54A0039, Revision 3, dated January 13, 2005: Perform a one-time HFEC inspection for cracking in and around the bolt holes of the right and left side of the mid-bulkhead lower flanges, in accordance with Part III of the Accomplishment Instructions of Boeing SB 757–54A0039, Revision 3, dated January 13, 2005.

(1) If no cracking is found: Before further flight, install oversized bolts per Figure 10 of the SB.

(2) If any cracking is found that is within the limits of the SB: Before further flight, repair per the SB.

(3) If any cracking is found that is outside the limits of the SB and the SB specifies to contact Boeing for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, Seattle ACO, FAA; or according to data meeting the certification basis of the airplane approved by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance (AMOCs)

(v)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

Material Incorporated by Reference

(w) You must use Boeing Alert Service Bulletin 757–54A0039, Revision 1, dated June 20, 2002; Boeing Service Bulletin 757–54A0039, Revision 2, dated December 2, 2004; or Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The incorporation by reference of Boeing Service Bulletin 757–54A0039, Revision 2, dated December 2, 2004; and Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005, is approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 757–54A0039, Revision 1, dated June 20, 2002, was approved previously by the Director of the **Federal Register** as of April 18, 2003 (68 FR 16200, April 3, 2003).

(3) For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on February 14, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–3558 Filed 2–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 526

Intramammary Dosage Forms; Ceftiofur

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pharmacia & Upjohn Co., a Division of Pfizer, Inc. The NADA provides for the veterinary prescription use of ceftiofur hydrochloride suspension, by intramammary infusion, for the treatment of clinical mastitis in lactating dairy cattle.

DATES: This rule is effective February 28, 2005.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.gov*.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 141–238 for SPECTRAMAST LC (ceftiofur hydrochloride) Sterile Suspension. The NADA provides for the veterinary prescription use of ceftiofur hydrochloride suspension, by intramammary infusion, for the treatment of clinical mastitis in lactating dairy cattle associated with coagulase-negative staphylococci, *Streptococcus dysgalactiae*, and *Escherichia coli*. The application is approved as of February 9, 2005, and the regulations are amended in 21 CFR part 526 by adding new § 526.314 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(d)(5) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning February 9, 2005.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because

it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 526

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 526 is amended as follows:

PART 526—INTRAMAMMARY DOSAGE FORMS

■ 1. The authority citation for 21 CFR part 526 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 526.314 is added to read as follows:

§ 526.314 Ceftiofur.

(a) *Specifications*—(1) Each 10-milliliter (mL) syringe contains ceftiofur hydrochloride suspension equivalent to 125 milligrams (mg) ceftiofur.

(2) [Reserved]

(b) *Sponsor*. See No. 000009 in § 510.600(c) of this chapter.

(c) *Related tolerances*. See § 556.113 of this chapter.

(d) *Conditions of use in cattle*—(1) *Lactating cows*—(i) *Amount*. 125 mg per affected quarter using product described in paragraph (a)(1) of this section. Repeat treatment in 24 hours. Once daily treatment may be repeated for up to 8 consecutive days.

(ii) *Indications for use*. For the treatment of clinical mastitis in lactating dairy cattle associated with coagulase-negative staphylococci, *Streptococcus dysgalactiae*, and *Escherichia coli*.

(iii) *Limitations*. Milk taken from cows during treatment (a maximum of eight daily infusions) and for 72 hours after the last treatment must not be used for human consumption. Following label use for up to 8 consecutive days, no preslaughter withdrawal period is required. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: February 17, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–3834 Filed 2–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 803

[Docket No. 2004N–0527]

Medical Devices; Medical Device Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is amending its regulation governing reporting of deaths, serious injuries, and certain malfunctions related to medical devices. We are revising the regulation into plain language to make the regulation easier to understand, and we are making technical corrections. Elsewhere in this issue of the **Federal Register**, we are publishing a companion proposed rule, under FDA's usual procedures for notice and comment, to provide a procedural framework to finalize the rule in the event we receive any significant adverse comment and withdraw the direct final rule.

DATES: This rule is effective July 13, 2005, with the exception of 21 CFR 803.55(b)(9) and (b)(10) and 21 CFR 803.58, which remain stayed indefinitely, in accordance with the stays of effective date published in the **Federal Registers** of July 31, 1996 (61 FR 39868), and July 23, 1996 (61 FR 38346). Submit written or electronic comments by May 16, 2005. If we receive no significant adverse comments within the specified comment period, we intend to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If we receive any timely significant adverse comment, we will withdraw this final rule in part or in whole by publication of a document in the **Federal Register** within 30 days after the comment period ends.

ADDRESSES: You may submit comments, identified by Docket No. 2004N–0527, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2004N–0527 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Howard Press, Center for Devices and Radiological Health (HFZ–531), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2983.

SUPPLEMENTARY INFORMATION:

I. What Is the Background of This Rule?

FDA's regulations governing device adverse event reporting, codified at part 803 (21 CFR part 803), implement section 519 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i). That statutory provision has undergone several changes since its enactment as part of the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295). As a result, FDA's regulations at part 803 have also undergone multiple revisions.

In the **Federal Register** of September 14, 1984 (49 FR 36326), FDA first issued final medical device reporting (MDR) regulations (part 803) under section 519 of the act for manufacturers and importers, requiring reports of deaths, serious injuries, and certain malfunctions involving devices.

To address shortcomings in the 1976 amendments, and to better protect the public health by ensuring more complete reporting of device-related adverse events, Congress enacted the Safe Medical Devices Act of 1990 (Public Law 101–629), which amended the statute to add requirements for medical device user facilities and distributors to report certain device-related adverse events. The reporting regulation for user facilities and for

distributors became effective by operation of law on May 28, 1992, following the November 26, 1991 (56 FR 60024), publication of those requirements in a tentative final rule. This regulation required user facilities to report deaths to FDA and to manufacturers, and to report serious illnesses and injuries to manufacturers, or to FDA if the manufacturer was unknown. Distributors were required to report deaths and serious illnesses or injuries to FDA and to manufacturers, and to report certain malfunctions to manufacturers. Existing reporting requirements for manufacturers and importers under the 1984 regulation remained in effect.

In the **Federal Register** of September 1, 1993 (58 FR 46514), we published a notice confirming that the distributor reporting regulation had become final and was codified in part 804 (21 CFR part 804). Earlier, on June 16, 1992, the President signed into law the Medical Device Amendments of 1992 (the 1992 amendments) (Public Law 102–112) further amending certain provisions of section 519 of the act relating to reporting of adverse device events. Among other things, the 1992 amendments modified the requirements for manufacturer and importer reporting. Consequently, under the regulation issued September 1, 1993, importers were required to report as manufacturers if they were engaged in manufacturing activities or to report as distributors if they were engaged solely in distribution activities.

On November 21, 1997, the President signed the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115) into law. FDAMA made several changes regarding the reporting of adverse experiences related to devices. In the **Federal Register** of May 12, 1998, FDA published a direct final rule (63 FR 26069) and a companion proposed rule (63 FR 26129) to implement new amendments to the MDR provisions. We received significant adverse comments on the 1998 direct final rule and 1998 companion proposed rule; therefore, we withdrew the 1998 direct final rule and issued a revised final rule on January 26, 2000 (65 FR 4112). Under the act as amended by FDAMA, distributors are no longer required to report adverse events but are required to keep records. Importers are still required to report adverse events related to medical devices. Because of FDAMA's changes, we revised part 803 and rescinded part 804.

In summary, the present version of part 803, as it is codified in the Code of Federal Regulations, imposes the following general reporting and recordkeeping requirements:

Device user facilities must report deaths and serious injuries that a device has or may have caused or contributed to, establish and maintain adverse event files, and submit annual reports. Manufacturers and importers must report deaths and serious injuries that a device has or may have caused or contributed to, must report certain device malfunctions, and must establish and maintain adverse event files. Manufacturers also must submit specified followup and baseline reports. Distributors must maintain records of incidents but are not required to report these incidents.

II. What Does This Direct Final Rulemaking Do?

A. What Is the General Approach?

In this direct final rule, FDA does not change the existing regulatory requirements described previously in this document. FDA is revising part 803 solely to ensure that despite the many revisions that have been made, part 803 is clear and easy to understand. To achieve this goal, we have rewritten part 803 into plain language, in accordance with the Presidential Memorandum on Plain Language, issued on June 1, 1998. That memorandum directed the agency to ensure that all of its documents are clear and easy to read. Part of achieving that goal involves having readers of a regulation feel that it is speaking directly to them. Therefore, we have attempted to incorporate plain language in this rule as much as possible. We have tried to make each section of the companion proposed rule easy to understand by using clear and simple language rather than jargon, by keeping sentences short, and by using active voice rather than passive voice whenever possible. We have also made changes to improve the consistency of the format and language used throughout parallel regulations governing user facilities, importers, and manufacturers that were added or amended at different times. We do not intend these changes to have any effect on the substantive requirements of part 803.

B. What Are Some Specific Changes Implemented by This Direct Final Rule?

We believe the majority of the plain language revisions to part 803 require no explanation, but we highlight some specific changes made to particular provisions in the following paragraphs:

- In § 803.1, we have described the scope of the regulation in relation to each of the types of entities that it covers—user facilities, manufacturers, importers, and distributors—to reflect more accurately the requirements established in the subsequent sections.
- In § 803.9(c), we have rephrased the regulation to state that we will delete the identity of a device user facility which makes a report under this part, except in specifically named circumstances. This change is a clearer expression of the underlying statutory prohibition on disclosure, found in section 519(d)(2) of the act, and reflects the agency's existing practice.
- In § 803.20(b)(1) and (b)(3), we have substituted the term ''work day'' for ''day'' in computing the time requirements for filing certain reports. This change clarifies that these regulations are congruent with section 519(b)(1)(A) of the act, which specifies that user facility reports be made within 10 ''working days'' and with § 803.53, which is cross-referenced by § 803.20(b)(3)(iii) and also specifies ''work days.'' We also changed ''day'' to ''work day'' in § 803.10(c)(2).
- In § 803.20(c)(1), we have rewritten the regulation to highlight examples of the types of information that may reasonably suggest that a reportable event has occurred. This is consistent with the intent of the regulation as explained in the **Federal Register** of December 11, 1995 (60 FR 63578).
- In § 803.40(b), which describes importer requirements regarding reports of malfunctions, we have reworded the regulation to add the term ''reasonably suggests'' to the description of the information that triggers a reporting requirement. This addition more accurately reflects the underlying statutory language of section 519(a)(1) of the act and is consistent with existing FDA interpretation of this regulation.
- In § 803.55(a)(1), we have changed terminology and inserted a cross-reference to part 807 (21 CFR part 807) to clarify that where an MDR is reported by a manufacturing site that is not registered as an establishment under part 807, and therefore does not have an existing establishment registration number, we will assign a number to be used in MDR reporting until such time as that site is registered and assigned a number under part 807. These changes are consistent with FDA's existing interpretation of and practice under this regulation. (See also 60 FR 63586.)

We note that §§ 803.55(b)(9) and (b)(10) and 803.58 were stayed indefinitely, under notices published in the **Federal Registers** of July 31, 1996 (61 FR 39868 at 39869) and July 23, 1996 (61 FR 38346 at 38347). This direct final rule does not implement any changes to those provisions, which

remain stayed indefinitely, but for the sake of completeness, we include as follows the current text of those provisions.

In addition to the plain language revisions made throughout part 803, we have made technical corrections in three provisions. In § 803.3, in the definition of ''user facility report number,'' we have replaced references to the Health Care Financing Administration with references to the Centers for Medicare and Medicaid Services, to reflect the change in name of that agency. In § 803.11, we have updated contact information regarding sources where forms may be obtained. In § 803.22(b), we have changed an erroneous reference to reports ''required under this section'' to a correct reference to reports ''required under this part.''

III. What Are the Procedures for Issuing a Direct Final Rule?

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described when and how it will employ direct final rulemaking. We believe that this rule is appropriate for direct final rulemaking because it is intended to make noncontroversial amendments to an existing regulation, rewriting existing regulations into clearer language and format without altering their substance, and making two technical corrections. We anticipate no significant adverse comment.

Consistent with FDA's procedures on direct final rulemaking, we are publishing elsewhere in this issue of the **Federal Register** a companion proposed rule to amend certain existing regulations governing reporting of medical device adverse events. The companion proposed rule is identical to the direct final rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment. The comment period for this direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received under the companion proposed rule will also be considered as comments regarding this direct final rule.

If we receive any significant adverse comment, we intend to withdraw this final rule by publication of a document in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

If we withdraw the direct final rule, all comments received will be considered under the companion proposed rule in developing a final rule under the usual notice-and-comment procedures under the Administrative Procedure Act (5 U.S.C. 552 *et seq.*). If we receive no significant adverse comment during the specified comment period, we intend to publish a confirmation document in the **Federal Register** within 30 days after the comment period ends. We intend to make the direct final rule effective July 13, 2005.

IV. What Is the Legal Authority for This Rule?

This direct final rule, like the existing medical device adverse event reporting regulations to which it makes nonsubstantive changes, is authorized by sections 502, 510, 519, 520, 701, and 704 of the the act (21 U.S.C. 352, 360, 360i, 360j, 371, and 374).

V. What Is the Environmental Impact of This Rule?

We have determined under 21 CFR 25.30(h) and (i) that this action does not have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. What Is the Economic Impact of This Rule?

We have examined the impacts of this direct final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). We believe that this direct final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this direct final rule will not change any existing requirements or impose any new requirements, we certify that this direct final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''* * * any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

VII. How Does the Paperwork Reduction Act of 1995 Apply to This Rule?

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the direct final rule have been approved by OMB in accordance with the PRA under the regulations governing medical device reporting (part 803, OMB control number 0910–0437).

VIII. What Are the Federalism Impacts of This Rule?

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government. Accordingly, we have concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. How Do You Submit Comments on This Rule?

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this direct final rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 803 is amended as follows:

■ 1. Part 803 is revised to read as follows:

PART 803—MEDICAL DEVICE REPORTING

Subpart A—General Provisions

Sec.
803.1 What does this part cover?
803.3 How does FDA define the terms used in this part?
803.9 What information from the reports do we disclose to the public?
803.10 Generally, what are the reporting requirements that apply to me?
803.11 What form should I use to submit reports of individual adverse events and where do I obtain these forms?
803.12 Where and how do I submit reports and additional information?
803.13 Do I need to submit reports in English?
803.14 How do I submit a report electronically?
803.15 How will I know if you require more information about my medical device report?
803.16 When I submit a report, does the information in my report constitute an admission that the device caused or contributed to the reportable event?
803.17 What are the requirements for developing, maintaining, and implementing written MDR procedures that apply to me?
803.18 What are the requirements for establishing and maintaining MDR files or records that apply to me?
803.19 Are there exemptions, variances, or alternative forms of adverse event reporting requirements?

Subpart B—Generally Applicable Requirements for Individual Adverse Event Reports

803.20 How do I complete and submit an individual adverse event report?
803.21 Where can I find the reporting codes for adverse events that I use with medical device reports?
803.22 What are the circumstances in which I am not required to file a report?

Subpart C—User Facility Reporting Requirements

803.30 If I am a user facility, what reporting requirements apply to me?
803.32 If I am a user facility, what information must I submit in my individual adverse event reports?
803.33 If I am a user facility, what must I include when I submit an annual report?

Subpart D—Importer Reporting Requirements

803.40 If I am an importer, what kinds of individual adverse event reports must I submit, when must I submit them, and to whom must I submit them?
803.42 If I am an importer, what information must I submit in my individual adverse event reports?

Subpart E—Manufacturer Reporting Requirements

803.50 If I am a manufacturer, what reporting requirements apply to me?
803.52 If I am a manufacturer, what information must I submit in my individual adverse event reports?
803.53 If I am a manufacturer, in which circumstances must I submit a 5-day report?
803.55 I am a manufacturer, in what circumstances must I submit a baseline report, and what are the requirements for such a report?
803.56 If I am a manufacturer, in what circumstances must I submit a supplemental or followup report and what are the requirements for such reports?
803.58 Foreign manufacturers.

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

Subpart A—General Provisions

§ 803.1 What does this part cover?

(a) This part establishes the requirements for medical device reporting for device user facilities, manufacturers, importers, and distributors. If you are a device user facility, you must report deaths and serious injuries that a device has or may have caused or contributed to, establish and maintain adverse event files, and submit summary annual reports. If you are a manufacturer or importer, you must report deaths and serious injuries that your device has or may have caused or contributed to, you must report certain device malfunctions, and you must establish and maintain adverse event files. If you are a manufacturer, you must also submit specified followup and baseline reports. These reports help us to protect the public health by helping to ensure that devices are not adulterated or misbranded and are safe and effective for their intended use. If you are a medical device distributor, you must maintain records (files) of incidents, but you are not required to report these incidents.

(b) This part supplements and does not supersede other provisions of this chapter, including the provisions of part 820 of this chapter.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

§ 803.3 How does FDA define the terms used in this part?

Some of the terms we use in this part are specific to medical device reporting and reflect the language used in the statute (law). Other terms are more general and reflect our interpretation of the law. This section defines the following terms as used in this part:

Act means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, as amended.

Ambulatory surgical facility (ASF) means a distinct entity that operates for the primary purpose of furnishing same day outpatient surgical services to patients. An ASF may be either an independent entity (i.e., not a part of a provider of services or any other facility) or operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity). An ASF is subject to this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or regardless of whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the ASF must report that event regardless of the nature or location of the medical service provided by the ASF.

Become aware means that an employee of the entity required to report has acquired information that reasonably suggests a reportable adverse event has occurred.

(1) If you are a device user facility, you are considered to have ''become aware'' when medical personnel, as defined in this section, who are employed by or otherwise formally affiliated with your facility, obtain information about a reportable event.

(2) If you are a manufacturer, you are considered to have become aware of an

event when any of your employees becomes aware of a reportable event that is required to be reported within 30 calendar days or that is required to be reported within 5 work days because we had requested reports in accordance with § 803.53(b). You are also considered to have become aware of an event when any of your employees with management or supervisory responsibilities over persons with regulatory, scientific, or technical responsibilities, or whose duties relate to the collection and reporting of adverse events, becomes aware, from any information, including any trend analysis, that a reportable MDR event or events necessitates remedial action to prevent an unreasonable risk of substantial harm to the public health.

(3) If you are an importer, you are considered to have become aware of an event when any of your employees becomes aware of a reportable event that is required to be reported by you within 30 days.

Caused or contributed means that a death or serious injury was or may have been attributed to a medical device, or that a medical device was or may have been a factor in a death or serious injury, including events occurring as a result of:

(1) Failure;

(2) Malfunction;

(3) Improper or inadequate design;

(4) Manufacture;

(5) Labeling; or

(6) User error.

Device family. (1) Device family means a group of one or more devices manufactured by or for the same manufacturer and having the same:

(i) Basic design and performance characteristics related to device safety and effectiveness,

(ii) Intended use and function, and

(iii) Device classification and product code.

(2) You may consider devices that differ only in minor ways not related to safety or effectiveness to be in the same device family. When grouping products in device families, you may consider factors such as brand name and common name of the device and whether the devices were introduced into commercial distribution under the same 510(k) or premarket approval application (PMA).

Device user facility means a hospital, ambulatory surgical facility, nursing home, outpatient diagnostic facility, or outpatient treatment facility as defined in this section, which is not a physician's office, as defined in this section. School nurse offices and employee health units are not device user facilities.

Distributor means any person (other than the manufacturer or importer) who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package. If you repackage or otherwise change the container, wrapper, or labeling, you are considered a manufacturer as defined in this section.

Expected life of a device means the time that a device is expected to remain functional after it is placed into use. Certain implanted devices have specified ''end of life'' (EOL) dates. Other devices are not labeled as to their respective EOL, but are expected to remain operational through activities such as maintenance, repairs, or upgrades, for an estimated period of time.

FDA, we, or us means the Food and Drug Administration.

Five-day report means a medical device report that must be submitted by a manufacturer to us under § 803.53, on FDA Form 3500A or an electronic equivalent approved under § 803.14, within 5 work days.

Hospital means a distinct entity that operates for the primary purpose of providing diagnostic, therapeutic (such as medical, occupational, speech, physical), surgical, and other patient services for specific and general medical conditions. Hospitals include general, chronic disease, rehabilitative, psychiatric, and other special-purpose facilities. A hospital may be either independent (e.g., not a part of a provider of services or any other facility) or may be operated by another medical entity (e.g., under the common ownership, licensure, or control of another entity). A hospital is covered by this regulation regardless of whether it is licensed by a Federal, State, municipal or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the hospital must report that event regardless of the nature or location of the medical service provided by the hospital.

Importer means any person who imports a device into the United States and who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package. If you repackage or otherwise change the container, wrapper, or labeling, you are considered a manufacturer as defined in this section.

Malfunction means the failure of a device to meet its performance specifications or otherwise perform as intended. Performance specifications include all claims made in the labeling for the device. The intended performance of a device refers to the intended use for which the device is labeled or marketed, as defined in § 801.4 of this chapter.

Manufacturer means any person who manufactures, prepares, propagates, compounds, assembles, or processes a device by chemical, physical, biological, or other procedure. The term includes any person who either:

(1) Repackages or otherwise changes the container, wrapper, or labeling of a device in furtherance of the distribution of the device from the original place of manufacture;

(2) Initiates specifications for devices that are manufactured by a second party for subsequent distribution by the person initiating the specifications;

(3) Manufactures components or accessories that are devices that are ready to be used and are intended to be commercially distributed and intended to be used as is, or are processed by a licensed practitioner or other qualified person to meet the needs of a particular patient; or

(4) Is the U.S. agent of a foreign manufacturer.

Manufacturer or importer report number. Manufacturer or importer report number means the number that uniquely identifies each individual adverse event report submitted by a manufacturer or importer. This number consists of the following three parts:

(1) The FDA registration number for the manufacturing site of the reported device, or the registration number for the importer. If the manufacturing site or the importer does not have an establishment registration number, we will assign a temporary MDR reporting number until the site is registered in accordance with part 807 of this chapter. We will inform the manufacturer or importer of the temporary MDR reporting number;

(2) The four-digit calendar year in which the report is submitted; and

(3) The five-digit sequence number of the reports submitted during the year, starting with 00001. (For example, the complete number will appear as follows: 1234567–1995–00001.)

MDR means medical device report.

MDR reportable event (or reportable event) means:

(1) An event that user facilities become aware of that reasonably

suggests that a device has or may have caused or contributed to a death or serious injury; or

(2) An event that manufacturers or importers become aware of that reasonably suggests that one of their marketed devices:

(i) May have caused or contributed to a death or serious injury, or

(ii) Has malfunctioned and that the device or a similar device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

Medical personnel means an individual who:

(1) Is licensed, registered, or certified by a State, territory, or other governing body, to administer health care;

(2) Has received a diploma or a degree in a professional or scientific discipline;

(3) Is an employee responsible for receiving medical complaints or adverse event reports; or

(4) Is a supervisor of these persons.

Nursing home means:

(1) An independent entity (i.e., not a part of a provider of services or any other facility) or one operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity) that operates for the primary purpose of providing:

(i) Skilled nursing care and related services for persons who require medical or nursing care;

(ii) Hospice care to the terminally ill; or

(iii) Services for the rehabilitation of the injured, disabled, or sick.

(2) A nursing home is subject to this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the nursing home must report that event regardless of the nature or location of the medical service provided by the nursing home.

Outpatient diagnostic facility. (1) Outpatient diagnostic facility means a distinct entity that:

(i) Operates for the primary purpose of conducting medical diagnostic tests on patients,

(ii) Does not assume ongoing responsibility for patient care, and

(iii) Provides its services for use by other medical personnel.

(2) Outpatient diagnostic facilities include outpatient facilities providing radiography, mammography, ultrasonography, electrocardiography, magnetic resonance imaging, computerized axial tomography, and in vitro testing. An outpatient diagnostic facility may be either independent (i.e., not a part of a provider of services or any other facility) or operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity). An outpatient diagnostic facility is covered by this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the outpatient diagnostic facility must report that event regardless of the nature or location of the medical service provided by the outpatient diagnostic facility.

Outpatient treatment facility means a distinct entity that operates for the primary purpose of providing nonsurgical therapeutic (medical, occupational, or physical) care on an outpatient basis or in a home health care setting. Outpatient treatment facilities include ambulance providers, rescue services, and home health care groups. Examples of services provided by outpatient treatment facilities include the following: Cardiac defibrillation, chemotherapy, radiotherapy, pain control, dialysis, speech or physical therapy, and treatment for substance abuse. An outpatient treatment facility may be either independent (i.e., not a part of a provider of services or any other facility) or operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity). An outpatient treatment facility is covered by this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the outpatient treatment facility must report that event regardless of the nature or location of the medical service provided by the outpatient treatment facility.

Patient of the facility means any individual who is being diagnosed or treated and/or receiving medical care at or under the control or authority of the facility. This includes employees of the facility or individuals affiliated with the facility who, in the course of their duties, suffer a device-related death or serious injury that has or may have been caused or contributed to by a device used at the facility.

Physician's office means a facility that operates as the office of a physician or other health care professional for the primary purpose of examination, evaluation, and treatment or referral of patients. Examples of physician offices include dentist offices, chiropractor offices, optometrist offices, nurse practitioner offices, school nurse offices, school clinics, employee health clinics, or freestanding care units. A physician's office may be independent, a group practice, or part of a Health Maintenance Organization.

Remedial action means any action other than routine maintenance or servicing of a device where such action is necessary to prevent recurrence of a reportable event.

Serious injury means an injury or illness that:

(1) Is life-threatening,

(2) Results in permanent impairment of a body function or permanent damage to a body structure, or

(3) Necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

Permanent means irreversible impairment or damage to a body structure or function, excluding trivial impairment or damage.

Shelf life means the maximum time a device will remain functional from the date of manufacture until it is used in patient care. Some devices have an expiration date on their labeling indicating the maximum time they can be stored before losing their ability to perform their intended function.

User facility report number means the number that uniquely identifies each report submitted by a user facility to manufacturers and to us. This number consists of the following three parts:

(1) The user facility's 10-digit Centers for Medicare and Medicaid Services (CMS) number (if the CMS number has fewer than 10 digits, fill the remaining spaces with zeros);

(2) The four-digit calendar year in which the report is submitted; and

(3) The four-digit sequence number of the reports submitted for the year, starting with 0001. (For example, a complete user facility report number will appear as follows: 1234560000–2004–0001. If a user facility has more than one CMS number, it must select one that will be used for all of its MDR reports. If a user facility has no CMS number, it should use all zeros in the appropriate space in its initial report (e.g., 0000000000–2004–0001). We will assign a number for future use and send that number to the user facility. This number is used in our record of the initial report, in subsequent reports, and in any correspondence with the user facility. If a facility has multiple sites, the primary site may submit reports for all sites and use one reporting number for all sites if the primary site provides the name, address, and CMS number for each respective site.)

Work day means Monday through Friday, except Federal holidays.

§ 803.9 What information from the reports do we disclose to the public?

(a) We may disclose to the public any report, including any FDA record of a telephone report, submitted under this part. Our disclosures are governed by part 20 of this chapter.

(b) Before we disclose a report to the public, we will delete the following:

(1) Any information that constitutes trade secret or confidential commercial or financial information under § 20.61 of this chapter;

(2) Any personal, medical, and similar information, including the serial number of implanted devices, which would constitute an invasion of personal privacy under § 20.63 of this chapter. However, if a patient requests a report, we will disclose to that patient all the information in the report concerning that patient, as provided in § 20.61 of this chapter; and

(3) Any names and other identifying information of a third party that voluntarily submitted an adverse event report.

(c) We may not disclose the identity of a device user facility that makes a report under this part except in connection with:

(1) An action brought to enforce section 301(q) of the act, including the failure or refusal to furnish material or information required by section 519 of the act;

(2) A communication to a manufacturer of a device that is the subject of a report required to be submitted by a user facility under § 803.30; or

(3) A disclosure to employees of the Department of Health and Human Services, to the Department of Justice, or to the duly authorized committees and subcommittees of the Congress.

§ 803.10 Generally, what are the reporting requirements that apply to me?

(a) If you are a device user facility, you must submit reports (described in subpart C of this part), as follows:

(1) Submit reports of individual adverse events no later than 10 work days after the day that you become aware of a reportable event:

(i) Submit reports of device-related deaths to us and to the manufacturer, if known; or

(ii) Submit reports of device-related serious injuries to the manufacturers or, if the manufacturer is unknown, submit reports to us.

(2) Submit annual reports (described in § 803.33) to us.

(b) If you are an importer, you must submit reports (described in subpart D of this part), as follows:

(1) Submit reports of individual adverse events no later than 30 calendar days after the day that you become aware of a reportable event:

(i) Submit reports of device-related deaths or serious injuries to us and to the manufacturer; or

(ii) Submit reports of device-related malfunctions to the manufacturer.

(2) [Reserved]

(c) If you are a manufacturer, you must submit reports (described in subpart E of this part) to us, as follows:

(1) Submit reports of individual adverse events no later than 30 calendar days after the day that you become aware of a reportable death, serious injury, or malfunction.

(2) Submit reports of individual adverse events no later than 5 work days after the day that you become aware of:

(i) A reportable event that requires remedial action to prevent an unreasonable risk of substantial harm to the public health, or

(ii) A reportable event for which we made a written request.

(3) Submit annual baseline reports.

(4) Submit supplemental reports if you obtain information that you did not submit in an initial report.

§ 803.11 What form should I use to submit reports of individual adverse events and where do I obtain these forms?

If you are a user facility, importer, or manufacturer, you must submit all reports of individual adverse events on FDA MEDWATCH Form 3500A or in an electronic equivalent as approved under § 803.14. You may obtain this form and all other forms referenced in this section from any of the following:

(1) The Consolidated Forms and Publications Office, Beltsville Service Center, 6351 Ammendale Rd., Landover, MD 20705;

(2) FDA, MEDWATCH (HF–2), 5600 Fishers Lane, Rockville, MD 20857, 301–827–7240;

(3) Division of Small Manufacturers, International, and Consumer Assistance, Office of Communication, Education, and Radiation Programs, Center for Devices and Radiological Health (CDRH) (HFZ–220), 1350 Piccard Dr. Rockville, MD 20850, by e-mail: *DSMICA@CDRH.FDA.GOV*, or FAX: 301–443–8818; or

(4) On the Internet at *http://www.fda.gov/cdrh/mdr/mdr-forms.html*.

§ 803.12 Where and how do I submit reports and additional information?

(a) You must submit any written report or additional information required under this part to FDA, CDRH, Medical Device Reporting, P.O. Box 3002, Rockville, MD 20847–3002.

(b) You must specifically identify each report (e.g., ''User Facility Report,'' ''Annual Report,'' ''Importer Report,'' ''Manufacturer Report,'' ''10-Day Report'').

(c) If you have a public health emergency, you can alert the FDA Emergency Operations Branch (HFC–162), Office of Regional Operations, at 301–443–1240. After contacting us, you should submit a FAX report to 301–443–3757.

(d) You may submit a voluntary telephone report to the MEDWATCH office at 800–FDA–1088. You may also obtain information regarding voluntary reporting from the MEDWATCH office at 800–FDA–1088. You may also find the voluntary MEDWATCH 3500 form and instructions to complete it at *http://www.fda.gov/medwatch/getforms.htm*.

§ 803.13 Do I need to submit reports in English?

(a) Yes. You must submit all written or electronic equivalent reports required by this part in English.

(b) If you submit any reports required by this part in an electronic medium, that submission must be done in accordance with § 803.14.

§ 803.14 How do I submit a report electronically?

(a) You may electronically submit any report required by this part if you have our prior written consent. We may revoke this consent at anytime. Electronic report submissions include alternative reporting media (magnetic tape, disc, etc.) and computer-to-computer communication.

(b) If your electronic report meets electronic reporting standards, guidance documents, or other MDR reporting procedures that we have developed, you may submit the report electronically without receiving our prior written consent.

§ 803.15 How will I know if you require more information about my medical device report?

(a) We will notify you in writing if we require additional information and will tell you what information we need. We will require additional information if we determine that protection of the public health requires additional or clarifying information for medical device reports submitted to us and in cases when the additional information is beyond the scope of FDA reporting forms or is not readily accessible to us.

(b) In any request under this section, we will state the reason or purpose for the information request, specify the due date for submitting the information, and clearly identify the reported event(s) related to our request. If we verbally request additional information, we will confirm the request in writing.

§ 803.16 When I submit a report, does the information in my report constitute an admission that the device caused or contributed to the reportable event?

No. A report or other information submitted by you, and our release of that report or information, is not necessarily an admission that the device, or you or your employees, caused or contributed to the reportable event. You do not have to admit and may deny that the report or information submitted under this part constitutes an admission that the device, you, or your employees, caused or contributed to a reportable event.

§ 803.17 What are the requirements for developing, maintaining, and implementing written MDR procedures that apply to me?

If you are a user facility, importer, or manufacturer, you must develop, maintain, and implement written MDR procedures for the following:

(a) Internal systems that provide for:

(1) Timely and effective identification, communication, and evaluation of events that may be subject to MDR requirements;

(2) A standardized review process or procedure for determining when an event meets the criteria for reporting under this part; and

(3) Timely transmission of complete medical device reports to manufacturers or to us, or to both if required.

(b) Documentation and recordkeeping requirements for:

(1) Information that was evaluated to determine if an event was reportable;

(2) All medical device reports and information submitted to manufacturers and/or us;

(3) Any information that was evaluated for the purpose of preparing the submission of annual reports; and

(4) Systems that ensure access to information that facilitates timely followup and inspection by us.

§ 803.18 What are the requirements for establishing and maintaining MDR files or records that apply to me?

(a) If you are a user facility, importer, or manufacturer, you must establish and maintain MDR event files. You must clearly identify all MDR event files and maintain them to facilitate timely access.

(b)(1) For purposes of this part, ''MDR event files'' are written or electronic files maintained by user facilities, importers, and manufacturers. MDR event files may incorporate references to other information (e.g., medical records, patient files, engineering reports), in lieu of copying and maintaining duplicates in this file. Your MDR event files must contain:

(i) Information in your possession or references to information related to the adverse event, including all documentation of your deliberations and decisionmaking processes used to determine if a device-related death, serious injury, or malfunction was or was not reportable under this part; and

(ii) Copies of all MDR forms, as required by this part, and other information related to the event that you submitted to us and other entities such as an importer, distributor, or manufacturer.

(2) If you are a user facility, importer, or manufacturer, you must permit any authorized FDA employee, at all reasonable times, to access, to copy, and to verify the records required by this part.

(c) If you are a user facility, you must retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event. If you are a manufacturer or importer, you must retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event or a period of time equivalent to the expected life of the device, whichever is greater. If the device is no longer distributed, you still must maintain MDR event files for the time periods described in this paragraph.

(d)(1) If you are a device distributor, you must establish and maintain device complaint records (files). Your records must contain any incident information, including any written, electronic, or oral communication, either received or generated by you, that alleges deficiencies related to the identity (e.g., labeling), quality, durability, reliability, safety, effectiveness, or performance of a device. You must also maintain information about your evaluation of the allegations, if any, in the incident record. You must clearly identify the records as device incident records and file these records by device name. You may maintain these records in written or electronic format. You must back up any file maintained in electronic format.

(2) You must retain copies of the required device incident records for a period of 2 years from the date of inclusion of the record in the file or for a period of time equivalent to the expected life of the device, whichever is greater. You must maintain copies of these records for this period even if you no longer distribute the device.

(3) You must maintain the device complaint files established under this section at your principal business establishment. If you are also a manufacturer, you may maintain the file at the same location as you maintain your complaint file under part 820 of this chapter. You must permit any authorized FDA employee, at all reasonable times, to access, to copy, and to verify the records required by this part.

(e) If you are a manufacturer, you may maintain MDR event files as part of your complaint file, under part 820 of this chapter, if you prominently identify these records as MDR reportable events. We will not consider your submitted MDR report to comply with this part unless you evaluate an event in accordance with the quality system requirements described in part 820 of this chapter. You must document and maintain in your MDR event files an explanation of why you did not submit or could not obtain any information required by this part, as well as the results of your evaluation of each event.

§ 803.19 Are there exemptions, variances, or alternative forms of adverse event reporting requirements?

(a) We exempt the following persons from the adverse event reporting requirements in this part:

(1) A licensed practitioner who prescribes or administers devices intended for use in humans and manufactures or imports devices solely for use in diagnosing and treating persons with whom the practitioner has a ''physician-patient'' relationship;

(2) An individual who manufactures devices intended for use in humans solely for this person's use in research or teaching and not for sale. This includes any person who is subject to alternative reporting requirements under the investigational device exemption regulations (described in part 812 of this chapter), which require reporting of all adverse device effects; and

(3) Dental laboratories or optical laboratories.

(b) If you are a manufacturer, importer, or user facility, you may request an exemption or variance from any or all of the reporting requirements in this part. You must submit the request to us in writing. Your request must include information necessary to identify you and the device; a complete statement of the request for exemption, variance, or alternative reporting; and an explanation why your request is justified.

(c) If you are a manufacturer, importer, or user facility, we may grant in writing an exemption or variance from, or alternative to, any or all of the reporting requirements in this part and may change the frequency of reporting to quarterly, semiannually, annually or other appropriate time period. We may grant these modifications in response to

your request, as described in paragraph (b) of this section, or at our discretion. When we grant modifications to the reporting requirements, we may impose other reporting requirements to ensure the protection of public health.

(d) We may revoke or modify in writing an exemption, variance, or alternative reporting requirement if we determine that revocation or modification is necessary to protect the public health.

(e) If we grant your request for a reporting modification, you must submit any reports or information required in our approval of the modification. The conditions of the approval will replace and supersede the regular reporting requirement specified in this part until such time that we revoke or modify the alternative reporting requirements in accordance with paragraph (d) of this section.

Subpart B—Generally Applicable Requirements for Individual Adverse Event Reports

§ 803.20 How do I complete and submit an individual adverse event report?

(a) What form must I complete and submit? There are two versions of the MEDWATCH form for individual reports of adverse events. If you are a health professional or consumer, you may use the FDA Form 3500 to submit voluntary reports regarding FDA-regulated products. If you are a user facility, importer, or manufacturer, you must use the FDA Form 3500A to submit mandatory reports about FDA-regulated products.

(1) If you are a user facility, importer, or manufacturer, you must complete the applicable blocks on the front of FDA Form 3500A. The front of the form is used to submit information about the patient, the event, the device, and the ''initial reporter'' (i.e., the first person or entity who reported the information to you).

(2) If you are a user facility, importer, or manufacturer, you must complete the applicable blocks on the back of the form. If you are a user facility or importer, you must complete block F. If you are a manufacturer, you must complete blocks G and H. If you are a manufacturer, you do not have to recopy information that you received on a Form 3500A unless you are copying the information onto an electronic medium. If you are a manufacturer and you are correcting or supplying information that is missing from another reporter's Form 3500A, you must attach a copy of that form to your report form. If you are a manufacturer and the information from another reporter's Form 3500A is complete and correct, you may fill in the remaining information on the same form and submit it to us.

(b) To whom must I submit reports and when?

(1) If you are a user facility, you must submit MDR reports to:

(i) The manufacturer and to us no later than 10 work days after the day that you become aware of information that reasonably suggests that a device has or may have caused or contributed to a death; or

(ii) The manufacturer no later than 10 work days after the day that you become aware of information that reasonably suggests that a device has or may have caused or contributed to a serious injury. If the manufacturer is not known, you must submit this report to us.

(2) If you are an importer, you must submit MDR reports to:

(i) The manufacturer and to us, no later than 30 calendar days after the day that you become aware of information that reasonably suggests that a device has or may have caused or contributed to a death or serious injury; or

(ii) The manufacturer, no later than 30 days calendar after receiving information that a device you market has malfunctioned and that this device or a similar device that you market would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

(3) If you are a manufacturer, you must submit MDR reports to us:

(i) No later than 30 calendar days after the day that you become aware of information that reasonably suggests that a device may have caused or contributed to a death or serious injury; or

(ii) No later than 30 calendar days after the day that you become aware of information that reasonably suggests a device has malfunctioned and that this device or a similar device that you market would be likely to cause or contribute to a death or serious injury if the malfunction were to recur; or

(iii) Within 5 work days if required by § 803.53.

(c) What kind of information reasonably suggests that a reportable event has occurred?

(1) Any information, including professional, scientific, or medical facts, observations, or opinions, may reasonably suggest that a device has caused or may have caused or contributed to an MDR reportable event. An MDR reportable event is a death, a serious injury, or, if you are a manufacturer or importer, a malfunction that would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

(2) If you are a user facility, importer, or manufacturer, you do not have to report an adverse event if you have information that would lead a person who is qualified to make a medical judgment reasonably to conclude that a device did not cause or contribute to a death or serious injury, or that a malfunction would not be likely to cause or contribute to a death or serious injury if it were to recur. Persons qualified to make a medical judgment include physicians, nurses, risk managers, and biomedical engineers. You must keep in your MDR event files (described in § 803.18) the information that the qualified person used to determine whether or not a device-related event was reportable.

§ 803.21 Where can I find the reporting codes for adverse events that I use with medical device reports?

(a) The MEDWATCH Medical Device Reporting Code Instruction Manual contains adverse event codes for use with FDA Form 3500A. You may obtain the coding manual from CDRH's Web site at *http://www.fda.gov/cdrh/mdr/373.html*; and from the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850, FAX: 301–443–8818, or e-mail to *DSMICA@CDRH.FDA.GOV*.

(b) We may sometimes use additional coding of information on the reporting forms or modify the existing codes. If we do make modifications, we will ensure that we make the new coding information available to all reporters.

§ 803.22 What are the circumstances in which I am not required to file a report?

(a) If you become aware of information from multiple sources regarding the same patient and same reportable event, you may submit one medical device report.

(b) You are not required to submit a medical device report if:

(1) You are a user facility, importer, or manufacturer, and you determine that the information received is erroneous in that a device-related adverse event did not occur. You must retain documentation of these reports in your MDR files for the time periods specified in § 803.18.

(2) You are a manufacturer or importer and you did not manufacture or import the device about which you have adverse event information. When you receive reportable event information in error, you must forward this information to us with a cover letter

explaining that you did not manufacture or import the device in question.

Subpart C—User Facility Reporting Requirements

§ 803.30 If I am a user facility, what reporting requirements apply to me?

(a) You must submit reports to the manufacturer or to us, or both, as specified below:

(1) *Reports of death*. You must submit a report to us as soon as practicable but no more than 10 work days after the day that you become aware of information, from any source, that reasonably suggests that a device has or may have caused or contributed to the death of a patient of your facility. You must also submit the report to the device manufacturer, if known. You must report information required by § 803.32 on FDA Form 3500A or an electronic equivalent approved under § 803.14.

(2) *Reports of serious injury*. You must submit a report to the manufacturer of the device no later than 10 work days after the day that you become aware of information, from any source, that reasonably suggests that a device has or may have caused or contributed to a serious injury to a patient of your facility. If the manufacturer is not known, you must submit the report to us. You must report information required by § 803.32 on FDA Form 3500A or an electronic equivalent approved under § 803.14.

(b) What information does FDA consider ''reasonably known'' to me? You must submit all information required in this subpart C that is reasonably known to you. This information includes information found in documents that you possess and any information that becomes available as a result of reasonable followup within your facility. You are not required to evaluate or investigate the event by obtaining or evaluating information that you do not reasonably know.

§ 803.32 If I am a user facility, what information must I submit in my individual adverse event reports?

You must include the following information in your report, if reasonably known to you, as described in § 803.30(b). These types of information correspond generally to the elements of FDA Form 3500A:

(a) Patient information (Form 3500A, Block A). You must submit the following:

(1) Patient name or other identifier;

(2) Patient age at the time of event, or date of birth;

(3) Patient gender; and

(4) Patient weight.

(b) Adverse event or product problem (Form 3500A, Block B). You must submit the following:

(1) Identification of adverse event or product problem;

(2) Outcomes attributed to the adverse event (e.g., death or serious injury). An outcome is considered a serious injury if it is:

(i) Life-threatening injury or illness;

(ii) Disability resulting in permanent impairment of a body function or permanent damage to a body structure; or

(iii) Injury or illness that requires intervention to prevent permanent impairment of a body structure or function;

(3) Date of event;

(4) Date of report by the initial reporter;

(5) Description of event or problem, including a discussion of how the device was involved, nature of the problem, patient followup or required treatment, and any environmental conditions that may have influenced the event;

(6) Description of relevant tests, including dates and laboratory data; and

(7) Description of other relevant history, including preexisting medical conditions.

(c) Device information (Form 3500A, Block D). You must submit the following:

(1) Brand name;

(2) Type of device;

(3) Manufacturer name and address;

(4) Operator of the device (health professional, patient, lay user, other);

(5) Expiration date;

(6) Model number, catalog number, serial number, lot number, or other identifying number;

(7) Date of device implantation (month, day, year);

(8) Date of device explantation (month, day, year);

(9) Whether the device was available for evaluation and whether the device was returned to the manufacturer; if so, the date it was returned to the manufacturer; and

(10) Concomitant medical products and therapy dates. (Do not report products that were used to treat the event.)

(d) Initial reporter information (Form 3500A, Block E). You must submit the following:

(1) Name, address, and telephone number of the reporter who initially provided information to you, or to the manufacturer or distributor;

(2) Whether the initial reporter is a health professional;

(3) Occupation; and

(4) Whether the initial reporter also sent a copy of the report to us, if known.

(e) User facility information (Form 3500A, Block F). You must submit the following:

(1) An indication that this is a user facility report (by marking the user facility box on the form);

(2) Your user facility number;

(3) Your address;

(4) Your contact person;

(5) Your contact person's telephone number;

(6) Date that you became aware of the event (month, day, year);

(7) Type of report (initial or followup); if it is a followup, you must include the report number of the initial report;

(8) Date of your report (month, day, year);

(9) Approximate age of device;

(10) Event problem codes—patient code and device code (refer to the ''MEDWATCH Medical Device Reporting Code Instructions'');

(11) Whether a report was sent to us and the date it was sent (month, day, year);

(12) Location where the event occurred;

(13) Whether the report was sent to the manufacturer and the date it was sent (month, day, year); and

(14) Manufacturer name and address, if available.

§ 803.33 If I am a user facility, what must I include when I submit an annual report?

(a) You must submit to us an annual report on FDA Form 3419, or electronic equivalent as approved by us under § 803.14. You must submit an annual report by January 1, of each year. You must clearly identify your annual report as such. Your annual report must include:

(1) Your CMS provider number used for medical device reports, or the number assigned by us for reporting purposes in accordance with § 803.3;

(2) Reporting year;

(3) Your name and complete address;

(4) Total number of reports attached or summarized;

(5) Date of the annual report and report numbers identifying the range of medical device reports that you submitted during the report period (e.g., 1234567890–2004–0001 through 1000);

(6) Name, position title, and complete address of the individual designated as your contact person responsible for reporting to us and whether that person is a new contact for you; and

(7) Information for each reportable event that occurred during the annual reporting period including:

(i) Report number;

(ii) Name and address of the device manufacturer;

(iii) Device brand name and common name;

(iv) Product model, catalog, serial and lot number;

(v) A brief description of the event reported to the manufacturer and/or us; and

(vi) Where the report was submitted, i.e., to the manufacturer, importer, or us.

(b) In lieu of submitting the information in paragraph (a)(7) of this section, you may submit a copy of FDA Form 3500A, or an electronic equivalent approved under § 803.14, for each medical device report that you submitted to the manufacturers and/or to us during the reporting period.

(c) If you did not submit any medical device reports to manufacturers or us during the time period, you do not need to submit an annual report.

Subpart D—Importer Reporting Requirements

§ 803.40 If I am an importer, what kinds of individual adverse event reports must I submit, when must I submit them, and to whom must I submit them?

(a) *Reports of deaths or serious injuries.* You must submit a report to us, and a copy of this report to the manufacturer, as soon as practicable but no later than 30 calendar days after the day that you receive or otherwise become aware of information from any source, including user facilities, individuals, or medical or scientific literature, whether published or unpublished, that reasonably suggests that one of your marketed devices may have caused or contributed to a death or serious injury. This report must contain the information required by § 803.42, on FDA form 3500A or an electronic equivalent approved under § 803.14.

(b) *Reports of malfunctions.* You must submit a report to the manufacturer as soon as practicable but no later than 30 calendar days after the day that you receive or otherwise become aware of information from any source, including user facilities, individuals, or through your own research, testing, evaluation, servicing, or maintenance of one of your devices, that reasonably suggests that one of your devices has malfunctioned and that this device or a similar device that you market would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. This report must contain information required by § 803.42, on FDA form 3500A or an electronic equivalent approved under § 803.14.

§ 803.42 If I am an importer, what information must I submit in my individual adverse event reports?

You must include the following information in your report, if the information is known or should be known to you, as described in § 803.40. These types of information correspond generally to the format of FDA Form 3500A:

(a) Patient information (Form 3500A, Block A). You must submit the following:

(1) Patient name or other identifier;

(2) Patient age at the time of event, or date of birth;

(3) Patient gender; and

(4) Patient weight.

(b) Adverse event or product problem (Form 3500A, Block B). You must submit the following:

(1) Identification of adverse event or product problem;

(2) Outcomes attributed to the adverse event (e.g., death or serious injury). An outcome is considered a serious injury if it is:

(i) Life-threatening injury or illness;

(ii) Disability resulting in permanent impairment of a body function or permanent damage to a body structure; or

(iii) Injury or illness that requires intervention to prevent permanent impairment of a body structure or function;

(3) Date of event;

(4) Date of report by the initial reporter;

(5) Description of the event or problem, including a discussion of how the device was involved, nature of the problem, patient followup or required treatment, and any environmental conditions that may have influenced the event;

(6) Description of relevant tests, including dates and laboratory data; and

(7) Description of other relevant patient history, including preexisting medical conditions.

(c) Device information (Form 3500A, Block D). You must submit the following:

(1) Brand name;

(2) Type of device;

(3) Manufacturer name and address;

(4) Operator of the device (health professional, patient, lay user, other);

(5) Expiration date;

(6) Model number, catalog number, serial number, lot number, or other identifying number;

(7) Date of device implantation (month, day, year);

(8) Date of device explanation (month, day, year);

(9) Whether the device was available for evaluation, and whether the device was returned to the manufacturer, and if so, the date it was returned to the manufacturer; and

(10) Concomitant medical products and therapy dates. (Do not report products that were used to treat the event.)

(d) Initial reporter information (Form 3500A, Block E). You must submit the following:

(1) Name, address, and telephone number of the reporter who initially provided information to the manufacturer, user facility, or distributor;

(2) Whether the initial reporter is a health professional;

(3) Occupation; and

(4) Whether the initial reporter also sent a copy of the report to us, if known.

(e) Importer information (Form 3500A, Block F). You must submit the following:

(1) An indication that this is an importer report (by marking the importer box on the form);

(2) Your importer report number;

(3) Your address;

(4) Your contact person;

(5) Your contact person's telephone number;

(6) Date that you became aware of the event (month, day, year);

(7) Type of report (initial or followup). If it is a followup report, you must include the report number of your initial report;

(8) Date of your report (month, day, year);

(9) Approximate age of device;

(10) Event problem codes—patient code and device code (refer to FDA MEDWATCH Medical Device Reporting Code Instructions);

(11) Whether a report was sent to us and the date it was sent (month, day, year);

(12) Location where event occurred;

(13) Whether a report was sent to the manufacturer and the date it was sent (month, day, year); and

(14) Manufacturer name and address, if available.

Subpart E—Manufacturer Reporting Requirements

§ 803.50 If I am a manufacturer, what reporting requirements apply to me?

(a) If you are a manufacturer, you must report to us no later than 30 calendar days after the day that you receive or otherwise become aware of information, from any source, that reasonably suggests that a device that you market:

(1) May have caused or contributed to a death or serious injury; or

(2) Has malfunctioned and this device or a similar device that you market

would be likely to cause or contribute to a death or serious injury, if the malfunction were to recur.

(b) What information does FDA consider ''reasonably known'' to me?

(1) You must submit all information required in this subpart E that is reasonably known to you. We consider the following information to be reasonably known to you:

(i) Any information that you can obtain by contacting a user facility, importer, or other initial reporter;

(ii) Any information in your possession; or

(iii) Any information that you can obtain by analysis, testing, or other evaluation of the device.

(2) You are responsible for obtaining and submitting to us information that is incomplete or missing from reports submitted by user facilities, importers, and other initial reporters.

(3) You are also responsible for conducting an investigation of each event and evaluating the cause of the event. If you cannot submit complete information on a report, you must provide a statement explaining why this information was incomplete and the steps you took to obtain the information. If you later obtain any required information that was not available at the time you filed your initial report, you must submit this information in a supplemental report under § 803.56.

§ 803.52 If I am a manufacturer, what information must I submit in my individual adverse event reports?

You must include the following information in your reports, if known or reasonably known to you, as described in § 803.50(b). These types of information correspond generally to the format of FDA Form 3500A:

(a) Patient information (Form 3500A, Block A). You must submit the following:

(1) Patient name or other identifier;

(2) Patient age at the time of event, or date of birth;

(3) Patient gender; and

(4) Patient weight.

(b) Adverse event or product problem (Form 3500A, Block B). You must submit the following:

(1) Identification of adverse event or product problem;

(2) Outcomes attributed to the adverse event (e.g., death or serious injury). An outcome is considered a serious injury if it is:

(i) Life-threatening injury or illness;

(ii) Disability resulting in permanent impairment of a body function or permanent damage to a body structure; or

(iii) Injury or illness that requires intervention to prevent permanent impairment of a body structure or function;

(3) Date of event;

(4) Date of report by the initial reporter;

(5) Description of the event or problem, including a discussion of how the device was involved, nature of the problem, patient followup or required treatment, and any environmental conditions that may have influenced the event;

(6) Description of relevant tests, including dates and laboratory data; and

(7) Other relevant patient history including preexisting medical conditions.

(c) Device information (Form 3500A, Block D). You must submit the following:

(1) Brand name;

(2) Type of device;

(3) Your name and address;

(4) Operator of the device (health professional, patient, lay user, other);

(5) Expiration date;

(6) Model number, catalog number, serial number, lot number, or other identifying number;

(7) Date of device implantation (month, day, year);

(8) Date of device explantation (month, day, year);

(9) Whether the device was available for evaluation, and whether the device was returned to you, and if so, the date it was returned to you; and

(10) Concomitant medical products and therapy dates. (Do not report products that were used to treat the event.)

(d) Initial reporter information (Form 3500A, Block E). You must submit the following:

(1) Name, address, and phone number of the reporter who initially provided information to you, or to the user facility or importer;

(2) Whether the initial reporter is a health professional;

(3) Occupation; and

(4) Whether the initial reporter also sent a copy of the report to us, if known.

(e) Reporting information for all manufacturers (Form 3500A, Block G). You must submit the following:

(1) Your reporting office's contact name and address and device manufacturing site;

(2) Your telephone number;

(3) Your report sources;

(4) Date received by you (month, day, year);

(5) Type of report being submitted (e.g., 5-day, initial, followup); and

(6) Your report number.

(f) Device manufacturer information (Form 3500A, Block H). You must submit the following:

(1) Type of reportable event (death, serious injury, malfunction, etc.);

(2) Type of followup report, if applicable (e.g., correction, response to FDA request, etc);

(3) If the device was returned to you and evaluated by you, you must include a summary of the evaluation. If you did not perform an evaluation, you must explain why you did not perform an evaluation;

(4) Device manufacture date (month, day, year);

(5) Whether the device was labeled for single use;

(6) Evaluation codes (including event codes, method of evaluation, result, and conclusion codes) (refer to FDA MEDWATCH Medical Device Reporting Code Instructions);

(7) Whether remedial action was taken and the type of action;

(8) Whether the use of the device was initial, reuse, or unknown;

(9) Whether remedial action was reported as a removal or correction under section 519(f) of the act, and if it was, provide the correction/removal report number; and

(10) Your additional narrative; and/or

(11) Corrected data, including:

(i) Any information missing on the user facility report or importer report, including any event codes that were not reported, or information corrected on these forms after your verification;

(ii) For each event code provided by the user facility under § 803.32(e)(10) or the importer under 803.42(e)(10), you must include a statement of whether the type of the event represented by the code is addressed in the device labeling; and

(iii) If your report omits any required information, you must explain why this information was not provided and the steps taken to obtain this information.

§ 803.53 If I am a manufacturer, in which circumstances must I submit a 5-day report?

You must submit a 5-day report to us, on Form 3500A or an electronic equivalent approved under § 803.14, no later than 5 work days after the day that you become aware that:

(a) An MDR reportable event necessitates remedial action to prevent an unreasonable risk of substantial harm to the public health. You may become aware of the need for remedial action from any information, including any trend analysis; or

(b) We have made a written request for the submission of a 5-day report. If you receive such a written request from us, you must submit, without further requests, a 5-day report for all subsequent events of the same nature

that involve substantially similar devices for the time period specified in the written request. We may extend the time period stated in the original written request if we determine it is in the interest of the public health.

§ 803.55 If I am a manufacturer, in what circumstances must I submit a baseline report, and what are the requirements for such a report?

(a) You must submit a baseline report for a device when you submit the first report under § 803.50 involving that device model. Submit this report on FDA Form 3417 or an electronic equivalent approved under § 803.14.

(b) You must update each baseline report annually on the anniversary month of the initial submission, after the initial baseline report is submitted. Report changes to baseline information in the manner described in § 803.56 (i.e., include only the new, changed, or corrected information in the appropriate portion(s) of the report form). In each baseline report, you must include the following information:

(1) Name, complete address, and establishment registration number of your reporting site. If your reporting site is not registered under part 807, we will assign a temporary number for use in MDR reporting until you register your reporting site in accordance with part 807. We will inform you of the temporary MDR reporting number;

(2) FDA registration number of each site where you manufacture the device;

(3) Name, complete address, and telephone number of the individual who you have designated as your MDR contact, and the date of the report. For foreign manufacturers, we require a confirmation that the individual submitting the report is the agent of the manufacturer designated under § 803.58(a);

(4) Product identification, including device family, brand name, generic name, model number, catalog number, product code, and any other product identification number or designation;

(5) Identification of any device that you previously reported in a baseline report that is substantially similar (e.g., same device with a different model number, or same device except for cosmetic differences in color or shape) to the device being reported. This includes additional identification of the previously reported device by model number, catalog number, or other product identification, and the date of the baseline report for the previously reported device;

(6) Basis for marketing, including your 510(k) premarket notification number or PMA number, if applicable, and whether the device is currently the subject of an approved postmarket study under section 522 of the act;

(7) Date that you initially marketed the device and, if applicable, the date on which you stopped marketing the device;

(8) Shelf life of the device, if applicable, and expected life of the device;

(9) The number of devices manufactured and distributed in the last 12 months and an estimate of the number of devices in current use; and

(10) Brief description of any methods that you used to estimate the number of devices distributed and the number of devices in current use. If this information was provided in a previous baseline report, in lieu of resubmitting the information, it may be referenced by providing the date and product identification for the previous baseline report.

§ 803.56 If I am a manufacturer, in what circumstances must I submit a supplemental or followup report and what are the requirements for such reports?

If you are a manufacturer, when you obtain information required under this part that you did not provide because it was not known or was not available when you submitted the initial report, you must submit the supplemental information to us within 1 month of the day that you receive this information. On a supplemental or followup report, you must:

(a) Indicate on the envelope and in the report that the report being submitted is a supplemental or followup report. If you are using FDA form 3500A, indicate this in Block Item H–2;

(b) Submit the appropriate identification numbers of the report that you are updating with the supplemental information (e.g., your original manufacturer report number and the user facility or importer report number of any report on which your report was based), if applicable; and

(c) Include only the new, changed, or corrected information in the appropriate portion(s) of the respective form(s) for reports that cross reference previous reports.

§ 803.58 Foreign manufacturers.

(a) Every foreign manufacturer whose devices are distributed in the United States shall designate a U.S. agent to be responsible for reporting in accordance with § 807.40 of this chapter. The U.S. designated agent accepts responsibility for the duties that such designation entails. Upon the effective date of this regulation, foreign manufacturers shall inform FDA, by letter, of the name and address of the U.S. agent designated under this section and § 807.40 of this chapter, and shall update this information as necessary. Such updated information shall be submitted to FDA, within 5 days of a change in the designated agent information.

(b) U.S.-designated agents of foreign manufacturers are required to:

(1) Report to FDA in accordance with §§ 803.50, 803.52, 803.53, 803.55, and 803.56;

(2) Conduct, or obtain from the foreign manufacturer the necessary information regarding, the investigation and evaluation of the event to comport with the requirements of § 803.50;

(3) Forward MDR complaints to the foreign manufacturer and maintain documentation of this requirement;

(4) Maintain complaint files in accordance with § 803.18; and

(5) Register, list, and submit premarket notifications in accordance with part 807 of this chapter.

Dated: February 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–3829 Filed 2–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–24; Notice No. 24]

RIN 1513–AA29

Establishment of the Trinity Lakes Viticultural Area (2001R–032P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the ''Trinity Lakes'' viticultural area in Trinity County, California. The viticultural area consists of approximately 96,000 acres surrounding Trinity and Lewiston Lakes and a portion of the Trinity River basin below Lewiston Dam. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

EFFECTIVE DATE: April 29, 2005.

FOR FURTHER INFORMATION CONTACT: Rita Butler, Writer-Editor, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Room 200E, Washington, DC 20220; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4), allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Trinity Lakes Petition

TTB was petitioned by Mr. Keith Groves of Alpen Cellars to establish a new American viticultural area to be called ''Trinity Lakes'' in Trinity County, California. It encompasses two man-made reservoirs, Trinity Lake and the adjoining but smaller Lewiston Lake to its south, and a portion of the Trinity River basin below Lewiston Dam. The area covers about 96,000 acres, of which 18 percent, or 17,285 acres, is lake surface water, while 1.5 percent, or 1,440 acres, is land suitable for viticulture. Currently, 30 acres are planted vineyards within the area. Rugged, steep, timbered ridges and narrow agricultural valleys characterize the area. The lakes' daytime cooling and nighttime warming effect moderates the agricultural valleys' climate. Below we summarize the evidence presented in the petition.

Name Evidence

The majority of the Trinity Lakes viticultural area is located within the Trinity Lake unit of the Whiskeytown-Shasta-Trinity National Recreation Area. This unit includes both Trinity Lake and the smaller Lewiston Lake, and according to the petitioner, the region surrounding both lakes is commonly known as the Trinity Lakes area. Current photographs of road signs were provided, which display the Trinity Lakes name as a reference for both Trinity and Lewiston Lakes. In Weaverville, Trinity Lakes Boulevard is the name used for California 3, a major highway.

A letter, dated December 13, 2002, from Mr. David Steinhauser, president of the Trinity County Chamber of Commerce, fully supported the establishment of this viticultural area. He wrote that the name ''Trinity Lakes'' is used to refer to the region around Trinity and Lewiston Lakes.

Created in the early 1960s, the larger man-made lake was originally named Clair Engle Lake. However, the petitioner stated that area residents have historically referred to the lake as, and prefer the name of, Trinity Lake. The petitioner also noted that a grassroots movement sought to change the lake's name and mentioned that Clair Engle Lake road signs often disappeared shortly after being posted. A 1997 Trinity Journal news article, included with the petition, spoke of U.S. Senator Barbara Boxer's support for the effort to have the lake re-named. Congress and the President made the change official in September 1997, with the passage and approval of Public Law 105–44, which renamed the reservoir Trinity Lake. The current California AAA road map and USGS topographic maps use the name of Trinity Lake.

Boundary Evidence

The Trinity Lakes viticultural area was viticulturally developed only after the completion of the two man-made lakes in the early 1960s as the climate-moderating lake effect on the surrounding valleys provided an opportunity to grow wine grapes. The petitioner stated that in 1981 a small vineyard was planted at the north end of Trinity Lake. It became a bonded winery in 1984. There are currently four vineyards, encompassing 30 acres, producing wine grapes within the viticultural area.

The Trinity Lakes viticultural area is in Trinity County, in northwestern California. The area is irregular in shape, generally running from northeast to southwest, and surrounds Trinity Lake, the smaller Lewiston Lake to the south of Trinity Dam, and a portion of the Trinity River basin downstream of Lewiston Dam. The majority of the area is within the Trinity Lake unit of the Whiskeytown-Shasta-Trinity National Recreation Area.

The boundary of the viticultural area begins north of Carrville at Derrick Flat, runs east across the Trinity River, continues south and southwest past Trinity and Lewiston dams and the town of Lewiston, and crosses the Trinity River near the mouth of Neaman Gulch. The boundary then runs north and northeast back past the two dams and the town of Trinity Center, returning to the beginning point at Derrick Flat. The approved USGS maps used for determining the boundary of the area are listed in paragraph (b) of the final rule below.

The boundaries of the Trinity Lakes viticultural area are discussed in detail in paragraph (c) of the final rule shown below.

Growing Conditions/Geographical Features

The petitioner indicated that rugged, steep, timbered ridges dropping into Trinity and Lewiston Lakes and the Trinity River basin characterize the area's topography. The Bureau of Land

Reclamation stated that Trinity Lake's surface covers 16,535 acres, while Lewiston Lake covers 750 acres, for a total of 17,285 acres of lake surface water. The filling of the lakes has left small, narrow valleys around the lakes, which are suitable for viticulture.

The large surface area of the two lakes moderates the viticultural area's climate, bringing cooler days and warmer nights to the narrow valleys and the Trinity River basin. The petition cited a 70-year local resident's claim that there is less snow and sub-freezing weather and more fog than before the lakes were created. This provides, according to the petitioner, a uniquely situated and moderated grape-growing region. Other potential grape-growing areas, located further from the lakes and outside the Trinity Lakes viticultural area, have a similar mountainous climate, but no moderating lake influence.

The petitioner indicated that the agricultural soils of the viticultural area are on well-drained alluvial fans in narrow valleys on stream terraces. This contrasts with surrounding Trinity County areas, which have wider valley floors and deeper soils with higher clay content.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the regulatory text published at the end of this document.

Notice of Proposed Rulemaking and TTB Finding

TTB published a notice of proposed rulemaking for the establishment of the Trinity Lakes viticultural area in the December 17, 2003, **Federal Register** as Notice No. 24 (68 FR 70215). In that notice, we requested comments from all interested persons by February 17, 2004. We received no comments.

After careful review, TTB finds that the evidence submitted with the petition supports the establishment of the Trinity Lakes viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the ''Trinity Lakes'' viticultural area in Trinity County, California, effective 60 days from this document's publication date.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, ''Trinity Lakes,'' is recognized as a name of viticultural significance. Consequently, wine bottlers using ''Trinity Lakes'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. *See* 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866 (58 FR 51735). Therefore, it requires no regulatory assessment.

Drafting Information

Rita Butler of the Regulations and Procedures Division drafted this final rule document.

List of Subjects in 27 CFR Part 9

Wine.

Regulatory Amendment

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.184 to read as follows:

§ 9.184 Trinity Lakes.

(a) *Name.* The name of the viticultural area described in this section is ''Trinity Lakes''.

(b) *Approved Maps.* The appropriate maps for determining the boundary of the Trinity Lakes viticultural area are 11 1:24,000 scale USGS topographic maps. They are titled:

(1) Carrville, Calif. Provisional Edition 1986;

(2) Whisky Bill Peak, Calif. Provisional Edition 1986;

(3) Damnation Peak, Calif. Provisional Edition 1982;

(4) Trinity Center, Calif. Provisional Edition 1982;

(5) Papoose Creek, Calif. Provisional Edition 1982;

(6) Trinity Dam, Calif. Provisional Edition 1982;

(7) Lewiston, Calif. Provisional Edition 1982;

(8) Weaverville, Calif. Provisional Edition 1982;

(9) Rush Creek Lakes, Calif. Provisional Edition 1982;

(10) Siligo Peak, Calif. Provisional Edition 1982; and

(11) Covington Mill, Calif. Provisional Edition 1982.

(c) *Boundary.* The Trinity Lakes viticultural area is located in Trinity County in northern California. The boundary encompasses Trinity Lake and Lewiston Lake, both within the Trinity Lake unit of the Whiskeytown-Shasta-Trinity National Recreation Area, and a portion of the Trinity River basin below Lewiston Dam.

(1) The beginning point is on the Carrville, California, quadrangle map on township line T38N/T37N at the northwest corner of section 5, T37N/R7W, near the Trinity River at Derrick Flat;

(2) From the beginning point, follow township line T38N/T37N due east to

the northeast corner of section 5, T37N/R7W;

(3) Proceed due south on the eastern boundary of sections 5, 8, 17, and 20 to the northwest corner of section 28, T37N/R7W, near Snow Gulch;

(4) Follow the northern boundary of section 28, T37N/R7W, due east to the section's northeast corner;

(5) Continue due south on the eastern boundary of sections 28 and 33, T37N/R7W, to township line T37N/T36N at the northeast corner of section 4, T36N/R7W;

(6) Proceed due east on township line T37N/T36N onto the Whisky Bill Peak, California quadrangle map to the R7W/R6W range line at the southwest corner of section 31, T37N/R6W, near the East Fork of the Trinity River;

(7) Follow the R7W/R6W range line due north to the northwest corner of section 30, T37N/R6W;

(8) Continue due east along the northern boundary of section 30, T37N/R6W, to the section's northeast corner;

(9) Proceed due south on the eastern boundary of sections 30 and 31, T37N/R6W, and sections 6 and 7, T36N/R6W, and continue onto the Damnation Peak, California, quadrangle map to the southeast corner of section 7;

(10) Follow the southern boundary of section 7, T36N/R6W, and section 12, T36N/R7W, due west onto the Trinity Center, California, quadrangle map to the northeast corner of section 14, T36N/R7W;

(11) Continue due south along the eastern boundary of sections 14, 23, 26, and 35, T36N/R7W, to the boundary's intersection with township line T36N/T35N at the southeast corner of section 35;

(12) Proceed due west along township line T36N/T35N approximately 0.5 mile to the township line's intersection with the 900-meter contour line;

(13) Follow the meandering 900-meter contour line generally west through sections 35 and 34, T36N/R7W; cross the T36N/T35N township line and continue generally southwest on the contour line around Linton Ridge, through Bridge Gulch, Bragdon Gulch, and around Feeny Ridge; cross onto the Papoose Creek, California, quadrangle map and continue southwesterly to the contour line's first intersection with a line marked ''NAT RECREATION BDY INDEFINITE,'' approximately 2,000 feet north of Feeny Gulch;

(14) Continue easterly on the 900-meter contour line over Feeny Gulch; then proceed southwesterly on the meandering contour line across Van Ness Creek, both Bear Gulches, Langdon Gulch, Digger Gulch, around Fairview Ridge, along the northern side of Papoose Arm, and over the North, East, and South Forks of Papoose Creek; continue westerly on the contour line along the southern side of Papoose Arm to the contour line's intersection with Little Papoose Creek in section 24, T34N/R8W;

(15) Continue generally west along the meandering 900-meter contour line through sections 24, 23, 14, and 15, T34N/R8W; cross onto the Trinity Dam, California, quadrangle map and continue on the contour line through sections 15 and 22; pass back onto the Papoose Creek map and follow the contour line through sections 22, 23, and 22 again; then cross back onto the Trinity Dam map and follow the contour line to its intersection with the southern boundary of section 22, T34N/R8W;

(16) Proceed due west along the southern boundary of section 22 to the northeast corner of section 28, T34N/R8W;

(17) Follow the eastern boundary of sections 28 and 33, T34W/R8W, and section 4, T33N/R8W, due south onto the Lewiston, California, quadrangle map, and continue due south on the eastern boundary of sections 4, 9, 16, and 21 to the southeast corner of section 21, T33N/R8W;

(18) Then proceed due west along the southern boundary of sections 21 and 20 to the northeast corner of section 30, T33N/R8W;

(19) Follow the eastern boundary of section 30, T33N/R8W, due south to the section's southeast corner;

(20) Continue due west along the southern boundary of section 30, T33N/R8W, and sections 25 and 26, T33N/R9W, to the northeast corner of section 34, T33N/R9W;

(21) Proceed due south on the eastern boundary of section 34, T33N/R9W, and section 3, T32N/R9W, to the southeast corner of section 3 near Tom Lang Gulch;

(22) Follow the southern boundary of section 3, T32N/R9W, due west onto the Weaverville, California, quadrangle map, and continue west along the southern boundary of sections 3, 4, and 5, T32N/R9W, to the southwest corner of section 5;

(23) Then proceed due north along the western boundary of section 5, T32N/R9W, for approximately 0.8 mile to its intersection with the 700-meter contour line;

(24) Follow the 700-meter contour line generally northwest through section 5, T32N/R9W, and then through sections 32, 31, 32 again, 29, and 28, T33N/R9W, to the contour line's intersection with the northern boundary of section 28;

(25) Proceed due east along the northern boundary of section 28 across Limekiln Gulch and China Gulch to the southwest corner of section 22, T33N/R9W;

(26) Follow the western boundary of section 22, T33N/R9W, due north to the section's northwest corner;

(27) Then continue due east along the northern boundary of section 22, T33N/R9W, onto the Lewiston map to the section's northeast corner;

(28) Proceed due north on the western boundary of section 14, T33N/R9W, to the section's northwest corner;

(29) Follow the northern boundary of sections 14 and 13, T33N/R9W, due east to the R9W/R8W range line at the northeast corner of section 13;

(30) Then proceed due north along the R9W/R8W range line onto the Trinity Dam map, and continue along the range line to the southeast corner of section 1, R9W/T34N, near Smith Gulch;

(31) Continue due west along the southern boundary of section 1, T34N/R9W, for approximately 0.3 mile to its intersection with the 900-meter contour line;

(32) Follow the meandering 900-meter contour line generally west over Tannery Gulch and around Tannery Ridge, cross onto the Rush Creek Lakes, California, quadrangle map, and continue along the 900-meter contour line to its intersection with Slate Creek in section 4, T34N/R9W;

(33) Using the Rush Creek Lakes and Trinity Dam maps, follow the contour line generally northeast from Slate Creek, crossing Irish Gulch in section 3, T34N/R9W, (crossing back and forth between the two maps three times) to the contour line's intersection with township line T34N/T35N at the northern boundary of section 3, T34N/R9W, on the Trinity Dam map;

(34) Continue generally northwest on the meandering 900-meter contour line and cross onto the Rush Creek Lakes map in section 34, T35N/R9W; continue northwesterly on the contour line over Cummings Creek, Bear Gulch, Snowslide Gulch, Sawmill Creek, and Van Matre Creek; cross onto the Siligo Peak, California, quadrangle map and continue generally northwest on the 900-meter contour line over Middle Creek and Owens Creek to the contour line's intersection with Stuart Fork;

(35) Continue generally southeast on the 900-meter contour line over Fire Camp Creek, Lightning Creek, and Sunday Creek; cross onto the Rush Creek Lakes map and continue generally southeast on the contour line over Elk Gulch and Trinity Alps Creek; cross onto the Trinity Dam map in section 27, T35N/R9W, and proceed easterly along

the contour line to its intersection with the eastern boundary of section 27, T35N/R9W;

(36) Continue generally north along the 900-meter contour line through sections 26 and 23, T35N/R9W, cross onto the Covington Mill, California, quadrangle map in section 23, T35N/R9W, and continue northerly along the contour line to its intersection with Stoney Creek in the same section;

(37) From Stoney Creek, continue generally south on the 900-meter contour line, cross back onto the Trinity Dam map in section 23, T35N/R9W, and continue southerly on the contour line through sections 23, 26, and 35 to the contour line's intersection with the eastern boundary of section 35, T35N/R9W, near that section's northeast corner;

(38) Continue generally northeast on the meandering 900-meter contour line over Telephone Ridge, Buck Gulch, and Buck Ridge; cross onto the Covington Mill map in section 19, T35N/R8W, and continue northwesterly along the contour line across Mule Creek and Snowslide Gulch in section 13, T35N/R9W; continue on the contour line, cross Little Mule Creek in section 18, T35N/R8W, and continue southeasterly on the contour line to its intersection with a line marked ''TRANS LINE SINGLE WOOD POLES'' in section 20, T35N/R8W;

(39) Continue generally northeast along the 900-meter contour line through sections 20 and 17, T35N/R8W, and cross Strope Creek, Mosquito Gulch, Greenhorn Gulch, Taylor Gulch, Stuart Fork (in section 5, T35N/R8W), and Davis Creek; cross onto the Trinity Center map in section 35, T36/R8W, and continue on the contour line to its intersection with the northern boundary of that section;

(40) Proceed due east along the northern boundary of sections 35 and 36, T36N/R8W, to the R8W/R7W range line at the northeast corner of section 36;

(41) Follow the R8W/R7W range line due north onto the Carrville map and continue along the range line to its intersection with township line T38N/T37N at the northwest corner of section 6, T37N/R7W; and

(42) Proceed due east along township line T38N/T37N and return to the beginning point at the northwest corner of section 5, T37N/R7W.

Signed: December 28, 2004.

Arthur J. Libertucci,

Administrator.

Dated: January 31, 2005.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 05–3714 Filed 2–25–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–011]

Drawbridge Operation Regulations; Port Aransas Channel—Tule Lake, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tule Lake Vertical Lift Span Highway and Railroad Bridge across the Corpus Christi—Port Aransas Channel, mile 14.0, at Corpus Christi, Nueces County, Texas. This deviation allows the bridge to remain closed to navigation for four hours on two consecutive days. This temporary deviation is necessary for the removal of scaffolding used during the maintenance of the rope sheaves and for the cleaning and lubrication of the haul and counterweight ropes of the drawbridge.

DATES: This deviation is effective from 7 a.m. on Wednesday, March 16, 2005, through 11 a.m. on Thursday, March 17, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Port of Corpus Christi Authority has requested a temporary deviation in order to remove scaffolding from the bridge that was required to perform scheduled maintenance on the Tule Lake vertical lift span bridge across Corpus Christi—Port Aransas Channel, mile 14.0 at Corpus Christi, Nueces County, Texas. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. to 11 a.m. on Wednesday, March 16, 2005, and from 7 a.m. to 11 a.m. on Thursday, March 17, 2005.

The vertical lift span bridge has a vertical clearance of 9.0 feet above mean high water, elevation 1.0 feet Mean Sea Level and 11.0 feet above mean low water, elevation -1.0 Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of oil tankers and tows with barges. There is no recreational pleasure craft usage at the bridge site. Due to prior experience, as well as coordination with waterway users, it has been determined that this two-day partial closure will not have a significant effect on these vessels. The bridge normally opens to pass navigation an average of 850 times per month. The bridge opens on signal as required by 33 CFR 117.5. The bridge will be able to open for emergencies during the closure period. Alternate routes are not available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 15, 2005.

Marcus Redford,

Bridge Administrator.

[FR Doc. 05–3761 Filed 2–25–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–017]

Drawbridge Operation Regulations: Harlem River, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Triborough 125th

Street Bridge, at mile 1.3, across the Harlem River, New York. Under this temporary deviation the Triborough 125th Street Bridge may remain in the closed position for thirty-days, April 1, 2005, through April 30, 2005. The purpose of this temporary deviation is to facilitate major structural repairs at the bridge.

DATES: This deviation is effective from April 1, 2005, through April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, Bridge Program (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Triborough 125th Street Bridge has a vertical clearance in the closed position of 54 feet at mean high water and 59 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.789(d).

The owner of the bridge, MTA Bridges and Tunnels, requested a temporary deviation from the drawbridge operation regulations to allow the bridge to remain in the closed position for thirty-days in order to facilitate major structural repairs at the bridge. The bridge will not be capable of opening once these repairs commence. The Triborough 125 Street Bridge rarely opens for the passage of vessel traffic.

Under this temporary deviation the Triborough 125th Street Bridge may remain in the closed position for thirty-days, April 1, 2005, through April 30, 2005.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: February 16, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–3762 Filed 2–25–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–IN–0007;FRL–7875–3]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the particulate matter (PM) and sulfur dioxide (SO_2) emission requirements for Pfizer, Inc. (Pfizer). Pfizer operates a medicinal chemical manufacturing facility in Vigo County, Indiana. On October 7, 2004, Indiana submitted a request for PM and SO_2 emissions limit revisions as an amendment to its State Implementation Plan (SIP) at the Vigo County facility. Pfizer has removed five boilers from its facility. Indiana has requested the deletion of the site-specific PM and SO_2 emission limits for all five removed boilers. A new boiler has replaced three of the removed boilers. The new boiler is subject to the current New Source Performance Standard limits for PM and SO_2 emissions. There will be no increase in PM or SO_2 emissions as a result of the requested revisions.

DATES: This ''direct final'' rule is effective on April 29, 2005 unless EPA receives adverse written comments by March 30, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2004–IN–0007, by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

Agency Web site: *http://docket.epa.gov/rmepub/index.jsp*. RME, EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: *mooney.john@epa.gov*.

Fax: (312)886–5824.

Mail: You may send written comments to: John Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2004–IN–0007. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**. Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. 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 RME or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524, E-Mail: *rau.matthew@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

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I. General Information

A. Does This Action Apply to Me?

This action applies to a single source, Pfizer, Inc., whose facility is located in Vigo County, Indiana.

B. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an electronic public rulemaking file available for inspection at RME under ID No. R05–OAR–2004–IN–0007, and a hard copy file which is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although it is a part of the official docket, the public rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket R05-OAR–2004-IN–0007'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

II. What Is the EPA Approving?

EPA is approving the deletion of particulate and sulfur dioxide emissions limits for the removed boilers at the Pfizer facility. Three boilers, Boilers 5, 6, and 7, have been decommissioned and replaced with a new boiler, Boiler 9. Boiler D and the Animal Health Boiler have been taken out of service and not replaced. The source-specific PM emission limits in 326 Indiana Administrative Code (IAC) 6–1–13 for boilers 5, 6, 7, and D are being deleted. The Animal Health Boiler does not have a PM limit in 326 IAC 6–1–13. Similarly, the source-specific SO_2 limits in 326 IAC 7–4–3 are being removed for boilers 5, 6, 7, and the Animal Health Boiler. No SO_2 limit is given in 326 IAC 7–4–3 for Boiler D.

Indiana did not include any new limits in the requested SIP revision, as the new boiler will be subject to the state-wide limits already in place. These include the PM emission limit in 326 IAC 6–1–2, the SO_2 emission limit in 326 IAC 7–1.1–2, and the New Source Performance Standards (NSPS) in 326 IAC Article 12 which incorporates by reference the applicable federal NSPS at 40 CFR Part 60, Subpart Dc.

III. What Are the Changes From the Current Rule?

This rule revision affects both particulate matter and sulfur dioxide limits. The specific PM limits eliminated by the State are of 57.2 tons per year (TPY) and 0.15 pounds per million British Thermal Units (lb/MMBTU) for Boiler 5, 92.0 TPY and 0.15 lb/MMBTU for Boilers 6 and 7 combined, and 7.9 TPY and 0.15 lb/MMBTU for Boiler D. The specific SO_2 limits eliminated are 2.12 lb/MMBTU for Boilers 5, 6, and 7, and 1.55 lb/MMBTU for the Animal Health Boiler. The State deleted these emission limits because Pfizer has decommissioned the five boilers.

IV. What Is the EPA's Analysis of the Requested Revisions?

Indiana deleted the source-specific particulate matter and sulfur dioxide emission limits for five decommissioned boilers. A new boiler, Boiler 9, has replaced three of the removed boilers, Boilers 5, 6, and 7. It is subject to the PM limits of 326 IAC 6–1–2, the SO_2 limits of 326 IAC 7–1.1–2, and the NSPS of 326 IAC Article 12. Indiana is not revising these state-wide limits. There will be no increase in particulate matter or sulfur dioxide emissions as a result of Pfizer's requested revisions. Therefore, EPA is approving the requested SIP revisions.

V. What Are the Environmental Effects of These Actions?

Particulate matter interferes with lung function when inhaled. Exposure to PM can cause heart and lung disease. PM also aggravates asthma. Airborne particulate is the main source of haze that causes a reduction in visibility. It also is deposited on the ground and in the water. This harms the environment by changing the nutrient and chemical balance.

Sulfur dioxide causes breathing difficulties and aggravation of existing cardiovascular disease. It is also a precursor of acid rain and fine particulate matter formation. Sulfur dioxide causes the loss of chloroform leading to vegetation damage.

The requested revisions will not cause an increase in emissions. The new boiler added to Pfizer's facility is subject to the NSPS for Small Industrial-Commercial-Institutional Steam Generating Units at 40 C.F.R. Part 60, Subpart Dc, which the State has incorporated by reference in 326 IAC Article 12.

VI. What Rulemaking Actions Are the EPA Taking?

The EPA is approving, through direct final rulemaking, revisions to PM and SO_2 emission regulations for the Pfizer medicinal chemical manufacturing facility in Vigo County, Indiana. The revisions delete the source specific PM and SO_2 emission limits on five boilers that have been removed. No increase in emissions is expected from the requested revisions.

We are publishing this action without a prior proposal because we view these as noncontroversial revisions and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if written adverse comments are filed. This rule will be effective on April 29, 2005 without further notice unless we receive relevant adverse written comment by March 30, 2005. If the EPA receives adverse written comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA does not intend to institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

VII. Administrative Requirements

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regerding today's action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52:

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: February 10, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(168) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(168) On October 7, 2004, Indiana submitted a request revision to particulate matter and sulfur dioxide emission limits as an amendment to its State Implementation Plan. The particulate matter and sulfur dioxide emission limits were deleted for the five boilers removed from the Pfizer, Incorporated facility in Vigo County, Indiana. These limits were listed in 326 Indiana Administrative Code (IAC) 6–1–13 and 326 IAC 7–4–3.

(i) Incorporation by reference. Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: County Specific Particulate Limitations, Section 13: Vigo County and Title 326: Air Pollution Control Board, Article 7: Sulfur Dioxide Rules, Rule 4: Emission Limitations and Requirements by County, Section 3: Vigo County Sulfur Dioxide Emission Limitations. Filed with the Secretary of State on August 31, 2004 and effective September 30, 2004. Published in 28 *Indiana Register* 115–18 on October 1, 2004.

[FR Doc. 05–3677 Filed 2–25–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7567]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as shown below:

State and county	Location	Dates, and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Colbert	City of Muscle Shoals.	December 10, 2004; December 17, 2004; *Times Daily*.	The Honorable David H. Bradford, Mayor of the City of Muscle Shoals, P.O. Box 2624, Muscle Shoals, Alabama 35662.	November 30, 2004 ..	010047 C
Connecticut:					
Fairfield	Town of Greenwich.	December 6, 2004; December 13, 2004; *Greenwich Time*.	Mr. Jim Lash, Town of Greenwich First Selectman, Town Hall, 101 Field Point Road, Greenwich, Connecticut 06830.	November 23, 2004 ..	090008 C
New Haven ..	Town of Madison	January 12, 2005; January 19, 2005; *Shore Line Times*.	Mr. Thomas S. Scarpati, First Selectman of the Town of Madison, 8 Campus Drive, Madison, Connecticut 06443.	December 27, 2004 ..	090079 C
Florida:					
Duval	City of Jacksonville.	October 22, 2004; October 29, 2004; *The Florida Times-Union*.	The Honorable John Peyton, Mayor of the City of Jacksonville, City Hall at St. James, 4th Floor, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	October 15, 2004	120077 E
Lake	Unincorporated Areas.	November 17, 2004; November 24, 2004; *Orlando Sentinel*.	Mr. William A. Neron, Lake County Manager, P.O. Box 7800, Tavares, Florida 32778.	November 4, 2004	120421 D
Lake	Unincorporated Areas.	December 10, 2004; December 17, 2004; *Orlando Sentinel*.	Mr. William A. Neron, Lake County Manager, P.O. Box 7800, Tavares, Florida 32778.	March 16, 2005	120421 D
Polk	City of Lake Wales.	November 17, 2004; November 24, 2004; *The News Chief*.	Mr. Tony Otte, Lake Wales City Manager, P.O. Box 1320, Lake Wales, Florida 33859.	February 23, 2005	120390 G
Polk	Unincorporated Areas.	November 17, 2004; November 24, 2004; *The News Chief*.	Mr. Michael Herr, Polk County Manager, P.O. Box 9005, Drawer BC 01, Bartow, Florida 33831–9005.	February 23, 2005	120261 G
Sarasota	City of Sarasota	January 14, 2004; January 24, 2004; *Sarasota Herald-Tribune*.	Mr. Michael A. McNees, Sarasota City Manager, 1565 First Street, Room 101, Sarasota, Florida 34236.	January 7, 2005	125150 B
St. Johns	Unincorporated Areas.	October 22, 2004; October 29, 2004; *The St. Augustine Record*.	Mr. Ben W. Adams, II, St. Johns County Administrator, 4020 Lewis Speedway, St. Augustine, Florida 32084.	October 13, 2004	125147 H
Georgia:					
Cherokee	Unincorporated Areas.	October 29, 2004; November 5, 2004; *Cherokee Tribune*.	Mr. Michael Byrd, Chairman of the Cherokee County, Board of Commissioners, 90 North Street, Suite 310, Canton, Georgia 30114.	October 20, 2004;	130424 B
Dekalb	Unincorporated Areas.	December 23, 2004; December 30, 2004; *The Champion*.	Mr. Vernon Jones, Chief Executive Officer of Dekalb County, 1300 Commerce Drive, Decatur, Georgia 30030.	December 14, 2004 ..	130065 H
Bibb and Jones.	City of Macon	October 29, 2004; November 5, 2004; *The Macon Telegraph*.	The Honorable C. Jack Ellis, Mayor of the City of Macon, 700 Poplar Street, Macon, Georgia 31201.	February 4, 2005	130011 D,E
Bulloch	City of Statesboro.	November 4, 2004; November 11, 2004; *Statesboro Herald*.	The Honorable William Hatcher, Mayor of the City of Statesboro, P.O. Box 348, Statesboro, Georgia 30459–0348.	February 10, 2005	130021 C
Kentucky	Lexington-Fayette Urban County Government.	August 18, 2004; August 25, 2004; *Lexington Herald-Leader*.	The Honorable Teresa Isaac, Mayor of the Lexington-Fayette, Urban County Government, Lexington-Fayette Government Building, 200 East Main Street, 12th Floor, Lexington, Kentucky 40507.	November 24, 2004 ..	210067 C

State and county	Location	Dates, and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
	Lexington-Fayette Urban County Government.	November 5, 2004; November 12, 2004; *Lexington Herald-Leader*.	The Honorable Teresa Isaac, Mayor of the Lexington-Fayette, Urban County Government, Lexington-Fayette Government Building, 200 East Main Street, 12th Floor, Lexington, Kentucky 40507.	October 28, 2004	210067 C
Massachusetts:					
Norfolk	Town of Foxborough.	January 19, 2005; January 26, 2005; *Foxborough Report*.	Mr. Robert Hickey, Chairman of the Town of Foxborough Board of Selectmen, 40 South Street, Foxborough, Massachusetts 02035.	January 12, 2005	250239 B
Norfolk	City of Quincy	January 14, 2005; January 21, 2005; *The Patriot Ledger*.	The Honorable William J. Phelan, Mayor of the City of Quincy, 1305 Hancock Street, Quincy, Massachusetts 02169.	April 22, 2005	255219 B
New York:					
Erie	Town of Lancaster.	November 25, 2004; December 2, 2004; *The Lancaster Bee*.	Mr. Robert H. Giza, Supervisor of the Town of Lancaster, 21 Central Avenue, Lancaster, New York 14086.	May 17, 2005	360249 C
Erie	Village of Lancaster.	November 25, 2004; December 2, 2004; *The Lancaster Bee*.	The Honorable William G. Cansdale, Jr., Mayor of the Village of Lancaster, 5423 Broadway, Lancaster, New York 14086.	May 17, 2005	360248 C
North Carolina:					
Craven	Unincorporated Areas.	January 14, 2005; January 21, 2005; *The Sun Journal*.	Mr. George N. Brown, Jr., Chairman of the Craven County, Board of Commissioners, 406 Craven Street, New Bern, North Carolina 28560.	January 4, 2005	450182 C
Haywood	Unincorporated Areas.	January 10, 2005; January 17, 2005; *The Mountaineer*.	Mr. Jack Horton, Haywood County Manager, 215 North Main Street, Waynesville, North Carolina 28786.	April 18, 2005	370120 B
Surry	City of Mount Airy.	August 9, 2004; August 16, 2004; *Mount Airy News*.	The Honorable Jack A. Loftis, Mayor of the City of Mount Airy, P.O. Box 70, Mount Airy, North Carolina 27030.	August 2, 2004	370226 C
Lee	City of Sanford ..	November 5, 2004; November 12, 2004; *The Sanford Herald*.	The Honorable Winston C. Hester, Mayor of the City of Sanford, P.O. Box 3729, Sanford, North Carolina 27331–3729.	February 11, 2005	370143 B
Tennessee:					
Decatur	Unincorporated Areas.	October 26, 2004; November 2, 2004; *The News-Leader*.	The Honorable Kenneth Broadway, Mayor of Decatur County, P.O. Box 488, Decaturville, Tennessee 38329.	February 1, 2005	470041 C
Henry	Unincorporated Areas.	November 8, 2004; November 15, 2004; *The Paris Post-Intelligencer*.	The Honorable Brent Greer, Mayor of Henry County, P.O. Box 7, Paris, Tennessee 38242.	February 14, 2005	470228 D
Texas: Tarrant	City of Southlake	October 14, 2004; October 21, 2004; *Fort Worth Star Telegram*.	The Honorable Andy Wambsganss, Mayor of the City of Southlake, 1400 Main Street, Suite 270, Southlake, Texas 76092.	October 7, 2004	480612 H
Virginia: Fauquier	Town of Warrenton.	October 28, 2004; November 4, 2004; *Fauquier Citizen*.	The Honorable George B. Fitch, Mayor of the Town of Warrenton, Municipal Building, 18 Court Street Warrenton, Virginia 20186.	February 3, 2004	510057 A
West Virginia: Mingo.	Unincorporated Areas.	November 26, 2004; December 3, 2004; *The Williamson Daily News*.	Mr. Jim Hatfield, President of the Mingo County, Board of Commissioners, P.O. Box 1197, Williamson, West Virginia 25661.	November 16, 2004 ..	540133 C

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: February 18, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–3776 Filed 2–25–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: *Effective Dates:* The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida:					
Duval (FEMA Docket No. D–7559).	City of Jacksonville.	Apr. 19, 2004, Apr. 26, 2004, *The Florida Times-Union.*	The Honorable John Peyton, Mayor of the City of Jacksonville, City Hall at St. James, 4th Floor, 117 West Duval Street, Suite 400, Jacksonville, Florida 32202.	July 26, 2004	120077 E

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Polk (FEMA Docket No. D–7599).	Unincorporated Areas.	Apr. 20, 2004, Apr. 27, 2004, *The Ledger*.	Mr. Michael Herr, Polk County Manager, 330 West Church Street, P.O. Box 9005, Drawer CS–10, Bartow, Florida 33831–9005.	July 27, 2004	120261 F
Kentucky: (FEMA Docket No. D–7559).	Lexington-Fayette Urban County Government.	Apr. 23, 2004, Apr. 30, 2004, *Lexington Herald-Leader*.	The Honorable Teresa Isaac, Mayor of the Lexington-Fayette Urban County Government, 200 East Main Street, 12th Floor, Lexington-Fayette Government Building, Lexington, Kentucky 40507.	July 30, 2004	210067 C
South Carolina: Richland (FEMA Docket No. D–7559).	Unincorporated Areas.	Apr. 20, 2004, Apr. 27, 2004, *The State*.	Mr. T. Cary McSwain, Richland County Administrator, 2020 Hampton Street, P.O. Box 192, Columbia, South Carolina 29202.	July 27, 2004	450170 H

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: February 18, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–3778 Filed 2–25–05; 8:45 am]

BILLING CODE 9110–12–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: *Effective Dates:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate, has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

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

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
FLORIDA	
Leon County (FEMA Docket No. D–7562)	
Alford Arm Tributary:	
Approximately 500 feet downstream of State Route 146	*66
At downstream side of Thomasville Road	*92
Leon County (Unincorporated Areas), City of Tallahassee	
Northeast Drainage Ditch:	
Approximately 100 feet upstream of Weems Road	*52
Approximately 1 mile upstream of Lonnbladh Road	*126
City of Tallahassee	
McCord Park Pond Drainage Ditch:	
At the confluence with Northeast Drainage Ditch	*69
Approximately 1,350 feet upstream of the confluence with Northeast Drainage Ditch	*69
City of Tallahassee	
Park Avenue Ditch:	
At the confluence with Northeast Drainage Ditch	*59
At the CSX Transportation	*66
City of Tallahassee	
Royal Oaks Creek:	
At the confluence with Lake Kinsale	*81
At a point approximately 680 feet upstream of Foxcroft Drive	*90
City of Tallahassee	
Goose Pond Tributary:	
At the confluence with Goose Pond	*76
Approximately 0.80 mile upstream of the confluence with Goose Pond	*120
City of Tallahassee	
Northeast Drainage Ditch Tributary 1:	
At the confluence with Northeast Drainage Ditch	*91
At the downstream side of Oleson Road	*137
City of Tallahassee	
Northeast Drainage Ditch Tributary 2:	
At the confluence with Northeast Drainage Ditch	*60
Approximately 250 feet upstream of Brewster Drive	*110
City of Tallahassee	
CMC Pond:	
Entire shoreline within community	*103
City of Tallahassee	
Phillips Road Pond:	
Entire shoreline within community	*95
City of Tallahassee	
Harriman Circle Pond:	
Entire shoreline within community	*86
City of Tallahassee	
Ponding Area 282–1:	
Entire shoreline within community	*136
City of Tallahassee	
Ponding Area 301–1:	
Entire shoreline within community	*144
Leon County (Unincorporated Areas), City of Tallahassee	
Ponding Area 301–2:	
Entire shoreline within community	*141
City of Tallahassee	
Ponding Area 301–3:	
Entire shoreline within community	*143
City of Tallahassee	
Ponding Area 301–4:	
Entire shoreline within community	*162
Leon County (Unincorporated Areas), City of Tallahassee	
Ponding Area 301–5:	
Entire shoreline within community	*180
City of Tallahassee	
Ponding Area 301–6:	
Entire shoreline within community	*85
City of Tallahassee	
Ponding Area 301–7:	
Entire shoreline within community	*109
Ponding Area 303–1:	
Entire shoreline within community	*91
City of Tallahassee	
Ponding Area 303–2:	
Entire shoreline within community	*110
City of Tallahassee	
Northeast Drainage Ditch Overland Flow:	
At Lonnbladh Road	*96
Approximately 4,150 feet upstream of Lonnbladh Road	*122
City of Tallahassee	
East Drainage Ditch:	
Approximately 0.6 mile upstream of the confluence with Munson Slough	*40
Approximately 800 feet upstream of Apakin Nene Road	*142
Leon County (Unincorporated Areas), City of Tallahassee	
West Drainage Ditch:	
At Mabry Street	*53
Approximately 50 feet upstream of New Quincy Highway	*61
Leon County (Unincorporated Areas), City of Tallahassee	
Gum Creek:	
At the confluence with West Drainage Ditch	*55
At the confluence with North Branch Gum Creek	*58
Leon County (Unincorporated Areas), City of Tallahassee	
North Branch Gum Creek:	
At the confluence with Gum Creek	*58
At Gum Road	*59
Leon County (Unincorporated Areas)	
West Branch Gum Creek:	
At the confluence with Gum Creek	*58
Just upstream of CSX Transportation	*59
Leon County (Unincorporated Areas)	
Leon County (Unincorporated Areas)	
Maps available for inspection at the Leon County Courthouse, 301 South Monroe Street, Tallahassee, Florida.	
City of Tallahassee	
Maps available for inspection at the Tallahassee City Hall, 300 South Adams Street, Tallahassee, Florida.	
MINNESOTA	
City of Minneapolis (Hennepin County) (FEMA Docket No. D–7592)	
Mississippi River:	
Approximately 2,100 feet downstream of confluence of Minnehaha Creek	*714
Downstream of Lock and Dam No. 1	*716
City of Minneapolis	
Minnehaha Creek:	
At confluence with Mississippi River	*715
Approximately 2,450 feet upstream of confluence with the Mississippi River	*715
City of Minneapolis	
City of Minneapolis	
Maps available for inspection at the Minneapolis City Hall, Public Works Office, 350 South Fifth Street, Minneapolis, Minnesota.	
NORTH CAROLINA	
Edgecombe County (Unincorporated Areas) (FEMA Docket Nos. D–7554 and D–7570)	
Beaverdam Branch:	
At the confluence with Cokey Swamp	•59
Approximately 0.8 mile upstream of McKendree Church Road	•73
Edgecombe County (Unincorporated Areas)	
Cokey Swamp:	
Approximately 1,100 feet upstream of Davistown-Mercer Road	•57
Approximately 1.1 miles downstream of the confluence with Little Cokey Swamp	•77
Edgecombe County (Unincorporated Areas)	
Corn Creek:	
At the confluence with Town Creek	•61
Approximately 1.2 miles upstream of Temperance Hall Road	•104
Edgecombe County (Unincorporated Areas)	
Deloach Branch:	
At the confluence with Cokey Swamp	•70
Approximately 0.7 mile upstream of the confluence with Cokey Swamp	•72
Edgecombe County (Unincorporated Areas)	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Dickson Branch:	
At the confluence with Cokey Swamp	•73
Approximately 0.8 mile upstream of the confluence with Cokey Swamp	•78
Edgecombe County (Unincorporated Areas)	
Fishing Creek:	
Approximately 0.8 mile upstream of the confluence with Deep Creek	•48
At the downstream side of Rail Road	•96
Edgecombe County (Unincorporated Areas)	
Little Cokey Swamp:	
Approximately 0.4 mile upstream of the confluence with Cokey Swamp	•82
Approximately 50 feet downstream of Green Pasture Road	•92
Edgecombe County (Unincorporated Areas)	
Longs Mill Run:	
At the Edgecombe/Pitt County boundary	•95
Approximately 1.1 miles upstream of the Edgecombe/Pitt County boundary	•107
Edgecombe County (Unincorporated Areas)	
Maple Swamp:	
Approximately 575 feet downstream of NC Highway 97	•52
Approximately 0.7 mile downstream of Bethlehem Church Road	•60
Edgecombe County (Unincorporated Areas)	
Millpond Branch:	
At the confluence with Cokey Swamp	•66
Approximately 0.6 mile upstream of the confluence with Cokey Swamp	•70
Edgecombe County (Unincorporated Areas)	
Moccasin Swamp:	
Approximately 0.5 mile upstream of confluence with Swift Creek	•75
Approximately 800 feet downstream of Morning Star Church Road	•75
Edgecombe County (Unincorporated Areas)	
Otter Creek:	
Approximately 1,000 feet downstream of the confluence with Otter Creek Tributary	•47
Approximately 0.7 mile upstream of Lewis Road	•91
Edgecombe County (Unincorporated Areas)	
Otter Creek Tributary:	
At the County boundary	•48
Approximately 2.2 miles upstream of the County boundary	•65
Edgecombe County (Unincorporated Areas)	
Sasnett Mill Branch:	
At the confluence with Cokey Swamp	•58
Approximately 300 feet upstream of Kent Road	•64
Edgecombe County (Unincorporated Areas)	
Town Creek:	
Approximately 150 feet upstream of State Route 43	•59
Approximately 550 feet upstream of the County boundary	•73
Edgecombe County (Unincorporated Areas)	
Williamson Branch:	
At the confluence with Town Creek	•70
Approximately 2.3 miles upstream of the confluence with Town Creek	•82
Edgecombe County (Unincorporated Areas)	
Buck Swamp:	
At confluence with Tar River	•66
Approximately 1,750 feet upstream of Melton Road	•78
Edgecombe County (Unincorporated Areas)	
Walnut Creek:	
At confluence with Tar River	•60
Approximately 0.7 mile upstream of Alternate Route 64	•68
Edgecombe County (Unincorporated Areas)	
Tar River:	
At the Edgecombe County boundary	•37
At the City of Rocky Mount Extraterritorial Jurisdiction limits	•71
Edgecombe County (Unincorporated Areas)	
Beech Branch:	
At the confluence with the Tar River	•63
At the City of Rocky Mount Extraterritorial Jurisdiction limits	•88
Edgecombe County (Unincorporated Areas)	
White Oak Swamp:	
At confluence with Swift Creek	•61
Approximately 1.0 mile upstream of Speight's Chapel Road	•107
Edgecombe County (Unincorporated Areas)	
Raccoon Branch:	
At the confluence with Penders Mill Run	•70
Approximately 350 feet upstream of CSX Railroad	•88
Edgecombe County (Unincorporated Areas)	
Penders Mill Run:	
At the confluence with Tar River	•53
Approximately 1.4 miles upstream of Taylor Drive	•90
Edgecombe County (Unincorporated Areas)	
Key Branch:	
At confluence with Tar River	•58
Approximately 1,160 feet upstream of confluence with Tar River	•62
Edgecombe County (Unincorporated Areas)	
Maple Swamp:	
At confluence with Fishing Creek	•51
Approximately 760 feet upstream of O'Neal Road	•76
Edgecombe County (Unincorporated Areas)	
Leggett Canal:	
Approximately 0.5 mile upstream of confluence with Swift Creek	•56
Approximately 1,525 feet upstream of State Route 30	•69
Town of Leggett	
Tar River Tributary:	
At confluence with Tar River	•50
Approximately 1.0 mile downstream of confluence with Tar River	•50
Edgecombe County (Unincorporated Areas), Town of Tarboro	
Holly Creek:	
Just upstream of confluence with Hendricks Creek	•45
Approximately 0.4 mile upstream of U.S. Route 64	•105
Town of Tarboro	
Tributary A to Hendricks Creek:	
Approximately 150 feet upstream of confluence with Hendricks Creek	•48
At Speight Forest Drive	•77
Town of Tarboro	
Hendricks Creek:	
At confluence with Tar River	•45
Approximately 1.06 miles upstream of Industrial Parkway	•75
Town of Tarboro	
East Tarboro Canal:	
At confluence with Tar River	•45
Approximately 700 feet upstream of Forest Acres Drive	•55
Town of Tarboro	
Cheeks Mill Creek:	
At confluence with Tar River	•37
Approximately 700 feet downstream of Britt Farm Road	•42
Edgecombe County (Unincorporated Areas)	
Conetoe Creek:	
Approximately 100 feet downstream of the County boundary	•42
Approximately 400 feet upstream of North Bowers Road	•76
Edgecombe County (Unincorporated Areas)	
NC 42 Canal:	
At confluence with Conetoe Creek	•42
Approximately 1,150 feet upstream of Highway 64A	•47
Edgecombe County (Unincorporated Areas), Town of Conetoe	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Crisp Creek:	
At confluence with Conetoe Creek	•48
At County boundary	•61
Edgecombe County (Unincorporated Areas)	
Fountain Fork Creek:	
At confluence with Conetoe Creek	•57
Approximately 1.0 mile upstream of Route 142	•73
Edgecombe County (Unincorporated Areas)	
Moore Swamp:	
At the confluence with Maple Swamp	•58
Approximately 250 feet downstream of Draughn Road	•61
Edgecombe County (Unincorporated Areas)	
Deep Creek:	
Approximately 0.7 mile upstream of Dickens Road	•53
Approximately 0.6 mile upstream of County boundary	•62
Edgecombe County (Unincorporated Areas), Town of Speed	
Deep Creek Tributary 2:	
At confluence with Deep Creek	•57
Approximately 500 feet downstream of Dickens Road	•60
Edgecombe County (Unincorporated Areas)	
Savage Mill Run:	
At the upstream side of CSX Railroad	•58
Approximately 0.8 mile upstream of Mill Pond Road	•74
Edgecombe County (Unincorporated Areas), Town of Speed	
Speed Levee Ponding Area:	
Ponding behind Speed Levee	•51
Edgecombe County (Unincorporated Areas), Town of Speed	
Princeville Ponding Area:	
Ponding behind Princeville Levee	•35

Edgecombe County (Unincorporated Areas)

Maps available for inspection at Edgecombe County (Unincorporated Areas) Planning Department, 201 Saint Andrews Street, Tarboro, North Carolina.

Town of Conetoe

Maps available for inspection at the Conetoe Town Hall, 204 West Church Street, Conetoe, North Carolina.

Town of Leggett

Maps available for inspection at the Leggett Town Hall, Route 2, Tarboro, North Carolina.

Town of Princeville

Maps available for inspection at the Princeville Town Hall, Planning Office, 310 Mutual Boulevard, Princeton, North Carolina.

Town of Speed

Maps available for inspection at the Speed Town Hall, 200 Railroad Street, Speed, North Carolina.

Town of Tarboro

Maps available for inspection at the Tarboro Town Hall, Planning Department, 500 Main Street, Tarboro, North Carolina.

SOUTH CAROLINA

Florence County (FEMA Docket No. D–7598)

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
Lynches River:	
Approximately 0.8 mile upstream of North Jones Road and U.S. Highway 301	*99
Approximately 800 feet downstream of Interstate Highway 95	*119
Florence County (Unincorporated Areas)	
Sparrow Swamp:	
Just upstream of W. J. Albert Sims Street	*126
Approximately 1,100 feet upstream of W. J. Albert Sims Street	*126
Town of Timmonsville	
Middle Swamp:	
State Highway 51/Pamplico Highway	*79
Approximately 0.70 mile upstream of State Highway 51/Pamplico Highway	*80
Florence County (Unincorporated Areas), City of Florence	
Jeffries Creek:	
Approximately 2,890 feet downstream of the confluence of Pye Branch	*80
Approximately 1,200 feet downstream of South Cashua Drive	*95
Florence County (Unincorporated Areas), City of Florence	

Florence County (Unincorporated Areas)

Maps available for inspection at the Florence County Planning Department, 218 West Evans Street, Florence, South Carolina.

City of Florence

Maps available for inspection at the City of Florence Department of Community Services, Drawer AA City-County Complex, 180 North Irby Street, Florence, South Carolina.

Town of Timmonsville

Maps available for inspection at the Timmonsville Town Hall, 115 East Main Street, Timmonsville, South Carolina.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: February 18, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 05–3774 Filed 2–25–05; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 70, No. 38
Monday, February 28, 2005

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 724

RIN 3206–AK38

Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to carry out the notification and training requirements of the Notification and Federal Employees Antidiscrimination and Retaliation Act of 2002 (No FEAR Act). This rule will implement the notice and training provisions of the No FEAR Act.

DATES: Comments must be received on or before April 29, 2005.

ADDRESSES: Send or deliver written comments to Ana A. Mazzi, Deputy Associate Director for Workforce Relations and Accountability Policy, Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC, 20415; by fax at (202) 606–0967; or by e-mail at *NoFEAR@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert by telephone at (202) 606–2920; by fax at (202) 606–2613; or by e-mail at *NoFEAR@opm.gov.*

SUPPLEMENTARY INFORMATION: The United States and its citizens are best served when the Federal workplace is free of discrimination and retaliation. In order to maintain a productive workplace that is fully engaged with the many important missions before the Government, Congress noted that it is essential that the rights of employees, former employees and applicants for Federal employment under Federal antidiscrimination, whistleblower, and retaliation laws be steadfastly protected. Congress also stated that agencies cannot be run effectively if those agencies practice or tolerate discrimination. Congress has found that notification of present and former Federal employees and applicants for Federal employment of their rights under antidiscrimination and whistleblower laws, combined with training of current employees, should increase Federal agency compliance with the laws. Congress entrusted the President with the authority to promulgate rules to carry out this title, and the President, in turn, delegated to OPM the authority to issue proposed regulations to implement the notification and training provisions of Title II of the No FEAR Act, Pub. L. 107–174. These regulations carry out that authority.

Notification Obligations

Section 202 of the No FEAR Act requires Federal agencies to notify their employees, former employees, and applicants for employment of their rights and protections under Federal antidiscrimination, whistleblower and retaliation laws. These proposed regulations prescribe the ''time, form, and manner'' of the notice required by the No FEAR Act, including the requirement to place the notice on each agency's Internet Web site.

The proposed regulations provide model paragraphs that must, at a minimum, be included in the notice. Agencies have the discretion to insert additional provisions as they deem appropriate. Agencies must provide the first notice within 60 days after final publication of this rule. Thereafter, such notice must be provided by the end of each successive fiscal year and remain posted until replaced or revised to help ensure that employees are kept informed of their rights and protections against discrimination and/or retaliation. After the initial notice deadline, new employees will be given notice during each agency's new employee orientation session(s) or, in the absence of such a program, within 60 days of the individual's appointment.

The notice requires language that agencies retain the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, up to and including removal. It also requires language that unfounded disciplinary action or violation of the procedural rights of a Federal employee accused of discrimination is not permitted. Another part of the notice advises readers how to get additional information about their rights and protections.

Training Obligations

Section 202 of the No FEAR Act also requires that Federal agencies provide training to all their employees regarding the rights and remedies under Federal antidiscrimination, whistleblower and retaliation laws. The regulations propose to require all agencies to develop written plans describing how they will meet their training obligations under the Act. Agencies have the discretion to develop the content and method of their own training programs. Agencies may also consult the Equal Employment Opportunity Commission and/or the Office of Special Counsel for information and/or assistance regarding the agency's training program.

Recognizing the importance of the required training under the No FEAR Act, OPM *encourages* all agencies to implement training programs as soon as possible and *requires* all agencies to complete initial training by the end of fiscal year 2005. Thereafter, the training must be completed on a training cycle of no longer than every two years.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

E.O. 12866, Regulatory Review

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

E.O. 13132

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

E.O. 12988, Civil Justice Reform

This regulation meets the applicable standard set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 5 CFR Part 724

Administrative practice and procedure, Discrimination, Prohibited personnel practices, Civil rights, Claims, Discipline.

U.S. Office of Personnel Management.

Dan G. Blair,

Acting Director.

Accordingly, OPM proposes to amend part 724 to title 5, Code of Federal Regulations, as follows:

PART 724—IMPLEMENTATION OF TITLE II OF THE NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002

1. The authority citation for part 724 continues to read as follows:

Authority: Sec. 204 of Pub. L. 107–174; Presidential Memorandum dated July 8, 2003, ''Delegation of Authority Under Section 204(a) of the Notification and Federal Employee Antidiscrimination Act of 2002.''

Subpart A—Reimbursement of Judgment Fund

2. In § 724.102 of subpart A, add new definitions for *Antidiscrimination Laws, Notice, Training,* and *Whistleblower Protection Laws* in alphabetical order to read as follows:

§ 724.102 Definitions:

Antidiscrimination Laws refers to 5 U.S.C. 2302(b)(1), 5 U.S.C. 2302 (b)(9) as applied to conduct described in 5 U.S.C. 2302 (b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

* * * * *

Notice means the written information provided by Federal agencies about the rights and protections available under Federal Antidiscrimination Laws and Whistleblower Protection Laws.

* * * * *

Training means the process by which Federal agencies instruct their employees regarding the rights and remedies applicable to such employees under the Federal Antidiscrimination Laws and Whistleblower Protection Laws.

Whistleblower Protection Laws refers to 5 U.S.C. 2302(b)(8) or 5 U.S.C. 2302(b)(9) as applied to conduct described in 5 U.S.C. 2302(b)(8).

3. A new subpart B to Part 724 is added to read as follows:

Subpart B—Notification of Rights and Protections and Training

Sec.
724.201 Purpose and Scope.
724.202 Notice Obligations.
724.203 Training Obligations.

§ 724.201 Purpose and Scope.

(a) This subpart implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 concerning the obligation of Federal agencies to notify all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Antidiscrimination Laws and Whistleblower Protection Laws. This subpart also implements Title II concerning the obligation of agencies to train the agencies' employees regarding such rights and remedies. The regulations describe agency obligations and the procedures for written notification and training.

(b) Pursuant to section 205 of the No FEAR Act, neither that Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

§ 724.202 Notice Obligations.

(a) Each agency must provide notice to all of its employees, former employees, and applicants for Federal employment about the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws applicable to them.

(b) The notice under this part must be titled ''No FEAR Act Notice.''

(c) Each agency must provide the initial notice within sixty (60) days after [date of final rule]. Thereafter, the notice must be provided by the end of each successive fiscal year and remain posted until replaced or revised.

(d) After the initial notice, each agency must provide the notice to new employees within 60 business days of their appointment.

(e) Each agency must provide the notice in paper (*e.g.*, letter, poster or brochure) and/or electronic form (*e.g.*, e-mail or internal agency electronic site). In addition, each agency must post the notice on their Internet web sites, in compliance with section 508 of the Rehabilitation Act of 1973, as amended. For agencies with components that operate Internet Web sites, the notice shall be made available by hyperlinks from the Internet Web sites of both the component and the parent agency. For former employees and applicants, an agency may meet its paper and/or electronic notice obligation by publishing an annual notice in the **Federal Register**.

(f) Upon request by employees, former employees and applicants, each agency must provide the notice in alternative, accessible formats.

(g) Unless an agency is exempt from the cited statutory provisions, the following is the minimum text to be included in the notice. Each agency may incorporate additional information within the model paragraphs, as appropriate.

Model Paragraphs

No Fear Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Pub. L. 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Pub. L. 107–74, Title I, General Provisions, Section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination, whistleblower protection and retaliation laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5

U.S.C. 2302(b) (1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See, e.g.,* 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (*see* contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protections laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR 724, as well as the appropriate offices within your agency (*e.g.*, EEO/civil rights office, human resources office or legal office). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*www.eeoc.gov* and the OSC Web site— *www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

§ 724.203 Training Obligations.

(a) Each agency must develop a written plan to train all of its employees (including supervisors and managers) about the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws applicable to them.

(b) Each agency shall have the discretion to develop the content and method of its training plan. Each agency training plan shall describe:

(1) The content and method of the training,

(2) The training schedule, and

(3) The means of documenting completion of training.

(c) Each agency may contact EEOC and/or OSC for information and/or assistance regarding the agency's training program. Neither agency, however, shall have authority under this regulation to review or approve an agency's training plan.

(d) Each agency is *encouraged* to implement its training as soon as possible, but *required* to complete the initial training under this subpart for all employees (including supervisors and managers) by the end of fiscal year 2005. Thereafter, each agency must train all existing employees on a training cycle of no longer than every 2 years.

(e) After the initial training is completed, each agency must train new employees as part of its agency orientation program. Any agency that does not have a new employee orientation program must train new employees within 60 business days of the new employees' appointment.

[FR Doc. 05–3840 Filed 2–24–05; 11:34 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4279

RIN 0570–AA34

Business and Industry Guaranteed Loan Program Annual Renewal Fee

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) proposes to amend its regulation for Business and Industry (B&I) Guaranteed Loans to remove all references to a one-time, specific loan guarantee fee and provide the authority for the charging of an annual renewal fee on all loans obligated after the publication of the final rule. The intended effect of this rule is to reduce the subsidy rate for guaranteed loans and its associated budget authority dollar level, which will result in a greater level of assistance to the public (i.e., higher supportable loan level). A notice will be published in the **Federal Register** each fiscal year that will establish the guarantee fee and any annual renewal fees for loans obligated during that fiscal year.

DATES: Written or e-mail comments must be received on or before April 29, 2005 to be assured of consideration.

ADDRESSES: Submit written comments via U.S. Postal Service, in duplicate, to the Regulations and Paperwork Management Branch, Attention: Cheryl Thompson, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. Submit written comments via Federal Express Mail, in duplicate, to the Regulations and Paperwork Management Branch, Attention: Cheryl Thompson, USDA-Rural Development, 7th Floor, 300 7th St., SW., Washington, DC 20546. Also, comments may be submitted via the Internet by addressing them to *comments@rus.usda.gov*. The comment must contain the word *Fee* in the subject line. All comments will be available for

public inspection during regular work hours at the 300 7th St., SW., address listed above.

FOR FURTHER INFORMATION CONTACT: Rick Bonnet, Special Projects/Programs Oversight Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3221, 1400 Independence Avenue, SW., Washington, DC 20250–3221, telephone (202) 720–1804, or by e-mail to *rick.bonnet@usda.gov*.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be significant and has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.768, Business and Industry Loans.

Intergovernmental Review

Business and Industry Guaranteed Loans are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with state and local officials. RBS will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities'' and 7 CFR part 3015, subpart V.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule, (1) all state and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given this rule, and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule.

Environmental Impact Statement

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agency will seek OMB approval of the reporting requirements contained in this regulation. These reporting and recordkeeping requirements have been previously approved under OMB control number 0570–0017. The estimate of burden is as follows:

Estimate of Burden: Burden per response is 30 minutes.

Respondents: Lenders and business owners.

Estimated Number of Respondents: 1,725.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 1,725.

Estimated Total Annual Burden of Respondents: 863 hours.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have a practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. All responses to this rule will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, RBS has determined that this action would not have a significant economic impact on a substantial number of small entities, because the action will not affect a significant number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). RBS made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

Executive Order 13132

It has been determined that, under Executive Order 13132, Federalism, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, imposes requirements on USDA in the development of regulatory policies that have tribal implications or preempt tribal law. USDA has determined that the proposed regulation does not have a substantial direct effect on one or more Indian tribes or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian Tribes. Thus, the proposed rule is not subject to the requirements of Executive Order 13175.

Discussion of the Proposed Rule

The cost of the B&I Guaranteed Loan Program has gone up in recent years. This is due to higher defaults and lower interest rates. In the meantime, there is still an interest in funding this program

in order to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities. To do that in a cost efficient manner for the taxpayer, RBS is proposing to implement an annual renewal fee. This will reduce the subsidy but will allow us to maintain the level of assistance that has been historically provided for this program at a level or even reduced cost to the taxpayers.

The proposed annual renewal fee is based on Small Business Administration (SBA) programs and is adopted for this program to provide additional funds to supplement the available funds appropriate to the program, thereby allowing the program to reach more potential applicants. Additionally, this type of fee is consistent with the recently authorized Renewable Energy Systems and Energy Efficiency Improvements Guaranteed Loan Program within RBS. The borrower pool for the B&I Guaranteed Loan is even more likely to be able to afford this type of fee than the other programs mentioned because they are not required to lack the ability to get credit elsewhere.

The SBA 7(a) Loan Guarantee Program and the B&I program are similar in that they both require an initial one-time fee; and 7(a) loans have an annual fee similar to the one being proposed for the B&I program. In fiscal year 1996, SBA made major changes in its 7(a) program by lowering the maximum percentage of the loan which could be guaranteed and increasing both the initial fee and the annual fee, which made the program more expensive and less valuable for borrowers and lenders. We examined changes in loan volume and loss levels associated with these changes, and found no convincing evidence that the FY96 changes decreased demand for the 7(a) program.

Subsidy rates are established using historic loss data from the program and other assumptions. In recent years the subsidy rate has increased significantly, resulting in a reduction in the amount of loans that could be guaranteed with the same budget authority. In the absence of additional budgetary authority, the proposed annual fee is necessary to cover expected losses from the program. The effect of the fee on the loan demand and program activity over the long term will depend on the size of the fee and other factors not related to the fee, including interest rates and general economic growth. This proposed change is prudent and cost efficient and will allow us to maintain the level of assistance going to rural America at a reasonable cost to the taxpayer.

List of Subjects in 7 CFR Part 4279

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

Therefore, chapter XLII, title 7, Code of Federal Regulations, is proposed to be amended as follows:

PART 4279—GUARANTEED LOANMAKING

1. The authority citation for part 4279 is revised to read as follows:

Authority: 5 U.S.C 301, 7 U.S.C 1989.

Subpart B—Business and Industry Loans

2. Section 4279.107 is revised to read as follows:

§ 4279.107 Guarantee fee.

(a) For all new loans there are two types of non-refundable guarantee fees to be paid by the borrower to the lender and forwarded to the Agency. The fees may be forwarded to the Agency by a check payable to USDA/Rural Development, using Agency Form ''Annual Renewal Fee Transmittal'' or an USDA-approved electronic funds transfer system. The fee rate will be published annually by a notice in the **Federal Register**.

(1) The initial fee is paid at the time the Loan Note Guarantee is issued. The fee may be included as an eligible loan purpose in the guaranteed loan. The fee will be the rate (a specified percentage) multiplied by the principal loan amount, multiplied by the percent of guarantee.

(2) The annual renewal fee is paid once a year and is required to maintain the enforceability of the guarantee as to the lender.

(i) The annual renewal fee is the rate established by Rural Development in the annual notice in the **Federal Register**, multiplied by the outstanding principal loan amount, as of December 31 of each year. The rate of the fee is the rate in effect at the time of original issuance of the Conditional Commitment for the loan and will remain in effect for the life of the loan.

(ii) Annual renewal fees are due on March 1. Payments not received by April 1 are delinquent and will result in cancellation of the guarantee to the lender. Holders' rights will continue in effect as specified in the Loan Note Guarantee. For loans where the Loan Note Guarantee is issued between October 1 and December 31, the first annual guarantee fee payment is due March 1 of the second year following the date the Loan Note Guarantee was issued.

(b) Subject to specified annual limits set by the Agency, the initial guarantee fee may be reduced to 1 percent if the borrower's business supports value-added agriculture and results in farmers benefiting financially, or

(1) Is a high impact business development investment in accordance with § 4279.155(b)(5), and

(2) Is located in a rural community that is:

(i) Experiencing long-term population decline and job deterioration, or

(ii) Has remained persistently poor over the last 60 years, or

(iii) Experiencing trauma as a result of natural disaster, or

(iv) That is experiencing fundamental structural changes in its economic base.

Dated: February 16, 2005.

Gilbert Gonzalez,

Acting Under Secretary, Rural Development.

[FR Doc. 05–3775 Filed 2–25–05; 8:45 am]

BILLING CODE 3410–XY–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH63

List of Approved Spent Fuel Storage Casks: NUHOMS®–24PT4 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear, Inc., Standardized Advanced NUHOMS® System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 1 to Certificate of Compliance Number (CoC No.) 1029. Amendment No. 1 would add another Dry Shielded Canister, designated NUHOMS®–24PT4, to the authorized contents of the Standardized Advanced NUHOMS® System. Also, the NRC staff is proposing that changes be made to the rule to correct a typographical error that incorrectly states the expiration date of the CoC.

DATES: Comments on the proposed rule must be received on or before March 30, 2005.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH63) in the subject line of your comments. Comments on rulemakings submitted in writing or in

electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* An electronic copy of the proposed CoC and preliminary safety evaluation report can be found under ADAMS Accession No. ML043650049.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail, *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 1 to CoC No. 1029 and does not include other aspects of the Standardized Advanced NUHOMS® System design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on May 16, 2005. However, if the NRC receives significant adverse comments by March 30, 2005, then the NRC will publish a document that withdraws the direct final rule and will subsequently address the comments received, in a final rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or Technical Specifications.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

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. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1029 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1029.
Initial Certificate Effective Date: February 5, 2003.
Amendment Number 1 Effective Date: May 16, 2005.
SAR Submitted by: Transnuclear, Inc.
SAR Title: Final Safety Analysis Report for the Standardized Advanced

NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1029.

Certificate Expiration Date: February 5, 2023.

Model Number: Standardized Advanced NUHOMS®–24PT1, NUHOMS®–24PT4.

Dated at Rockville, Maryland, this 14th day of February, 2005.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 05–3737 Filed 2–25–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH64

List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Holtec International HI-STORM 100 cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 2 to Certificate of Compliance Number (CoC No.) 1014. Amendment No. 2 would modify the present cask system design to include changes to materials used in construction, changes to the types of fuel that can be loaded, changes to shielding and confinement methodologies and assumptions, revisions to various temperature limits, changes in allowable fuel enrichments, and other changes to reflect current NRC staff guidance and use of industry codes under a general license.

DATES: Comments on the proposed rule must be received on or before March 30, 2005.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH64) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking website at *http://ruleforum.llnl.gov*. Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML043640359.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail, *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 2 to CoC No. 1014 and does not include other aspects of the HI-STORM 100 cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on May 16, 2005. However, if the NRC receives significant adverse comments by March 30, 2005, then the NRC will publish a document that withdraws the direct final rule and will subsequently address the comments received in a final rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or Technical Specifications.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

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. 553; the NRC

is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: June 1, 2000.

Amendment Number 1 Effective Date: July 15, 2002.

Amendment Number 2 Effective Date: May 16, 2005.

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI-STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: June 1, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 14th day of February, 2005.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 05–3740 Filed 2–25–05; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 914, 915, 917, 925, 950, 951, 952, and 955

[No. 2005–04]

RIN 3069–AB28

Data Reporting Requirements for the Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to reorganize the way it imposes reporting requirements on the Federal Home Loan Banks (Banks) by issuing the requirements in a reporting manual to be titled Data Reporting Manual (DRM). When issued, the DRM would be an enforceable order issued pursuant to the Finance Board's investigatory powers. As part of this reorganization, the Finance Board is proposing to remove from its regulations certain reporting requirements and reissuing them as part of the DRM. The Finance Board also is proposing to add a new part 914, which would address a Bank's obligation with respect to reporting requirements and make its books and records available to the Finance Board. Lastly, the Finance Board is proposing to add a new section to part 917, which would impose on each Bank's board of directors the obligation to establish policies and procedures with respect to regulatory reporting.

DATES: The Finance Board will accept written comments on the proposed rule on or before April 29, 2005.

Comments: Submit comments by any of the following methods:

E-mail: comments@fhfb.gov.

Fax: (202) 408–2580.

Mail/Hand Delivery: Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, Attention: Public Comments.

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the Finance Board at *comments@fhfb.gov* to ensure timely receipt by the agency.

Include the following information in the subject line of your submission: Federal Housing Finance Board. Proposed Rule: Data Reporting Requirements for the Federal Home Loan Banks. RIN Number 3069–AB28. Docket Number 2005–04.

We will post all public comments we receive on this rule without change, including any personal information you provide, such as your name and address, on the Finance Board Web site at *http://www.fhfb.gov/pressroom/pressroom_regs.htm.*

FOR FURTHER INFORMATION CONTACT: Thomas Hearn, Senior Attorney Advisor, Office of General Counsel, by electronic mail at *hearnt@fhfb.gov* or by telephone at (202) 408–2976; Scott L. Smith, Associate Director, Office of Supervision, by electronic mail at *smiths@fhfb.gov* or by telephone at (202) 408–2991; or Joseph A. McKenzie, Deputy Chief Economist, Office of Supervision, by electronic mail at *mckenziej@fhfb.gov* or by telephone at (202) 408–2845. You can send regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. The Federal Home Loan Bank System (Bank System)

The Bank System consists of 12 Banks and the Office of Finance (OF). The Banks are instrumentalities of the United States organized under the authority of the Federal Home Loan Bank Act (Bank Act). 12 U.S.C. 1421 *et seq*. The Banks also are ''government sponsored enterprises'' (GSEs), *i.e.,* Federally chartered but privately owned institutions created by Congress to support the financing of housing and community lending by their members. *See* 12 U.S.C. 1422a(a)(3)(B)(ii), 1430(i), and 1430(j). By virtue of their GSE status, the Banks are able to borrow in the capital markets at favorable rates. The Banks are then able to pass along that funding advantage to their members—and ultimately to consumers—by providing advances (secured loans) and other financial services to their members (principally, depository institutions) at rates that the members generally could not obtain elsewhere.

The Banks, along with the OF, operate under the supervision of the Finance Board. The primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner. Consistent with that duty, the Finance Board is required to supervise the Banks, ensure that they carry out

their housing finance mission, and ensure that they remain adequately capitalized and able to raise funds in the capital markets. 12 U.S.C. 1422a(a)(3)(A) and (B).

B. Finance Board Investigatory Powers

Congress has delegated to the Finance Board broad authority to fulfill its statutory mandates. Section 2B of the Bank Act states that the Finance Board has the power ''[t]o supervise the Federal Home Loan Banks and to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of this chapter [*i.e.,* Chapter 11 of Title 12, *codified* at 12 U.S.C. 1421–1449].'' 12 U.S.C. 1422b(a)(1). Section 20 of the Bank Act provides the Finance Board with the authority to require, ''from time to time, [but] at least annually,'' examinations and reports of condition of all the Banks in such form as the Finance Board prescribes. 12 U.S.C. 1440. Section 20 also vests in Finance Board examiners ''the same powers and privileges as are vested in'' examiners under the National Bank Act and the Federal Reserve Act. These Acts, in turn, provide examiners with sweeping powers, including the power to ''make a thorough examination of all the affairs of the bank.'' 12 U.S.C. 481. Thus, the Finance Board and its examiners have been vested with broad access to the books, records, and information of the Banks in order to fulfill the statutory mission of the Finance Board.

The United States Supreme Court has recognized the importance of this broad access to the ability of financial institution regulators to perform their supervisory functions. In *United States* v. *Philadelphia National Bank,* 374 U.S. 321 (1963), the Court stated:

> *[P]erhaps the most effective weapon of federal regulation of banking is the broad visitorial power of federal bank examiners. Whenever the agencies deem it necessary, they may order 'a thorough examination of all the affairs of the bank' * * * [citation omitted]. Such examinations are frequent and intensive. In addition, the banks are required to furnish detailed periodic reports of their operations to the supervisory agencies [citation omitted].* In this way the agencies maintain virtually a day-to-day surveillance of the American banking system. And should they discover unsound banking practices, they are equipped with a formidable array of sanctions. * * * As a result of this panoply of sanctions, recommendations by the agencies concerning banking practices tend to be followed by bankers without the necessity of formal compliance proceedings. 1 Davis, Administrative Law (1958), s. 4.04.

374 U.S. at 329 (emphasis added). An agency's authority to require informational reports stems from its investigatory power, which generally is distinct from, and in addition to, its authority exercised under the Administrative Procedures Act (APA) to engage in rulemaking or to issue adjudicative orders. A principal legislative sponsor of the APA described investigative activity during floor debate in the House of Representatives as follows:

> This third type of administrative compulsory power may be incidental to either legislative or judicial powers of administrative agencies, or it may be entirely independent of either. I refer to the compulsory action of administrative agencies when they issue subpoenas, require records or reports, or undertake mandatory inspections. These functions are investigatory in nature.

92 Cong. Rec. 5648 (1948), *cited in Appeal of FTC Line of Business Report Litigation,* 595 F.2d 685, 695–696 (D.C. Cir.) (*per curiam*), *cert. denied sub nom. Milliken & Co.* v. *FTC,* 439 U.S. 958 (1978).

An agency's exercise of its investigatory power will be upheld if the request for information is ''reasonably relevant.'' *FTC* v. *Invention Submission Corp.,* 965 F.2d 1086, 1089 (D.C. Cir. 1992). Courts have said that an agency's own appraisal of relevancy must be accepted as long as it is not ''obviously wrong.'' 965 F.2d at 1089. Furthermore, an agency may delegate its investigatory powers to staff. *See Fleming* v. *Mohawk Wrecking & Lumber Co.,* 331 U.S. 111 (1947).

The Bank Act makes clear that Congress intended the Finance Board to operate with broad investigatory powers to ensure that the Banks operate in a safe and sound manner and carry out their housing finance mission. *See* 12 U.S.C. 1422a, 1422b(a)(1), and 1440. To date, Finance Board staff has exercised the agency's investigatory power to require the Banks to submit call reports as well as instrument level data used by the Banks to run their market risk models. The Finance Board also has delegated to the OF the authority to require the Banks to submit information needed to prepare the combined financial statements of the Bank System. 12 CFR 989.3.

The Finance Board also may impose reporting requirements using its rulemaking authority. 12 U.S.C. 1422b(a)(1). The Finance Board has exercised its rulemaking authority to require reports related to a Bank's condition or activities, including: Bank director eligibility (12 CFR 915.7 and 915.12(a)); a Bank's performance in achieving certain goals described in the Bank's strategic plan (12 CFR 917.5(c)); capital member stock purchases (12 CFR 925.20); stock advances and commitments outstanding to each member (12 CFR 950.4(e)); Affordable Housing Program (AHP) (12 CFR 951.3(d)); Advisory Council annual analysis (12 CFR 951.4(f)(3)); Affordable Housing Reserve Fund annual statement (12 CFR 951.15(b)); Community Investment and Cash Advance (CICA) reporting (12 CFR 952.6); and acquired member assets (AMA) (12 CFR 955.4).

C. Reorganization of Reporting Requirements

To make it easier for interested parties to locate Bank reporting requirements and to simplify the process for modifying these requirements as circumstances warrant, the Finance Board intends to issue many of the requirements in a manual to be titled Data Reporting Manual (DRM). For certain reporting requirements currently contained in Finance Board regulations, the Finance Board proposes to relocate them to the DRM. The DRM would include instructions addressing data definitions as well as requirements concerning data elements, reporting format, reporting method (*e.g.,* electronic or paper), record retention, timeliness, reporting frequency, and certification. Going forward, changes to the reporting requirements will be made by amendments to the DRM.[1]

The DRM would represent an enforceable order issued pursuant to the Finance Board's investigatory powers. The reorganization of reporting requirements, and the proposed amendments to Finance Board regulations, will allow the Finance Board to address problems it has experienced with the timeliness, accuracy, and completeness of data reporting by the Banks. The Bank Act gives the Finance Board enforcement authority to redress, among other things, violations of the Bank Act, or any law, order, rule, or regulation. 12 U.S.C. 1422b(a)(5). After this rulemaking is issued in final form and the DRM is issued, the Finance Board will deem

[1] The delegation of authority to the OF in § 989.3 to exercise the Finance Board's investigatory powers will remain. Also, the disclosure reporting to the Securities and Exchange Commission required by 12 CFR 998.2(b) is unaffected by the reorganization discussed in this notice. Lastly, the reporting requirements concerning capital stock for voting purposes (12 CFR 915.4), results of director elections (12 CFR 915.8), and capital requirements (12 CFR 932.7) will not be affected by this rulemaking. These three requirements do not present the same issues as the sections the Finance Board proposes to amend and are most useful to the reader in their current location and form.

data reporting problems as violations of an investigatory order and, where applicable, violations of the regulations being proposed today.

Reporting requirements imposed pursuant to the Finance Board's investigatory powers are not subject to the notice and comment provisions of the Administrative Procedures Act. *See Appeal of FTC Line of Business Report Litigation*, 595 F.2d at 695–696. Nevertheless, the Finance Board recognizes that changes to reporting requirements can impose regulatory burden. The Finance Board also recognizes the utility of input from the Banks and the public in determining what information is appropriate to collect. Thus, where practicable, Finance Board staff will consult with the Banks and the public with respect to significant changes in the DRM before changes are made. Moreover, information collections that are subject to the Paperwork Reduction Act, such as those related to the AMA rule, will continue to be published in the **Federal Register** for comment in accordance with that Act. The Finance Board welcomes written comments on all aspects of the proposed rule.

II. Analysis of Proposed Rule

A. Part 914

The Finance Board is proposing to add a new part 914 to its regulations that would address a Bank's obligation with respect to reporting requirements and make its books and records available to the Finance Board. Section 914.1 would contain a number of provisions directed at how a Bank reports data to the Finance Board and makes its books and records available to Finance Board examiners. Section 914.1(a) would define the term *regulatory report* to mean any report of raw or summary data required to evaluate the safe and sound condition and operations of a Bank or to determine compliance with any: (1) Provision in the Bank Act, or any law, order, rule, or regulation; (2) condition imposed in writing by the Finance Board in connection with the granting of any application or other request by a Bank; or (3) written agreement entered into by the Finance Board and a Bank. Section 914.1(b) would provide examples of a *regulatory report*, including the call report, reports of information to the OF pursuant to § 989.3, and reports of instrument-level data submitted for risk assessment purposes. The term *regulatory report* also includes reports related to a Bank's housing mission achievement, such as reports related to AMA, AHP, Community Investment Program (CIP), and other CICA programs.

Section 914.2 would require each Bank to file regulatory reports with the Finance Board pursuant to the Finance Board's forms and instructions for the reports. These reports must be filed no later than the deadline established by the Finance Board. In some cases, this will involve reporting at regular intervals; in other cases, it will involve responding to Finance Board requests for information that are in addition to the information submitted at regular intervals.

Section 914.3 would require each Bank to make its books and records available upon request by the Finance Board within a reasonable period at a location acceptable to the Finance Board. Section 914.3 establishes presumptions about what the Finance Board considers a reasonable period of time to respond to requests that occur during and outside of an ongoing examination as well as those that occur at other times.

B. Part 917

Part 917 of the Finance Board's current regulations sets forth various powers and responsibilities of Bank boards of directors. In addition to setting out the basic fiduciary duties of care and loyalty for each director, part 917 requires each board, as a group, to take specific actions with respect to functions such as risk management, strategic planning, internal controls, budget, and oversight of the audit function.

The Finance Board is proposing to revise part 917 to require each Bank's board of directors to have in place at all times policies and procedures to ensure that the Bank complies with Finance Board reporting requirements. Given the Finance Board's need for Bank information that is timely, accurate, and complete, it is essential that responsibility for maintaining that information and reporting it to the Finance Board rest at the highest level of each Bank's corporate structure.[2]

C. Parts 915, 917, 925, 950, 951, 952, and 955

The Finance Board is proposing to revise various reporting requirements set forth in parts 915, 917, 925, 950, 951, 952, and 955 to refer the reader to forms and instructions issued pursuant to the DRM when this rulemaking is issued in final form.

III. Paperwork Reduction Act

The proposed rule would have no substantive effect on any collection of information covered by the Paperwork Reduction Act of 1995 (PRA). *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted this proposal to the Office of Management and Budget (OMB) for review. Data requests that will be set out in the DRM or other investigatory orders that are ''information collections'' as that term is used in the PRA will be submitted to OMB for review and published in the **Federal Register** in accordance with the PRA's requirements.

IV. Regulatory Flexibility Act

The proposed rule would apply only to the Banks, which do not come within the meaning of ''small entities'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 900

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 914

Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 915

Banks, Banking, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

12 CFR Part 917

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 925

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 950

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

[2] In recent proposed changes to its corporate governance regulation, the Office of Federal Housing Enterprise Oversight proposed including a similar change to the duties of the boards of directors for Fannie Mae and Freddie Mac. *See* 12 CFR 1710.15(b)(7) (proposed). 69 FR 19126, 19131 (April 12, 2004).

12 CFR Part 951

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 952

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 955

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Finance Board proposes to amend 12 CFR, chapter IX, as follows:

PART 900—GENERAL DEFINITIONS APPLYING TO ALL FINANCE BOARD REGULATIONS

1. The authority citation for part 900 continues to read as follows:

Authority: 12 U.S.C. 1422b(a).

2. Amend § 900.2 by adding in alphabetical order, a defined term to read as follows:

§ 900.2 Terms relating to Bank operations, mission and supervision.

* * * * *

Data Reporting Manual or *DRM* means a manual issued by the Finance Board and amended from time to time containing reporting requirements for the Banks.

* * * * *

3. Add part 914 to title 12, chapter IX, to read as follows:

PART 914—DATA AVAILABILITY AND REPORTING

Sec.
914.1 Definition.
914.2 Filing regulatory reports.
914.3 Access to books and records.

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), and 1440.

§ 914.1 Definition.

(a) *Definition. Regulatory report* means any report of raw or summary data needed to evaluate the safe and sound condition and operations of a Bank or to determine compliance with any:

(1) Provision in the Act or other law, order, rule, or regulation;

(2) Condition imposed in writing by the Finance Board in connection with the granting of any application or other request by a Bank; or

(3) Written agreement entered into between the Finance Board and a Bank.

(b) *Examples.* Regulatory reports include:

(1) Call reports, reports of information to the OF pursuant to § 989.3, and reports of instrument-level risk modeling data;

(2) Reports related to a Bank's housing mission achievement, such as reports related to AMA, AHP, CIP, and other CICA programs; and

(3) Reports submitted in response to requests to one or more Banks for information on a nonrecurring basis.

§ 914.2 Filing regulatory reports.

Each Bank shall file regulatory reports with the Finance Board in accordance with the forms, instructions, and schedules issued by the Finance Board from time to time. Regulatory reports shall be filed according to the schedule established by the Finance Board. If no regularly scheduled reporting dates are established, regulatory reports shall be filed as requested by the Finance Board.

§ 914.3 Access to books and records.

Each Bank shall make its books and records readily available for inspection and other supervisory purposes within a reasonable period upon request by the Finance Board, at a location acceptable to the Finance Board. For requests for documents made during the course of an onsite examination and pursuant to the examination's scope, a reasonable period is presumed to be one business day. For requests for documents made outside of an onsite examination, a reasonable period is presumed to be three business days.

PART 915—BANK DIRECTOR ELIGIBILITY, APPOINTMENT, AND ELECTIONS

4. The authority citation for part 915 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, and 1432.

5. Revise § 915.7(a) to read as follows:

§ 915.7 Eligibility requirements for elective directors.

(a) *Eligibility verification.* Based on the information provided on the director eligibility certification form prescribed in the Data Reporting Manual issued by the Finance Board, as amended from time to time, a Bank shall verify that each nominee meets all of the eligibility requirements for elective directors set forth in the Act and this part before placing that nominee on the ballot prepared by the Bank under § 915.8(a). A Bank shall not declare elected a nominee that it has reason to know is ineligible to serve, nor shall it seat a director-elect that it has reason to know is ineligible to serve.

* * * * *

6. Revise § 915.12(a) to read as follows:

§ 915.12 Reporting requirements for Bank directors.

(a) *Annual reporting.* On or before March 1 of each year, each director shall submit to his or her Bank the appropriate executed director eligibility certification, as prescribed in the Data Reporting Manual issued by the Finance Board, as amended from time to time. The Bank shall promptly forward to the Finance Board a copy of the certification filed by each appointive director.

* * * * *

PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

7. The authority citation for part 917 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1427, 1432(a), 1436(a), and 1440.

8. Revise § 917.5(c) to read as follows:

§ 917.5 Strategic business plan.

* * * * *

(c) *Report to the Finance Board.* Each Bank shall submit to the Finance Board a report analyzing and describing the Bank's performance in achieving the goals described in paragraph (a)(3) of this section in accordance with the instructions provided in the Data Reporting Manual issued by the Finance Board, as amended from time to time.

9. Add § 917.11 to read as follows:

§ 917.11 Regulatory reporting.

Each Bank's board of directors shall have in place at all times policies and procedures to ensure that the Bank complies with data reporting requirements set forth in Finance Board regulations and orders.

PART 925—MEMBERS OF THE BANKS

10. The authority citation for part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, and 1442.

11. Revise § 925.20(e) to read as follows:

§ 925.20 Stock purchase.

* * * * *

(e) *Reports.* The Bank shall make quarterly reports to the Finance Board setting forth purchases by institutions approved for membership of their minimum stock requirement pursuant to this section in accordance with the instructions provided in the Data Reporting Manual issued by the Finance Board, as amended from time to time.

PART 950—ADVANCES

12. The authority citation for part 950 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, and 1431.

13. Revise § 950.4(e) to read as follows:

§ 950.4 Limitations on access to advances.

* * * * *

(e) *Reporting.* (1) Each Bank shall provide the Finance Board with a report of the advances and commitments outstanding to each of its members in accordance with the instructions provided in the Data Reporting Manual issued by the Finance Board, as amended from time to time.

(2) Each Bank shall, upon written request from a member's appropriate federal banking agency or insurer, provide to such entity information on advances and commitments outstanding to the member.

* * * * *

PART 951—AFFORDABLE HOUSING PROGRAM

14. The authority citation for part 951 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

15. Revise § 951.3(d) to read as follows:

§ 951.3 Operation of Program and adoption of AHP implementation plan.

* * * * *

(d) *Reporting.* Each Bank shall provide such reports and documentation concerning its Program in accordance with the instructions provided in the Data Reporting Manual issued by the Finance Board, as amended from time to time.

16. Revise § 951.4(f)(3) to read as follows:

§ 951.4 Advisory Councils.

* * * * *

(f) * * *

(3) *Annual report to the Finance Board.* Each Advisory Council shall submit to the Finance Board, in accordance with the instructions provided in the Data Reporting Manual issued by the Finance Board, as amended from time to time, its analysis of the low- and moderately low-income housing and community lending activity of the Bank by which it is appointed.

* * * * *

17. Revise § 951.15(b) to read as follows:

§ 951.15 Affordable Housing Reserve Fund.

* * * * *

(b) *Annual statement.* By January 15 of each year, each Bank shall provide to the Finance Board, in accordance with the instructions provided in the Data Reporting Manual issued by the Finance Board, as amended from time to time, a statement indicating the amount of unused and uncommitted funds from the previous year, if any, which will be deposited in the Affordable Housing Reserve Fund.

* * * * *

PART 952—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS

18. The authority citation for part 952 continues to read as follows:

Authority: 12 U.S.C. 1422b(a)(1) and 1430.

19. Revise § 952.6(a) to read as follows:

§ 952.6 Reporting.

(a) Each Bank annually shall provide to the Finance Board, in accordance with the instructions provided in the Data Reporting Manual issued by the Finance Board, as amended from time to time, a Targeted Community Lending Plan.

* * * * *

PART 955—ACQUIRED MEMBER ASSETS

20. The authority citation for part 955 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1430, 1430b, and 1431.

21. Revise § 955.4 to read as follows:

§ 955.4 Reporting requirement for acquired member assets.

Each Bank shall report information related to AMA in accordance with the instructions provided in the Data Reporting Manual issued by the Finance Board, as amended from time to time.

Appendix A [Removed]

22. Remove Appendix A to part 955.

Appendix B [Removed]

23. Remove Appendix B to part 955.

Dated: February 9, 2005.

By the Board of Directors of the Federal Housing Finance Board.

Ronald A. Rosenfeld,

Chairman.

[FR Doc. 05–3717 Filed 2–25–05; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20452; Directorate Identifier 2004–NM–206–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A330 and A340–200 and –300 series airplanes. This proposed AD would require repetitive detailed inspections for discrepancies of the inboard and outboard actuator fittings of the aileron servo-controls, corrective actions if necessary, and eventual replacement of all the attachment bolts of the aileron servo-controls. This proposed AD is prompted by several cases of bushing migration on the inboard and outboard actuator fittings of the aileron servo-controls; in one case the bushing had migrated completely out of the actuator fitting and the fitting was cracked. We are proposing this AD to prevent rupture of the inboard and outboard actuator fittings of the aileron servo controls, which could result in airframe vibration and consequent reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by March 30, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed 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.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 1

Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20452; the directorate identifier for this docket is 2004–NM–206–AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2005–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20452; Directorate Identifier 2004–NM–206–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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 proposed AD. Using the search function of our docket website, 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can 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 that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330, A340–200, and A340–300 series airplanes. The DGAC advises of several cases of bushing migration on the inboard and outboard actuator fittings of the aileron servo-controls; in one case the bushing had migrated completely out of the actuator fitting and the fitting was cracked. Investigation revealed that, in cases of bushing migration, the cracking is due to fatigue initiated by very high unsymmetrical loads. It has been determined that airplanes affected are those equipped with aileron servo-controls with ECP–8 or ECP–9 standard installed in service. These aileron servo-controls are equipped with new attachment bolts with a reduced diameter and small head. This condition, if not corrected, could result in rupture of the inboard and outboard actuator fittings of the aileron servo controls, which could result in airframe vibration and consequent reduced structural integrity of the airplane.

Relevant Service Information

Airbus has issued the service bulletins listed in the table below, which describe procedures for modifying the aileron servo-controls.

SERVICE BULLETINS FOR MODIFYING THE AILERON SERVO-CONTROLS

Airbus model	Airbus service bulletin	Procedures described
A330 series	A330–57–3076, Revision 01, dated June 1, 2004.	Modifying the attachment bolt of the aileron servo-controls.
A340–200 and –300 series	A340–57–4084, Revision 01, dated June 1, 2004.	Modifying the attachment bolt of the aileron servo-controls.

Airbus has also issued Service Bulletins A330–57–3075 and A340–57–4083, both Revision 02, both including Appendix 01, both dated May 28, 2004. The service bulletins describe procedures for repetitive detailed visual inspections for discrepancies of the inboard and outboard actuator fitting of the aileron servo-controls, any related investigative/corrective actions; and eventual replacement of all the attachment bolts of the aileron servo-controls with large-head bolts. The related investigative/corrective actions are included in Figure 2, Sheets 1 through 5, of the Accomplishment Instructions of the applicable service bulletin. The investigative/corrective actions include, among other things:

- Accomplishing a detailed visual inspection for bushing migration of the rod end fittings of the inboard and outboard aileron servo-controls.
- If there is no bushing migration: Applying a paint mark on the fitting and bushing, or accomplishing follow-on detailed visual inspections to monitor bushing rotation or migration.
- If the bushing is missing (full migration): Accomplishing a special detailed inspection for cracking of the aileron fitting.
- If any discrepancies are found (bushing rotation or partial migration, missing bushing, cracks): Replacing

with a new bushing or repairing the bushing.

• If the bushing migration is outside the limits specified in the service bulletins: Contacting Airbus for repair procedures.

The service bulletins also recommend submitting an inspection report to Airbus with the results of the detailed visual inspections.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The DGAC mandated the service information and issued French airworthiness directives F–2004–067 and F–2004–068, both dated May 26, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Among Proposed AD, French Airworthiness Directives, and Service Information.''

Differences Among Proposed AD, French Airworthiness Directives, and Service Information

The French airworthiness directives and Airbus Service Bulletins A330–57–3075 and A340–57–4083 specify that operators may contact the manufacturer for disposition of certain repair conditions, but this proposed AD would require operators to repair those conditions per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Airbus Service Bulletins A330–57–3075 and A340–57–4083 recommend reporting inspection results to the airplane manufacturer; however, this proposed AD would not contain that requirement.

French airworthiness directive F–2004–068 requires that all Model A340 series airplanes be retrofitted with the ECP–9 standard aileron servo-controls before December 31, 2004. Since issuance of that airworthiness directive, the manufacturer has verified that all Model A340 series airplanes have been retrofitted with the ECP–9 standard, as recommended in Airbus Service Bulletin A340–27–4062. Therefore, this proposed AD differs from French airworthiness directive F–2004–068 by excluding the requirements to modify aileron servo controls with ECP–7 and ECP–8 standards for those airplanes. The manufacturer has also verified that all Model A330 series airplanes had the ECP–9 standard installed by either Airbus Modification 45512 or by retrofit, as recommended in Airbus Service Bulletin A330–27–3054. Therefore, this proposed AD excludes those requirements for Model A330 and A340 series airplanes that were equipped with ECP–7 and ECP–8 standard aileron servo-controls because those airplanes have had the ECP–9 standard installed. For these reasons, accomplishing the modifications of the aileron servo-controls to ECP–9 standard by accomplishing the concurrent service bulletins specified in Airbus Service Bulletins A330–57–3076, Revision 01, and A330–57–4084, Revision 01, is not required by this proposed AD.

The differences cited above have been coordinated with the DGAC.

Clarification of Inspection Terminology

The Airbus service bulletins specify to do a ''detailed visual inspection'' for discrepancies of the inboard and outboard actuator fitting of the aileron servo-controls. This proposed AD instead requires a ''detailed inspection,'' which is defined in Note 2 of this AD.

Costs of Compliance

This proposed AD would affect about 20 airplanes of U.S. registry.

The proposed inspection would take about 16 work hours per airplane (2 hours per fitting), at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed inspection is $20,800, or $1,040 per airplane, per inspection cycle.

The proposed replacement would take about 12 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would be free of charge. Based on these figures, the estimated cost of the proposed replacement is $15,600, or $780 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD will not have federalism implications under Executive Order 13132. This proposed 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 proposed regulation:

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

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

3. 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 regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 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):

Airbus: Docket No. FAA–2005–20452; Directorate Identifier 2004–NM–206–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by March 30, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330 and A340–200 and –300 series airplanes, certificated in any category, except those on which Airbus Modification 50660 has been accomplished.

Unsafe Condition

(d) This AD was prompted by several cases of bushing migration on the inboard and outboard actuator fittings of the aileron servo-controls; in one case the bushing had migrated completely out of the actuator fitting and the fitting was cracked. We are issuing this AD to prevent rupture of the inboard and outboard actuator fittings of the aileron servo controls, which could result in airframe vibration and consequent reduced structural integrity of the airplane.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD.

TABLE 1.—AIRBUS SERVICE BULLETINS

For airbus model—	Use airbus service bulletin—	And, for actions done before the effective date of this AD, credit is given for prior accomplishment of revision—
A330 series airplanes	A330–27–3075, Revision 02, dated May 28, 2004	None.
A330 series airplanes	A330–57–3076, Revision 01, dated June 1, 2004	Original dated March 14, 2003.
A340–200 and –300 series airplanes	A340–27–4083, Revision 02, dated May 28, 2004	None.
A340–200 and –300 series airplanes	A340–57–4084,Revision 01, dated June 1, 2004	Original, dated March 14, 2003.

(g) Airbus Service Bulletins A330–57–3075 and A340–57–4083 recommend reporting inspection results to the airplane manufacturer; however, this AD does not contain that requirement.

Repetitive Inspections/Corrective Actions

(h) Within 600 flight hours after the effective date of this AD, accomplish a detailed inspection for discrepancies of the inboard and outboard actuator fitting of the aileron servo-controls, in accordance with the service bulletin. Accomplish any related corrective actions before further flight in accordance with the service bulletin, except as required by paragraph (i) of this AD. Repeat the inspection thereafter at intervals not to exceed 600 flight hours.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(i) If any discrepancy is found during any inspection required by paragraph (h) of this AD, and the service bulletin specifies to contact Airbus for an appropriate action. Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the DGAC (or its delegated agent). Where differences in the compliance times or corrective actions exist between the service bulletin and this AD, the AD prevails.

Replacement

(j) Replace all the small-head attachment bolts of the aileron servo-controls with large-head attachment bolts at the earlier of the times specified in paragraphs (j)(1) and (j)(2) of this AD, in accordance with the service bulletin.

(1) Before further flight if no discrepancies are found after accomplishing three consecutive inspections, as required by paragraph (h) of this AD.

(2) Within 18 months after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(l) French airworthiness directives F–2004–067 and F–2004–068, both dated May 26, 2004, also address the subject of this AD.

Issued in Renton, Washington, on February 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–3783 Filed 2–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 803

[Docket No. 2004N–0527]

Medical Devices; Medical Device Reporting; Companion to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or we) is proposing to amend its regulation governing reporting of deaths, serious injuries, and certain malfunctions related to medical devices. We are revising the regulation into plain language to make the regulation easier to understand, and we are making technical corrections. Elsewhere in this issue of the **Federal Register**, we are publishing a direct final rule that is identical to this proposed rule. This proposed rule will provide a procedural framework to finalize the rule in the event we receive any significant adverse comment and withdraw the direct final rule.

DATES: Submit written or electronic comments by May 16, 2005.

ADDRESSES: You may submit comments, identified by Docket No. 2004N–0527, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2004N–0527 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Howard Press, Center for Devices and Radiological Health (HFZ–531), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2983.

SUPPLEMENTARY INFORMATION: This proposed rule is a companion to the direct final rule regarding adverse event reporting requirements for medical devices that is published in the final rules section of this issue of the **Federal Register**. The direct final rule and this companion proposed rule are identical. We are publishing the direct final rule because we believe the rule contains noncontroversial changes, and we anticipate that it will receive no significant adverse comment. A detailed discussion of the rule is set forth in the preamble of the direct final rule. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, we will publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect on July 13, 2005. You can find additional information about FDA's direct final rulemaking procedures in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

If we receive any significant adverse comment regarding the direct final rule, we will withdraw the direct final rule within 30 days after the comment period ends and proceed to respond to all of the comments under this companion proposed rule using usual notice-and-comment rulemaking procedures. The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule.

A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending an additional change to the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, we may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

I. What Is the Background of This Rule?

FDA's regulations governing device adverse event reporting, codified at part 803 (21 CFR part 803), implement section 519 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i). That statutory provision has undergone several changes since its enactment as part of the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295). As a result, FDA's regulations at part 803 have also undergone multiple revisions.

In the **Federal Register** of September 14, 1984 (49 FR 36326), FDA first issued final medical device reporting (MDR) regulations (part 803) for manufacturers and importers under the section 519 of the act, requiring reports of deaths, serious injuries, and certain malfunctions involving devices.

To address shortcomings in the 1976 amendments, and to better protect the public health by ensuring reporting of device-related adverse events, Congress enacted the Safe Medical Devices Act of 1990 (Public Law 101–629), which amended the statute to add requirements for medical device user facilities and distributors to report certain device-related adverse events. Reporting regulations for user facilities and for distributors became effective by operation of law on May 28, 1992, following the November 26, 1991 (56 FR 60024), publication of those requirements in a tentative final rule. This regulation required user facilities to report deaths to FDA and to manufacturers, and to report serious illnesses and injuries to manufacturers, or to FDA if the manufacturer was unknown. Distributors were required to report deaths and serious illnesses or injuries to FDA and to manufacturers, and to report certain malfunctions to manufacturers. Existing reporting requirements for manufacturer and importers under the 1984 regulation remained in effect.

In the **Federal Register** of September 1, 1993 (58 FR 46514), we published a notice confirming that the distributor reporting regulation had become final and was codified in part 804 (21 CFR part 804). On June 16, 1992, the President signed into law the Medical Device Amendments of 1992 (the 1992 amendments) (Public Law 102–112) further amending certain provisions of section 519 of the act relating to reporting of adverse device events. Among other things, the 1992 amendments amended section 519 of the act to modify the requirements for manufacturer and importer reporting. Consequently, under the regulation issued September 1, 1993, importers were required to report as manufacturers if they were engaged in manufacturing activities or to report as distributors if they were engaged solely in distribution activities.

On November 21, 1997, the President signed the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115) into law. FDAMA made several changes regarding the reporting of adverse experiences related to devices. In the **Federal Register** of May 12, 1998, FDA published a direct final rule (63 FR 26069) and a companion proposed rule (63 FR 26129) to implement new amendments to the MDR provisions. We

received significant adverse comments on the 1998 direct final rule and the 1998 companion proposed rule; therefore, we withdrew the 1998 direct final rule and issued a revised final rule on January 26, 2000 (65 FR 4112). Under the act as amended by FDAMA, distributors are no longer required to report adverse events but are required to keep records. Importers are still required to report adverse events related to medical devices. Because of FDAMA's changes, we revised part 803 and rescinded part 804.

In summary, the present version of part 803, as it is codified in the Code of Federal Regulations, imposes the following general reporting and recordkeeping requirements:

Device user facilities must report deaths and serious injuries that a device has or may have caused or contributed to, establish and maintain adverse event files, and submit annual reports. Manufacturers and importers must report deaths and serious injuries that a device has or may have caused or contributed to, must report certain device malfunctions, and must establish and maintain adverse event files. Manufacturers also must submit specified followup and baseline reports. Distributors must maintain records of incidents but are not required to report these incidents.

II. What Does This Proposed Rule Do?

This proposed rule does not change the substantive regulatory requirements described previously in this document. FDA is revising part 803 solely to ensure that despite the many revisions that have been made, part 803 is clear and easy to understand. To achieve this goal, we have rewritten part 803 into plain language, in accordance with the Presidential Memorandum on Plain Language, issued on June 1, 1998. That memorandum directed the agency to ensure that all of its documents are clear and easy to read. Part of achieving that goal involves having readers of a regulation feel that it is speaking directly to them. Therefore, we have attempted to incorporate plain language in this rule as much as possible. We have tried to make each section of the proposed rule easy to understand by using clear and simple language rather than jargon, by keeping sentences short, and by using active voice rather than passive voice whenever possible. We have also made changes to improve the consistency of the format and language used throughout parallel regulations governing user facilities, importers, and manufacturers that were added or amended at different times. We would like your comments on the following topics: (1) How effectively we have used plain language, (2) the organization and format of the proposed rule, and (3) whether these changes have made the document clear and easy to read. In addition, in this proposed rule, as in the direct final rule, we have made technical corrections to several provisions.

A detailed description of specific changes in the rule is contained in the preamble to the direct final rule, published elsewhere in this issue of the **Federal Register**.

We note that §§ 803.55(b)(9) and (b)(10) and 803.58 were stayed indefinitely, under notices published in the **Federal Registers** of July 31, 1996 (61 FR 39868 at 39869) and July 23, 1996 (61 FR 38346 at 38347). This proposed rule does not propose any changes to those provisions, which remain stayed indefinitely, but for the sake of completeness, we include as follows, the current text of those provisions.

III. What Is the Legal Authority for This Proposed Rule?

This proposed rule, like the existing medical device adverse event reporting regulations to which it makes nonsubstantive changes, is authorized by sections 502, 510, 519, 520, 701, and 704 of the act (21 U.S.C. 352, 360, 360i, 360j, 371, and 374).

IV. What Is the Environmental Impact of This Proposed Rule?

We have determined under 21 CFR 25.30(h) and (i) that this action does not have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. What Is the Economic Impact of This Proposed Rule?

We have examined the impacts of this proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). We believe that this proposed rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule will not change any existing requirements or impose any new requirements, we certify that this proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

VI. How Does the Paperwork Reduction Act of 1995 Apply to This Proposed Rule?

This rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the rule have been approved by OMB in accordance with the PRA under the regulations governing medical device reporting (part 803, OMB control number 0910–0437).

VII. What Are the Federalism Impacts of This Proposed Rule?

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

VIII. How Do You Submit Comments on This Proposed Rule?

Interested persons may submit to the Division of Dockets Management (see

ADDRESSES) written or electronic comments regarding this proposed rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 803 be amended as follows:

1. Part 803 is revised to read as follows:

PART 803—MEDICAL DEVICE REPORTING

Subpart A—General Provisions

Sec.
803.1 What does this part cover?
803.3 How does FDA define the terms used in this part?
803.9 What information from the reports do we disclose to the public?
803.10 Generally, what are the reporting requirements that apply to me?
803.11 What form should I use to submit reports of individual adverse events and where do I obtain these forms?
803.12 Where and how do I submit reports and additional information?
803.13 Do I need to submit reports in English?
803.14 How do I submit a report electronically?
803.15 How will I know if you require more information about my medical device report?
803.16 When I submit a report, does the information in my report constitute an admission that the device caused or contributed to the reportable event?
803.17 What are the requirements for developing, maintaining, and implementing written MDR procedures that apply to me?
803.18 What are the requirements for establishing and maintaining MDR files or records that apply to me?
803.19 Are there exemptions, variances, or alternative forms of adverse event reporting requirements?

Subpart B—Generally Applicable Requirements for Individual Adverse Event Reports

803.20 How do I complete and submit an individual adverse event report?
803.21 Where can I find the reporting codes for adverse events that I use with medical device reports?
803.22 What are the circumstances in which I am not required to file a report?

Subpart C—User Facility Reporting Requirements

803.30 If I am a user facility, what reporting requirements apply to me?
803.32 If I am a user facility, what information must I submit in my individual adverse event reports?
803.33 If I am a user facility, what must I include when I submit an annual report?

Subpart D—Importer Reporting Requirements

803.40 If I am an importer, what kinds of individual adverse event reports must I submit, when must I submit them, and to whom must I submit them?
803.42 If I am an importer, what information must I submit in my individual adverse event reports?

Subpart E—Manufacturer Reporting Requirements

803.50 If I am a manufacturer, what reporting requirements apply to me?
803.52 If I am a manufacturer, what information must I submit in my individual adverse event reports?
803.53 If I am a manufacturer, in which circumstances must I submit a 5-day report?
803.55 I am a manufacturer, in what circumstances must I submit a baseline report, and what are the requirements for such a report?
803.56 If I am a manufacturer, in what circumstances must I submit a supplemental or followup report and what are the requirements for such reports?
803.58 Foreign manufacturers.

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

Subpart A—General Provisions

§ 803.1 What does this part cover?

(a) This part establishes the requirements for medical device reporting for device user facilities, manufacturers, importers, and distributors. If you are a device user facility, you must report deaths and serious injuries that a device has or may have caused or contributed to, establish and maintain adverse event files, and submit summary annual reports. If you are a manufacturer or importer, you must report deaths and serious injuries that your device has or may have caused or contributed to, you must report certain device malfunctions, and you must establish and maintain adverse event files. If you are a manufacturer, you must also submit specified followup and baseline reports. These reports help us to protect the public health by helping to ensure that devices are not adulterated or misbranded and are safe and effective for their intended use. If you are a medical device distributor, you must maintain records (files) of incidents, but you are not required to report these incidents.

(b) This part supplements and does not supersede other provisions of this chapter, including the provisions of part 820 of this chapter.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

§ 803.3 How does FDA define the terms used in this part?

Some of the terms we use in this part are specific to medical device reporting and reflect the language used in the statute (law). Other terms are more general and reflect our interpretation of the law. This section defines the following terms as used in this part:

Act means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*, as amended.

Ambulatory surgical facility (ASF) means a distinct entity that operates for the primary purpose of furnishing same day outpatient surgical services to patients. An ASF may be either an independent entity (i.e., not a part of a provider of services or any other facility) or operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity). An ASF is subject to this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or regardless of whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the ASF must report that event regardless of the nature or location of the medical service provided by the ASF.

Become aware means that an employee of the entity required to report has acquired information that reasonably suggests a reportable adverse event has occurred.

(1) If you are a device user facility, you are considered to have ''become aware'' when medical personnel, as defined in this section, who are employed by or otherwise formally affiliated with your facility, obtain information about a reportable event.

(2) If you are a manufacturer, you are considered to have become aware of an event when any of your employees becomes aware of a reportable event that is required to be reported within 30 calendar days or that is required to be reported within 5 work days because we had requested reports in accordance with § 803.53(b). You are also considered to have become aware of an event when any of your employees with management or supervisory responsibilities over persons with regulatory, scientific, or technical responsibilities, or whose duties relate

to the collection and reporting of adverse events, becomes aware, from any information, including any trend analysis, that a reportable MDR event or events necessitates remedial action to prevent an unreasonable risk of substantial harm to the public health.

(3) If you are an importer, you are considered to have become aware of an event when any of your employees becomes aware of a reportable event that is required to be reported by you within 30 calendar days.

Caused or contributed means that a death or serious injury was or may have been attributed to a medical device, or that a medical device was or may have been a factor in a death or serious injury, including events occurring as a result of:

(1) Failure;

(2) Malfunction;

(3) Improper or inadequate design;

(4) Manufacture;

(5) Labeling; or

(6) User error.

Device family. (1) Device family means a group of one or more devices manufactured by or for the same manufacturer and having the same:

(i) Basic design and performance characteristics related to device safety and effectiveness,

(ii) Intended use and function, and

(iii) Device classification and product code.

(2) You may consider devices that differ only in minor ways not related to safety or effectiveness to be in the same device family. When grouping products in device families, you may consider factors such as brand name and common name of the device and whether the devices were introduced into commercial distribution under the same 510(k) or premarket approval application (PMA).

Device user facility means a hospital, ambulatory surgical facility, nursing home, outpatient diagnostic facility, or outpatient treatment facility as defined in this section, which is not a physician's office, as defined in this section. School nurse offices and employee health units are not device user facilities.

Distributor means any person (other than the manufacturer or importer) who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package. If you repackage or otherwise change the container, wrapper, or labeling, you are considered a manufacturer as defined in this section.

Expected life of a device means the time that a device is expected to remain functional after it is placed into use. Certain implanted devices have specified ''end of life'' (EOL) dates. Other devices are not labeled as to their respective EOL, but are expected to remain operational through activities such as maintenance, repairs, or upgrades, for an estimated period of time.

FDA, we, or us means the Food and Drug Administration.

Five-day report means a medical device report that must be submitted by a manufacturer to us under § 803.53, on FDA Form 3500A or an electronic equivalent approved under § 803.14, within 5 work days.

Hospital means a distinct entity that operates for the primary purpose of providing diagnostic, therapeutic (such as medical, occupational, speech, physical), surgical, and other patient services for specific and general medical conditions. Hospitals include general, chronic disease, rehabilitative, psychiatric, and other special-purpose facilities. A hospital may be either independent (e.g., not a part of a provider of services or any other facility) or may be operated by another medical entity (e.g., under the common ownership, licensure, or control of another entity). A hospital is covered by this regulation regardless of whether it is licensed by a Federal, State, municipal or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the hospital must report that event regardless of the nature or location of the medical service provided by the hospital.

Importer means any person who imports a device into the United States and who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package. If you repackage or otherwise change the container, wrapper, or labeling, you are considered a manufacturer as defined in this section.

Malfunction means the failure of a device to meet its performance specifications or otherwise perform as intended. Performance specifications include all claims made in the labeling for the device. The intended performance of a device refers to the intended use for which the device is labeled or marketed, as defined in § 801.4 of this chapter.

Manufacturer means any person who manufactures, prepares, propagates, compounds, assembles, or processes a device by chemical, physical, biological, or other procedure. The term includes any person who either:

(1) Repackages or otherwise changes the container, wrapper, or labeling of a device in furtherance of the distribution of the device from the original place of manufacture;

(2) Initiates specifications for devices that are manufactured by a second party for subsequent distribution by the person initiating the specifications;

(3) Manufactures components or accessories that are devices that are ready to be used and are intended to be commercially distributed and intended to be used as is, or are processed by a licensed practitioner or other qualified person to meet the needs of a particular patient; or

(4) Is the U.S. agent of a foreign manufacturer.

Manufacturer or importer report number. Manufacturer or importer report number means the number that uniquely identifies each individual adverse event report submitted by a manufacturer or importer. This number consists of the following three parts:

(1) The FDA registration number for the manufacturing site of the reported device, or the registration number for the importer. If the manufacturing site or the importer does not have an establishment registration number, we will assign a temporary MDR reporting number until the site is registered in accordance with part 807 of this chapter. We will inform the manufacturer or importer of the temporary MDR reporting number;

(2) The four-digit calendar year in which the report is submitted; and

(3) The five-digit sequence number of the reports submitted during the year, starting with 00001. (For example, the complete number will appear as follows: 1234567–1995–00001.)

MDR means medical device report.

MDR reportable event (or reportable event) means:

(1) An event that user facilities become aware of that reasonably suggests that a device has or may have caused or contributed to a death or serious injury, or

(2) An event that manufacturers or importers become aware of that reasonably suggests that one of their marketed devices:

(i) May have caused or contributed to a death or serious injury, or

(ii) Has malfunctioned and that the device or a similar device marketed by the manufacturer or importer would be likely to cause or contribute to a death

or serious injury if the malfunction were to recur.

Medical personnel means an individual who:

(1) Is licensed, registered, or certified by a State, territory, or other governing body, to administer health care;

(2) Has received a diploma or a degree in a professional or scientific discipline;

(3) Is an employee responsible for receiving medical complaints or adverse event reports; or

(4) Is a supervisor of these persons.

Nursing home means:

(1) An independent entity (i.e., not a part of a provider of services or any other facility) or one operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity) that operates for the primary purpose of providing:

(i) Skilled nursing care and related services for persons who require medical or nursing care;

(ii) Hospice care to the terminally ill; or

(iii) Services for the rehabilitation of the injured, disabled, or sick.

(2) A nursing home is subject to this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the nursing home must report that event regardless of the nature or location of the medical service provided by the nursing home.

Outpatient diagnostic facility. (1) Outpatient diagnostic facility means a distinct entity that:

(i) Operates for the primary purpose of conducting medical diagnostic tests on patients,

(ii) Does not assume ongoing responsibility for patient care, and

(iii) Provides its services for use by other medical personnel.

(2) Outpatient diagnostic facilities include outpatient facilities providing radiography, mammography, ultrasonography, electrocardiography, magnetic resonance imaging, computerized axial tomography, and in vitro testing. An outpatient diagnostic facility may be either independent (i.e., not a part of a provider of services or any other facility) or operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity). An outpatient diagnostic facility is covered by this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the outpatient diagnostic facility must report that event regardless of the nature or location of the medical service provided by the outpatient diagnostic facility.

Outpatient treatment facility means a distinct entity that operates for the primary purpose of providing nonsurgical therapeutic (medical, occupational, or physical) care on an outpatient basis or in a home health care setting. Outpatient treatment facilities include ambulance providers, rescue services, and home health care groups. Examples of services provided by outpatient treatment facilities include the following: Cardiac defibrillation, chemotherapy, radiotherapy, pain control, dialysis, speech or physical therapy, and treatment for substance abuse. An outpatient treatment facility may be either independent (i.e., not a part of a provider of services or any other facility) or operated by another medical entity (e.g., under the common ownership, licensure, or control of an entity). An outpatient treatment facility is covered by this regulation regardless of whether it is licensed by a Federal, State, municipal, or local government or whether it is accredited by a recognized accreditation organization. If an adverse event meets the criteria for reporting, the outpatient treatment facility must report that event regardless of the nature or location of the medical service provided by the outpatient treatment facility.

Patient of the facility means any individual who is being diagnosed or treated and/or receiving medical care at or under the control or authority of the facility. This includes employees of the facility or individuals affiliated with the facility who, in the course of their duties, suffer a device-related death or serious injury that has or may have been caused or contributed to by a device used at the facility.

Physician's office means a facility that operates as the office of a physician or other health care professional for the primary purpose of examination, evaluation, and treatment or referral of patients. Examples of physician offices include dentist offices, chiropractor offices, optometrist offices, nurse practitioner offices, school nurse offices, school clinics, employee health clinics, or freestanding care units. A physician's office may be independent, a group practice, or part of a Health Maintenance Organization.

Remedial action means any action other than routine maintenance or servicing of a device where such action is necessary to prevent recurrence of a reportable event.

Serious injury means an injury or illness that:

(1) Is life-threatening,

(2) Results in permanent impairment of a body function or permanent damage to a body structure, or

(3) Necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

Permanent means irreversible impairment or damage to a body structure or function, excluding trivial impairment or damage.

Shelf life means the maximum time a device will remain functional from the date of manufacture until it is used in patient care. Some devices have an expiration date on their labeling indicating the maximum time they can be stored before losing their ability to perform their intended function.

User facility report number means the number that uniquely identifies each report submitted by a user facility to manufacturers and to us. This number consists of the following three parts:

(1) The user facility's 10-digit Centers for Medicare and Medicaid Services (CMS) number (if the CMS number has fewer than 10 digits, fill the remaining spaces with zeros);

(2) The four-digit calendar year in which the report is submitted; and

(3) The four-digit sequence number of the reports submitted for the year, starting with 0001. (For example, a complete user facility report number will appear as follows: 1234560000–2004–0001. If a user facility has more than one CMS number, it must select one that will be used for all of its MDR reports. If a user facility has no CMS number, it should use all zeros in the appropriate space in its initial report (e.g., 0000000000–2004–0001). We will assign a number for future use and send that number to the user facility. This number is used in our record of the initial report, in subsequent reports, and in any correspondence with the user facility. If a facility has multiple sites, the primary site may submit reports for all sites and use one reporting number for all sites if the primary site provides the name, address, and CMS number for each respective site.)

Work day means Monday through Friday, except Federal holidays.

§ 803.9 What information from the reports do we disclose to the public?

(a) We may disclose to the public any report, including any FDA record of a telephone report, submitted under this part. Our disclosures are governed by part 20 of this chapter.

(b) Before we disclose a report to the public, we will delete the following:

(1) Any information that constitutes trade secret or confidential commercial

or financial information under § 20.61 of this chapter;

(2) Any personal, medical, and similar information, including the serial number of implanted devices, which would constitute an invasion of personal privacy under § 20.63 of this chapter. However, if a patient requests a report, we will disclose to that patient all the information in the report concerning that patient, as provided in § 20.61 of this chapter; and

(3) Any names and other identifying information of a third party that voluntarily submitted an adverse event report.

(c) We may not disclose the identity of a device user facility that makes a report under this part except in connection with:

(1) An action brought to enforce section 301(q) of the act, including the failure or refusal to furnish material or information required by section 519 of the act;

(2) A communication to a manufacturer of a device that is the subject of a report required to be submitted by a user facility under § 803.30; or

(3) A disclosure to employees of the Department of Health and Human Services, to the Department of Justice, or to the duly authorized committees and subcommittees of the Congress.

§ 803.10 Generally, what are the reporting requirements that apply to me?

(a) If you are a device user facility, you must submit reports (described in subpart C of this part), as follows:

(1) Submit reports of individual adverse events no later than 10 work days after the day that you become aware of a reportable event:

(i) Submit reports of device-related deaths to us and to the manufacturer, if known; or

(ii) Submit reports of device-related serious injuries to the manufacturers or, if the manufacturer is unknown, submit reports to us.

(2) Submit annual reports (described in § 803.33) to us.

(b) If you are an importer, you must submit reports (described in subpart D of this part), as follows:

(1) Submit reports of individual adverse events no later than 30 calendar days after the day that you become aware of a reportable event:

(i) Submit reports of device-related deaths or serious injuries to us and to the manufacturer; or

(ii) Submit reports of device-related malfunctions to the manufacturer.

(2) [Reserved]

(c) If you are a manufacturer, you must submit reports (described in subpart E of this part) to us, as follows:

(1) Submit reports of individual adverse events no later than 30 calendar days after the day that you become aware of a reportable death, serious injury, or malfunction.

(2) Submit reports of individual adverse events no later than 5 work days after the day that you become aware of:

(i) A reportable event that requires remedial action to prevent an unreasonable risk of substantial harm to the public health, or

(ii) A reportable event for which we made a written request.

(3) Submit annual baseline reports.

(4) Submit supplemental reports if you obtain information that you did not submit in an initial report.

§ 803.11 What form should I use to submit reports of individual adverse events and where do I obtain these forms?

If you are a user facility, importer, or manufacturer, you must submit all reports of individual adverse events on FDA MEDWATCH Form 3500A or in an electronic equivalent as approved under § 803.14. You may obtain this form and all other forms referenced in this section from any of the following:

(1) The Consolidated Forms and Publications Office, Beltsville Service Center, 6351 Ammendale Rd., Landover, MD 20705;

(2) Food and Drug Administration, MEDWATCH (HF–2), 5600 Fishers Lane, Rockville, MD 20857, 301–827–7240;

(3) Division of Small Manufacturers, International, and Consumer Assistance, Office of Communication, Education, and Radiation Programs, Center for Devices and Radiological Health (CDRH) (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850, by e-mail: *DSMICA@CDRH.FDA.GOV*, or FAX: 301–443–8818; or

(4) On the Internet at *http://www.fda.gov/cdrh/mdr/mdr-forms.html*.

§ 803.12 Where and how do I submit reports and additional information?

(a) You must submit any written report or additional information required under this part to Food and Drug Administration, Center for Devices and Radiological Health, Medical Device Reporting, P.O. Box 3002, Rockville, MD 20847–3002.

(b) You must specifically identify each report (e.g., ''User Facility Report,'' ''Annual Report,'' ''Importer Report,'' ''Manufacturer Report,'' ''10-Day Report'').

(c) If you have a public health emergency, you can alert the FDA Emergency Operations Branch (HFC–162), Office of Regional Operations, at 301–443–1240. After contacting us, you should submit a FAX report to 301–443–3757.

(d) You may submit a voluntary telephone report to the MEDWATCH office at 800–FDA–1088. You may also obtain information regarding voluntary reporting from the MEDWATCH office at 800–FDA–1088. You may also find the voluntary MEDWATCH 3500 form and instructions to complete it at *http://www.fda.gov/medwatch/getforms.htm*.

§ 803.13 Do I need to submit reports in English?

(a) Yes. You must submit all written or electronic equivalent reports required by this part in English.

(b) If you submit any reports required by this part in an electronic medium, that submission must be done in accordance with § 803.14.

§ 803.14 How do I submit a report electronically?

(a) You may electronically submit any report required by this part if you have our prior written consent. We may revoke this consent at anytime. Electronic report submissions include alternative reporting media (magnetic tape, disc, etc.) and computer-to-computer communication.

(b) If your electronic report meets electronic reporting standards, guidance documents, or other MDR reporting procedures that we have developed, you may submit the report electronically without receiving our prior written consent.

§ 803.15 How will I know if you require more information about my medical device report?

(a) We will notify you in writing if we require additional information and will tell you what information we need. We will require additional information if we determine that protection of the public health requires additional or clarifying information for medical device reports submitted to us and in cases when the additional information is beyond the scope of FDA reporting forms or is not readily accessible to us.

(b) In any request under this section, we will state the reason or purpose for the information request, specify the due date for submitting the information, and clearly identify the reported event(s) related to our request. If we verbally request additional information, we will confirm the request in writing.

§ 803.16 When I submit a report, does the information in my report constitute an admission that the device caused or contributed to the reportable event?

No. A report or other information submitted by you, and our release of that report or information, is not

necessarily an admission that the device, or you or your employees, caused or contributed to the reportable event. You do not have to admit and may deny that the report or information submitted under this part constitutes an admission that the device, you, or your employees, caused or contributed to a reportable event.

§ 803.17 What are the requirements for developing, maintaining, and implementing written MDR procedures that apply to me?

If you are a user facility, importer, or manufacturer, you must develop, maintain, and implement written MDR procedures for the following:

(a) Internal systems that provide for:

(1) Timely and effective identification, communication, and evaluation of events that may be subject to MDR requirements;

(2) A standardized review process or procedure for determining when an event meets the criteria for reporting under this part; and

(3) Timely transmission of complete medical device reports to manufacturers or to us, or to both if required.

(b) Documentation and recordkeeping requirements for:

(1) Information that was evaluated to determine if an event was reportable;

(2) All medical device reports and information submitted to manufacturers and/or us;

(3) Any information that was evaluated for the purpose of preparing the submission of annual reports; and

(4) Systems that ensure access to information that facilitates timely followup and inspection by us.

§ 803.18 What are the requirements for establishing and maintaining MDR files or records that apply to me?

(a) If you are a user facility, importer, or manufacturer, you must establish and maintain MDR event files. You must clearly identify all MDR event files and maintain them to facilitate timely access.

(b)(1) For purposes of this part, ''MDR event files'' are written or electronic files maintained by user facilities, importers, and manufacturers. MDR event files may incorporate references to other information (e.g., medical records, patient files, engineering reports), in lieu of copying and maintaining duplicates in this file. Your MDR event files must contain:

(i) Information in your possession or references to information related to the adverse event, including all documentation of your deliberations and decisionmaking processes used to determine if a device-related death, serious injury, or malfunction was or was not reportable under this part; and

(ii) Copies of all MDR forms, as required by this part, and other information related to the event that you submitted to us and other entities such as an importer, distributor, or manufacturer.

(2) If you are a user facility, importer, or manufacturer, you must permit any authorized FDA employee, at all reasonable times, to access, to copy, and to verify the records required by this part.

(c) If you are a user facility, you must retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event. If you are a manufacturer or importer, you must retain an MDR event file relating to an adverse event for a period of 2 years from the date of the event or a period of time equivalent to the expected life of the device, whichever is greater. If the device is no longer distributed, you still must maintain MDR event files for the time periods described in this paragraph.

(d)(1) If you are a device distributor, you must establish and maintain device complaint records (files). Your records must contain any incident information, including any written, electronic, or oral communication, either received or generated by you, that alleges deficiencies related to the identity (e.g., labeling), quality, durability, reliability, safety, effectiveness, or performance of a device. You must also maintain information about your evaluation of the allegations, if any, in the incident record. You must clearly identify the records as device incident records and file these records by device name. You may maintain these records in written or electronic format. You must back up any file maintained in electronic format.

(2) You must retain copies of the required device incident records for a period of 2 years from the date of inclusion of the record in the file or for a period of time equivalent to the expected life of the device, whichever is greater. You must maintain copies of these records for this period even if you no longer distribute the device.

(3) You must maintain the device complaint files established under this section at your principal business establishment. If you are also a manufacturer, you may maintain the file at the same location as you maintain your complaint file under part 820 of this chapter. You must permit any authorized FDA employee, at all reasonable times, to access, to copy, and to verify the records required by this part.

(e) If you are a manufacturer, you may maintain MDR event files as part of your complaint file, under part 820 of this chapter, if you prominently identify these records as MDR reportable events. We will not consider your submitted MDR report to comply with this part unless you evaluate an event in accordance with the quality system requirements described in part 820 of this chapter. You must document and maintain in your MDR event files an explanation of why you did not submit or could not obtain any information required by this part, as well as the results of your evaluation of each event.

§ 803.19 Are there exemptions, variances, or alternative forms of adverse event reporting requirements?

(a) We exempt the following persons from the adverse event reporting requirements in this part:

(1) A licensed practitioner who prescribes or administers devices intended for use in humans and manufactures or imports devices solely for use in diagnosing and treating persons with whom the practitioner has a ''physician-patient'' relationship;

(2) An individual who manufactures devices intended for use in humans solely for this person's use in research or teaching and not for sale. This includes any person who is subject to alternative reporting requirements under the investigational device exemption regulations (described in part 812 of this chapter), which require reporting of all adverse device effects; and

(3) Dental laboratories or optical laboratories.

(b) If you are a manufacturer, importer, or user facility, you may request an exemption or variance from any or all of the reporting requirements in this part. You must submit the request to us in writing. Your request must include information necessary to identify you and the device; a complete statement of the request for exemption, variance, or alternative reporting; and an explanation why your request is justified.

(c) If you are a manufacturer, importer, or user facility, we may grant in writing an exemption or variance from, or alternative to, any or all of the reporting requirements in this part and may change the frequency of reporting to quarterly, semiannually, annually or other appropriate time period. We may grant these modifications in response to your request, as described in paragraph (b) of this section, or at our discretion. When we grant modifications to the reporting requirements, we may impose other reporting requirements to ensure the protection of public health.

(d) We may revoke or modify in writing an exemption, variance, or

alternative reporting requirement if we determine that revocation or modification is necessary to protect the public health.

(e) If we grant your request for a reporting modification, you must submit any reports or information required in our approval of the modification. The conditions of the approval will replace and supersede the regular reporting requirement specified in this part until such time that we revoke or modify the alternative reporting requirements in accordance with paragraph (d) of this section.

Subpart B—Generally Applicable Requirements for Individual Adverse Event Reports

§ 803.20 How do I complete and submit an individual adverse event report?

(a) What form must I complete and submit? There are two versions of the MEDWATCH form for individual reports of adverse events. If you are a health professional or consumer, you may use the FDA Form 3500 to submit voluntary reports regarding FDA-regulated products. If you are a user facility, importer, or manufacturer, you must use the FDA Form 3500A to submit mandatory reports about FDA-regulated products.

(1) If you are a user facility, importer, or manufacturer, you must complete the applicable blocks on the front of FDA Form 3500A. The front of the form is used to submit information about the patient, the event, the device, and the ''initial reporter'' (i.e., the first person or entity who reported the information to you).

(2) If you are a user facility, importer, or manufacturer, you must complete the applicable blocks on the back of the form. If you are a user facility or importer, you must complete block F. If you are a manufacturer, you must complete blocks G and H. If you are a manufacturer, you do not have to recopy information that you received on a Form 3500A unless you are copying the information onto an electronic medium. If you are a manufacturer and you are correcting or supplying information that is missing from another reporter's Form 3500A, you must attach a copy of that form to your report form. If you are a manufacturer and the information from another reporter's Form 3500A is complete and correct, you may fill in the remaining information on the same form and submit it to us.

(b) To whom must I submit reports and when?

(1) If you are a user facility, you must submit MDR reports to:

(i) The manufacturer and to us no later than 10 work days after the day that you become aware of information that reasonably suggests that a device has or may have caused or contributed to a death; or

(ii) The manufacturer no later than 10 work days after the day that you become aware of information that reasonably suggests that a device has or may have caused or contributed to a serious injury. If the manufacturer is not known, you must submit this report to us.

(2) If you are an importer, you must submit MDR reports to:

(i) The manufacturer and to us, no later than 30 calendar days after the day that you become aware of information that reasonably suggests that a device has or may have caused or contributed to a death or serious injury; or

(ii) The manufacturer, no later than 30 calendar days after receiving information that a device you market has malfunctioned and that this device or a similar device that you market would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

(3) If you are a manufacturer, you must submit MDR reports to us:

(i) No later than 30 days after the day that you become aware of information that reasonably suggests that a device may have caused or contributed to a death or serious injury; or

(ii) No later than 30 days after the day that you become aware of information that reasonably suggests a device has malfunctioned and that this device or a similar device that you market would be likely to cause or contribute to a death or serious injury if the malfunction were to recur; or

(iii) Within 5 work days if required by § 803.53.

(c) What kind of information reasonably suggests that a reportable event has occurred?

(1) Any information, including professional, scientific, or medical facts, observations, or opinions, may reasonably suggest that a device has caused or may have caused or contributed to an MDR reportable event. An MDR reportable event is a death, a serious injury, or, if you are a manufacturer or importer, a malfunction that would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

(2) If you are a user facility, importer, or manufacturer, you do not have to report an adverse event if you have information that would lead a person who is qualified to make a medical judgment reasonably to conclude that a device did not cause or contribute to a death or serious injury, or that a malfunction would not be likely to cause or contribute to a death or serious injury if it were to recur. Persons qualified to make a medical judgment include physicians, nurses, risk managers, and biomedical engineers. You must keep in your MDR event files (described in § 803.18) the information that the qualified person used to determine whether or not a device-related event was reportable.

§ 803.21 Where can I find the reporting codes for adverse events that I use with medical device reports?

(a) The MEDWATCH Medical Device Reporting Code Instruction Manual contains adverse event codes for use with FDA Form 3500A. You may obtain the coding manual from CDRH's Web site at *http://www.fda.gov/cdrh/mdr/373.html*; and from the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, 1350 Piccard Dr., Rockville, MD 20850, FAX: 301–443–8818, or e-mail to *DSMICA@CDRH.FDA.GOV*.

(b) We may sometimes use additional coding of information on the reporting forms or modify the existing codes. If we do make modifications, we will ensure that we make the new coding information available to all reporters.

§ 803.22 What are the circumstances in which I am not required to file a report?

(a) If you become aware of information from multiple sources regarding the same patient and same reportable event, you may submit one medical device report.

(b) You are not required to submit a medical device report if:

(1) You are a user facility, importer, or manufacturer, and you determine that the information received is erroneous in that a device-related adverse event did not occur. You must retain documentation of these reports in your MDR files for the time periods specified in § 803.18.

(2) You are a manufacturer or importer and you did not manufacture or import the device about which you have adverse event information. When you receive reportable event information in error, you must forward this information to us with a cover letter explaining that you did not manufacture or import the device in question.

Subpart C—User Facility Reporting Requirements

§ 803.30 If I am a user facility, what reporting requirements apply to me?

(a) You must submit reports to the manufacturer or to us, or both, as specified below:

(1) *Reports of death*. You must submit a report to us as soon as practicable but no more than 10 work days after the day that you become aware of information, from any source, that reasonably suggests that a device has or may have caused or contributed to the death of a patient of your facility. You must also submit the report to the device manufacturer, if known. You must report information required by § 803.32 on FDA Form 3500A or an electronic equivalent approved under § 803.14.

(2) *Reports of serious injury*. You must submit a report to the manufacturer of the device no later than 10 work days after the day that you become aware of information, from any source, that reasonably suggests that a device has or may have caused or contributed to a serious injury to a patient of your facility. If the manufacturer is not known, you must submit the report to us. You must report information required by § 803.32 on FDA Form 3500A or an electronic equivalent approved under § 803.14.

(b) What information does FDA consider ''reasonably known'' to me? You must submit all information required in this subpart C that is reasonably known to you. This information includes information found in documents that you possess and any information that becomes available as a result of reasonable followup within your facility. You are not required to evaluate or investigate the event by obtaining or evaluating information that you do not reasonably know.

§ 803.32 If I am a user facility, what information must I submit in my individual adverse event reports?

You must include the following information in your report, if reasonably known to you, as described in § 803.30(b). These types of information correspond generally to the elements of FDA Form 3500A:

(a) Patient information (Form 3500A, Block A). You must submit the following:

(1) Patient name or other identifier;

(2) Patient age at the time of event, or date of birth;

(3) Patient gender; and

(4) Patient weight.

(b) Adverse event or product problem (Form 3500A, Block B). You must submit the following:

(1) Identification of adverse event or product problem;

(2) Outcomes attributed to the adverse event (e.g., death or serious injury). An outcome is considered a serious injury if it is:

(i) Life-threatening injury or illness;

(ii) Disability resulting in permanent impairment of a body function or permanent damage to a body structure; or

(iii) Injury or illness that requires intervention to prevent permanent impairment of a body structure or function;

(3) Date of event;

(4) Date of report by the initial reporter;

(5) Description of event or problem, including a discussion of how the device was involved, nature of the problem, patient followup or required treatment, and any environmental conditions that may have influenced the event;

(6) Description of relevant tests, including dates and laboratory data; and

(7) Description of other relevant history, including preexisting medical conditions.

(c) Device information (Form 3500A, Block D). You must submit the following:

(1) Brand name;

(2) Type of device;

(3) Manufacturer name and address;

(4) Operator of the device (health professional, patient, lay user, other);

(5) Expiration date;

(6) Model number, catalog number, serial number, lot number, or other identifying number;

(7) Date of device implantation (month, day, year);

(8) Date of device explantation (month, day, year);

(9) Whether the device was available for evaluation and whether the device was returned to the manufacturer; if so, the date it was returned to the manufacturer; and

(10) Concomitant medical products and therapy dates. (Do not report products that were used to treat the event.)

(d) Initial reporter information (Form 3500A, Block E). You must submit the following:

(1) Name, address, and telephone number of the reporter who initially provided information to you, or to the manufacturer or distributor;

(2) Whether the initial reporter is a health professional;

(3) Occupation; and

(4) Whether the initial reporter also sent a copy of the report to us, if known.

(e) User facility information (Form 3500A, Block F). You must submit the following:

(1) An indication that this is a user facility report (by marking the user facility box on the form);

(2) Your user facility number;

(3) Your address;

(4) Your contact person;

(5) Your contact person's telephone number;

(6) Date that you became aware of the event (month, day, year);

(7) Type of report (initial or followup); if it is a followup, you must include the report number of the initial report;

(8) Date of your report (month, day, year);

(9) Approximate age of device;

(10) Event problem codes—patient code and device code (refer to the ''MEDWATCH Medical Device Reporting Code Instructions'');

(11) Whether a report was sent to us and the date it was sent (month, day, year);

(12) Location where the event occurred;

(13) Whether the report was sent to the manufacturer and the date it was sent (month, day, year); and

(14) Manufacturer name and address, if available.

§ 803.33 If I am a user facility, what must I include when I submit an annual report?

(a) You must submit to us an annual report on FDA Form 3419, or electronic equivalent as approved by us under § 803.14. You must submit an annual report by January 1, of each year. You must clearly identify your annual report as such. Your annual report must include:

(1) Your CMS provider number used for medical device reports, or the number assigned by us for reporting purposes in accordance with § 803.3;

(2) Reporting year;

(3) Your name and complete address;

(4) Total number of reports attached or summarized;

(5) Date of the annual report and report numbers identifying the range of medical device reports that you submitted during the report period (e.g., 1234567890–2004–0001 through 1000);

(6) Name, position title, and complete address of the individual designated as your contact person responsible for reporting to us and whether that person is a new contact for you; and

(7) Information for each reportable event that occurred during the annual reporting period including:

(i) Report number;

(ii) Name and address of the device manufacturer;

(iii) Device brand name and common name;

(iv) Product model, catalog, serial and lot number;

(v) A brief description of the event reported to the manufacturer and/or us; and

(vi) Where the report was submitted, i.e., to the manufacturer, importer, or us.

(b) In lieu of submitting the information in paragraph (a)(7) of this section, you may submit a copy of FDA Form 3500A, or an electronic equivalent approved under § 803.14, for each medical device report that you submitted to the manufacturers and/or to us during the reporting period.

(c) If you did not submit any medical device reports to manufacturers or us during the time period, you do not need to submit an annual report.

Subpart D—Importer Reporting Requirements

§ 803.40 If I am an importer, what kinds of individual adverse event reports must I submit, when must I submit them, and to whom must I submit them?

(a) *Reports of deaths or serious injuries.* You must submit a report to us, and a copy of this report to the manufacturer, as soon as practicable but no later than 30 calendar days after the day that you receive or otherwise become aware of information from any source, including user facilities, individuals, or medical or scientific literature, whether published or unpublished, that reasonably suggests that one of your marketed devices may have caused or contributed to a death or serious injury. This report must contain the information required by § 803.42, on FDA form 3500A or an electronic equivalent approved under § 803.14.

(b) *Reports of malfunctions.* You must submit a report to the manufacturer as soon as practicable but no later than 30 calendar days after the day that you receive or otherwise become aware of information from any source, including user facilities, individuals, or through your own research, testing, evaluation, servicing, or maintenance of one of your devices, that reasonably suggests that one of your devices has malfunctioned and that this device or a similar device that you market would be likely to cause or contribute to a death or serious injury if the malfunction were to recur. This report must contain information required by § 803.42, on FDA form 3500A or an electronic equivalent approved under § 803.14.

§ 803.42 If I am an importer, what information must I submit in my individual adverse event reports?

You must include the following information in your report, if the information is known or should be known to you, as described in § 803.40. These types of information correspond generally to the format of FDA Form 3500A:

(a) Patient information (Form 3500A, Block A). You must submit the following:

(1) Patient name or other identifier;

(2) Patient age at the time of event, or date of birth;

(3) Patient gender; and

(4) Patient weight.

(b) Adverse event or product problem (Form 3500A, Block B). You must submit the following:

(1) Identification of adverse event or product problem;

(2) Outcomes attributed to the adverse event (e.g., death or serious injury). An outcome is considered a serious injury if it is:

(i) Life-threatening injury or illness;

(ii) Disability resulting in permanent impairment of a body function or permanent damage to a body structure; or

(iii) Injury or illness that requires intervention to prevent permanent impairment of a body structure or function;

(3) Date of event;

(4) Date of report by the initial reporter;

(5) Description of the event or problem, including a discussion of how the device was involved, nature of the problem, patient followup or required treatment, and any environmental conditions that may have influenced the event;

(6) Description of relevant tests, including dates and laboratory data; and

(7) Description of other relevant patient history, including preexisting medical conditions.

(c) Device information (Form 3500A, Block D). You must submit the following:

(1) Brand name;

(2) Type of device;

(3) Manufacturer name and address;

(4) Operator of the device (health professional, patient, lay user, other);

(5) Expiration date;

(6) Model number, catalog number, serial number, lot number, or other identifying number;

(7) Date of device implantation (month, day, year);

(8) Date of device explanation (month, day, year);

(9) Whether the device was available for evaluation, and whether the device was returned to the manufacturer, and if so, the date it was returned to the manufacturer; and

(10) Concomitant medical products and therapy dates. (Do not report products that were used to treat the event.)

(d) Initial reporter information (Form 3500A, Block E). You must submit the following:

(1) Name, address, and telephone number of the reporter who initially provided information to the manufacturer, user facility, or distributor;

(2) Whether the initial reporter is a health professional;

(3) Occupation; and

(4) Whether the initial reporter also sent a copy of the report to us, if known.

(e) Importer information (Form 3500A, Block F). You must submit the following:

(1) An indication that this is an importer report (by marking the importer box on the form);

(2) Your importer report number;

(3) Your address;

(4) Your contact person;

(5) Your contact person's telephone number;

(6) Date that you became aware of the event (month, day, year);

(7) Type of report (initial or followup). If it is a followup report, you must include the report number of your initial report;

(8) Date of your report (month, day, year);

(9) Approximate age of device;

(10) Event problem codes—patient code and device code (refer to FDA MEDWATCH Medical Device Reporting Code Instructions);

(11) Whether a report was sent to us and the date it was sent (month, day, year);

(12) Location where event occurred;

(13) Whether a report was sent to the manufacturer and the date it was sent (month, day, year); and

(14) Manufacturer name and address, if available.

Subpart E—Manufacturer Reporting Requirements

§ 803.50 If I am a manufacturer, what reporting requirements apply to me?

(a) If you are a manufacturer, you must report to us no later than 30 calendar days after the day that you receive or otherwise become aware of information, from any source, that reasonably suggests that a device that you market:

(1) May have caused or contributed to a death or serious injury; or

(2) Has malfunctioned and this device or a similar device that you market would be likely to cause or contribute to a death or serious injury, if the malfunction were to recur.

(b) What information does FDA consider ''reasonably known'' to me?

(1) You must submit all information required in this subpart E that is

reasonably known to you. We consider the following information to be reasonably known to you:

(i) Any information that you can obtain by contacting a user facility, importer, or other initial reporter;

(ii) Any information in your possession; or

(iii) Any information that you can obtain by analysis, testing, or other evaluation of the device.

(2) You are responsible for obtaining and submitting to us information that is incomplete or missing from reports submitted by user facilities, importers, and other initial reporters.

(3) You are also responsible for conducting an investigation of each event and evaluating the cause of the event. If you cannot submit complete information on a report, you must provide a statement explaining why this information was incomplete and the steps you took to obtain the information. If you later obtain any required information that was not available at the time you filed your initial report, you must submit this information in a supplemental report under § 803.56.

§ 803.52 If I am a manufacturer, what information must I submit in my individual adverse event reports?

You must include the following information in your reports, if known or reasonably known to you, as described in § 803.50(b). These types of information correspond generally to the format of FDA Form 3500A:

(a) Patient information (Form 3500A, Block A). You must submit the following:

(1) Patient name or other identifier;

(2) Patient age at the time of event, or date of birth;

(3) Patient gender; and

(4) Patient weight.

(b) Adverse event or product problem (Form 3500A, Block B). You must submit the following:

(1) Identification of adverse event or product problem;

(2) Outcomes attributed to the adverse event (e.g., death or serious injury). An outcome is considered a serious injury if it is:

(i) Life-threatening injury or illness;

(ii) Disability resulting in permanent impairment of a body function or permanent damage to a body structure; or

(iii) Injury or illness that requires intervention to prevent permanent impairment of a body structure or function;

(3) Date of event;

(4) Date of report by the initial reporter;

(5) Description of the event or problem, including a discussion of how the device was involved, nature of the problem, patient followup or required treatment, and any environmental conditions that may have influenced the event;

(6) Description of relevant tests, including dates and laboratory data; and

(7) Other relevant patient history including preexisting medical conditions.

(c) Device information (Form 3500A, Block D). You must submit the following:

(1) Brand name;

(2) Type of device;

(3) Your name and address;

(4) Operator of the device (health professional, patient, lay user, other);

(5) Expiration date;

(6) Model number, catalog number, serial number, lot number, or other identifying number;

(7) Date of device implantation (month, day, year);

(8) Date of device explantation (month, day, year);

(9) Whether the device was available for evaluation, and whether the device was returned to you, and if so, the date it was returned to you; and

(10) Concomitant medical products and therapy dates. (Do not report products that were used to treat the event.)

(d) Initial reporter information (Form 3500A, Block E). You must submit the following:

(1) Name, address, and phone number of the reporter who initially provided information to you, or to the user facility or importer;

(2) Whether the initial reporter is a health professional;

(3) Occupation; and

(4) Whether the initial reporter also sent a copy of the report to us, if known.

(e) Reporting information for all manufacturers (Form 3500A, Block G). You must submit the following:

(1) Your reporting office's contact name and address and device manufacturing site;

(2) Your telephone number;

(3) Your report sources;

(4) Date received by you (month, day, year);

(5) Type of report being submitted (e.g., 5-day, initial, followup); and

(6) Your report number.

(f) Device manufacturer information (Form 3500A, Block H). You must submit the following:

(1) Type of reportable event (death, serious injury, malfunction, etc.);

(2) Type of followup report, if applicable (e.g., correction, response to FDA request, etc);

(3) If the device was returned to you and evaluated by you, you must include a summary of the evaluation. If you did not perform an evaluation, you must explain why you did not perform an evaluation;

(4) Device manufacture date (month, day, year);

(5) Whether the device was labeled for single use;

(6) Evaluation codes (including event codes, method of evaluation, result, and conclusion codes) (refer to FDA MEDWATCH Medical Device Reporting Code Instructions);

(7) Whether remedial action was taken and the type of action;

(8) Whether the use of the device was initial, reuse, or unknown;

(9) Whether remedial action was reported as a removal or correction under section 519(f) of the act, and if it was, provide the correction/removal report number; and

(10) Your additional narrative; and/or

(11) Corrected data, including:

(i) Any information missing on the user facility report or importer report, including any event codes that were not reported, or information corrected on these forms after your verification;

(ii) For each event code provided by the user facility under § 803.32(e)(10) or the importer under § 803.42(e)(10), you must include a statement of whether the type of the event represented by the code is addressed in the device labeling; and

(iii) If your report omits any required information, you must explain why this information was not provided and the steps taken to obtain this information.

§ 803.53 If I am a manufacturer, in which circumstances must I submit a 5-day report?

You must submit a 5-day report to us, on Form 3500A or an electronic equivalent approved under § 803.14, no later than 5 work days after the day that you become aware that:

(a) An MDR reportable event necessitates remedial action to prevent an unreasonable risk of substantial harm to the public health. You may become aware of the need for remedial action from any information, including any trend analysis; or

(b) We have made a written request for the submission of a 5-day report. If you receive such a written request from us, you must submit, without further requests, a 5-day report for all subsequent events of the same nature that involve substantially similar devices for the time period specified in the written request. We may extend the time period stated in the original written request if we determine it is in the interest of the public health.

§ 803.55 If I am a manufacturer, in what circumstances must I submit a baseline report, and what are the requirements for such a report?

(a) You must submit a baseline report for a device when you submit the first report under § 803.50 involving that device model. Submit this report on FDA Form 3417 or an electronic equivalent approved under § 803.14.

(b) You must update each baseline report annually on the anniversary month of the initial submission, after the initial baseline report is submitted. Report changes to baseline information in the manner described in § 803.56 (i.e., include only the new, changed, or corrected information in the appropriate portion(s) of the report form). In each baseline report, you must include the following information:

(1) Name, complete address, and establishment registration number of your reporting site. If your reporting site is not registered under part 807, we will assign a temporary number for use in MDR reporting until you register your reporting site in accordance with part 807. We will inform you of the temporary MDR reporting number;

(2) FDA registration number of each site where you manufacture the device;

(3) Name, complete address, and telephone number of the individual who you have designated as your MDR contact, and the date of the report. For foreign manufacturers, we require a confirmation that the individual submitting the report is the agent of the manufacturer designated under § 803.58(a);

(4) Product identification, including device family, brand name, generic name, model number, catalog number, product code, and any other product identification number or designation;

(5) Identification of any device that you previously reported in a baseline report that is substantially similar (e.g., same device with a different model number, or same device except for cosmetic differences in color or shape) to the device being reported. This includes additional identification of the previously reported device by model number, catalog number, or other product identification, and the date of the baseline report for the previously reported device;

(6) Basis for marketing, including your 510(k) premarket notification number or PMA number, if applicable, and whether the device is currently the subject of an approved postmarket study under section 522 of the act;

(7) Date that you initially marketed the device and, if applicable, the date on which you stopped marketing the device;

(8) Shelf life of the device, if applicable, and expected life of the device;

(9) The number of devices manufactured and distributed in the last 12 months and an estimate of the number of devices in current use; and

(10) Brief description of any methods that you used to estimate the number of devices distributed and the number of devices in current use. If this information was provided in a previous baseline report, in lieu of resubmitting the information, it may be referenced by providing the date and product identification for the previous baseline report.

§ 803.56 If I am a manufacturer, in what circumstances must I submit a supplemental or followup report and what are the requirements for such reports?

If you are a manufacturer, when you obtain information required under this part that you did not provide because it was not known or was not available when you submitted the initial report, you must submit the supplemental information to us within 1 month of the day that you receive this information. On a supplemental or followup report, you must:

(a) Indicate on the envelope and in the report that the report being submitted is a supplemental or followup report. If you are using FDA form 3500A, indicate this in Block Item H–2;

(b) Submit the appropriate identification numbers of the report that you are updating with the supplemental information (e.g., your original manufacturer report number and the user facility or importer report number of any report on which your report was based), if applicable; and

(c) Include only the new, changed, or corrected information in the appropriate portion(s) of the respective form(s) for reports that cross reference previous reports.

§ 803.58 Foreign manufacturers.

(a) Every foreign manufacturer whose devices are distributed in the United States shall designate a U.S. agent to be responsible for reporting in accordance with § 807.40 of this chapter. The U.S. designated agent accepts responsibility for the duties that such designation entails. Upon the effective date of this regulation, foreign manufacturers shall inform FDA, by letter, of the name and address of the U.S. agent designated under this section and § 807.40 of this chapter, and shall update this information as necessary. Such updated information shall be submitted to FDA, within 5 days of a change in the designated agent information.

(b) U.S.-designated agents of foreign manufacturers are required to:

(1) Report to FDA in accordance with §§ 803.50, 803.52, 803.53, 803.55, and 803.56;

(2) Conduct, or obtain from the foreign manufacturer the necessary information regarding, the investigation and evaluation of the event to comport with the requirements of § 803.50;

(3) Forward MDR complaints to the foreign manufacturer and maintain documentation of this requirement;

(4) Maintain complaint files in accordance with § 803.18; and

(5) Register, list, and submit premarket notifications in accordance with part 807 of this chapter.

Dated: February 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–3833 Filed 2–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: 2005–P–055]

RIN 0651–AB87

Changes to the Practice for Handling Patent Applications Filed Without the Appropriate Fees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: Among other changes to patent and trademark fees, the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act), splits the patent application filing fee into a separate filing fee, search fee and examination fee, and requires an additional fee (application size fee) for applications whose specification and drawings exceed 100 sheets of paper, during fiscal years 2005 and 2006. The United States Patent and Trademark Office is in this notice proposing changes in the Office's practice for handling patent applications filed without the appropriate filing, search, and examination fees. The Office has implemented the changes to the patent fees provided in the Consolidated Appropriations Act in a separate rulemaking.

DATES: *Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before March 30, 2005. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *AB69Comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert W. Bahr. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. *See* the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Office Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr, Senior Patent Attorney, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–8800, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: Among other changes, the Consolidated Appropriations Act (section 801 of Division B) provides that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. The Consolidated Appropriations Act also provides that the provisions of 35 U.S.C. 111(a) for payment of the fee for filing the application apply to the payment of the examination fee (35 U.S.C. 41(a)(3)) and search fee (35 U.S.C. 41(d)(1)) in an application filed under 35 U.S.C. 111(a), and that the provisions of 35 U.S.C. 371(d) for the payment of the national fee apply to the payment of the examination fee (35 U.S.C. 41(a)(3)) and search fee (35 U.S.C. 41(d)(1)) in an international application filed under the Patent Cooperation Treaty (PCT) and entering the national stage under 35 U.S.C. 371. *See* 35 U.S.C. 41(a)(3) and 41(d)(1)(C). Thus, the examination fee and search fee are due on filing in an application filed under 35 U.S.C. 111(a) or on commencement of the national stage in a PCT international application, but may be paid at a later time if paid within such period and under such conditions (including payment of a surcharge) as may be prescribed by the Director. *See* H.R. Rep. 108–241, at 16 (2003) (H.R. Rep. 108–241 contains an analysis and discussion of an identical provision in H.R. 1561, 108th Cong. (2004)).

In view of the revised patent fee structure during fiscal years 2005 and 2006 set forth in the Consolidated Appropriations Act, the Office is proposing the following changes in Office practice for handling patent applications filed without the appropriate fees: That is, the filing fee, search fee, and examination fee.

The Office is proposing to: (1) Require the surcharge under § 1.16(f) in any application filed under 35 U.S.C. 111(a) in which the search fee or examination fee is paid on a date later than the filing date; and (2) require the surcharge under § 1.492(h) in any application filed under the PCT in which the search fee or examination fee is paid on a date later than thirty months from the priority date. This change is because the Consolidated Appropriations Act splits the former patent application filing (or national) fee into a separate filing (or national) fee, search fee and examination fee during fiscal years 2005 and 2006. The filing of an application which lacks any of the basic filing (or national) fee, the search fee, the examination fee, or oath or declaration requires the Office to issue a notice to file the missing parts (or requirements) of the application.

The Office is also proposing to eliminate the processing and retention fee (§ 1.21(l)) practice. The processing and retention fee practice permits an applicant to file an application without the basic filing fee (which formerly covered the cost of the initial processing of an application and part of the cost of the search and examination of an application) and pay only the processing and retention fee set forth in § 1.21(l) in order for the application to be used as a basis for foreign filing and benefit claims under 35 U.S.C. 120 and § 1.78(a). Under the revised patent fee structure set forth in the Consolidated Appropriations Act, the basic filing fee covers only the cost of the initial processing of an application. Thus, the Office is proposing to require payment of the basic filing fee (rather than just the current processing and retention fee set forth in § 1.21(l)) to retain the application. Since the Office must retain an application to permit benefit of the application to be claimed under 35 U.S.C. 120 and § 1.78 in a subsequent nonprovisional or international application, the Office is also proposing to require payment of the basic filing fee (rather than just the current processing and retention fee set forth in § 1.21(l)) to permit benefit of the application to be claimed under 35 U.S.C. 120 and § 1.78 in a subsequent nonprovisional or international application.

The Office is also implementing the provision in 35 U.S.C. 41(a)(1)(G) for the Office to prescribe the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of the application size fee specified in 35 U.S.C. 41(a)(1)(G) (§ 1.16(s) and § 1.492(j)). A 21.6 cm by 27.9 cm (8 ½ by 11 inches) sheet of paper with a top margin of 2.0 cm (¾ inch), a left side margin of 2.5 cm (1 inch), a right side margin of 2.0 cm (¾ inch), and a bottom margin of 2.0 cm (¾ inch)), will contain about 30 lines of double-spaced text, with each line having about 50 to 65 characters. An ASCII text (the only format permitted by § 1.52(e)) document containing 30 lines of text, each line having about 50 to 65 characters, will be slightly less than two kilobytes in size. Therefore, the Office is proposing that each two kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper for purposes of the application size fee specified in 35 U.S.C. 41(a)(1)(G) (§ 1.16(s) and § 1.492(j)).

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.16: Section 1.16(f) is proposed to be amended to require a surcharge if any of the basic filing fee, the search fee, the examination fee, or oath or declaration is filed in a nonprovisional application on a date later than the filing date of the application. Section 1.16(s) is proposed to be amended to include a cross reference to § 1.52(f).

Section 1.21: Section 1.21 is proposed to be amended to remove and reserve paragraph (l), which set forth the fee for

processing and retaining an application in which the basic filing fee has not been paid.

Section 1.52: Section 1.52(f)(1) is proposed to be amended to provide that for purposes of determining the application size fee required by § 1.16(s) or § 1.492(j), for an application the specification and drawings of which (excluding any sequence listing in compliance with § 1.821(c) or (e), and any computer program listing filed in an electronic medium in compliance with §§ 1.52(e) and 1.96) are submitted in whole or in part on an electronic medium other than the Office electronic filing system, each two kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper.

Section 1.53: Section 1.53(f)(5) is proposed to be amended to provide that if the applicant does not pay the basic filing fee during the pendency of the application, the Office may dispose of the application.

Section 1.78: Section 1.78(a)(1) is proposed to be amended to provide that to claim the benefit of a prior-filed nonprovisional application under 35 U.S.C. 120 and § 1.78(a) in a subsequent nonprovisional or international application, the prior-filed nonprovisional application must be entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and have paid therein the basic filing fee set forth in § 1.16 within the pendency of the application.

Section 1.492: Section 1.492(h) is proposed to be amended to require a surcharge if any of the search fee, the examination fee, or the oath or declaration is filed later than thirty months from the priority date. Section 1.492(j) is proposed to be amended to include a cross reference to § 1.52(f).

Rulemaking Considerations

Administrative Procedure Act: The changes proposed in this notice relate solely to the procedures to be followed in prosecuting a patent application: *i.e.*, the procedures for paying the fees due upon filing an application for patent. This notice does not propose any change to the amount of fees charged by the Office. Specifically, the changes proposed in this notice concern the procedures for payment of the filing fee, search fee, and examination fee, and setting forth which fees must be paid in order for a nonprovisional application to be processed and retained by the Office such that it may be used as the basis for foreign filing and for benefit claims under 35 U.S.C. 120 and § 1.78(a). Therefore, these rule changes involve interpretive rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A). *See Bachow Communications Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are ''rules of agency organization, procedure, or practice'' and are exempt from the Administrative Procedure Act's notice and comment requirement); *see also Merck & Co., Inc.* v. *Kessler,* 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment requirements of the Administrative Procedure Act apply)), and *Fressola* v. *Manbeck,* 36 USPQ2d 1211, 1215 (D.D.C. 1995) (''it is doubtful whether any of the rules formulated to govern patent and trade-mark practice are other than 'interpretative rules, general statements of policy, * * * procedure, or practice.' '') (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act,* 38 Trademark Rep. 149, 153 (1948)).

Under the Office's pre-existing ''missing parts'' or ''missing requirements'' practice, an applicant was required to pay a surcharge if the basic filing fee was not present on filing in an application filed under 35 U.S.C. 111 or if the basic national fee was not present on the date of commencement of the national stage of processing in a PCT application entering the national stage under 35 U.S.C. 371. The Consolidated Appropriations Act split the patent application filing (or national) fee into a separate filing (or national) fee, search fee and examination fee. Therefore, the proposed replacement of the basic filing (or national) fee in §§ 1.16 and 1.492 with the basic filing (or national) fee, the search fee, or the examination fee is simply a procedural change that is necessary to maintain (or restore) the *status quo ante* with respect to the Office's pre-existing ''missing parts'' or ''missing requirements'' practice.

The processing and retention fee practice allows applicants to file an application without the filing fee and to pay only a processing and retention fee in order for the application to be used as a basis for foreign filing and for priority under 35 U.S.C. 120. Under the revised patent fee structure set forth in the Consolidated Appropriations Act (which split the filing fee into a separate filing, search fee and examination fee), the filing fee covers the cost of the initial processing and retention of an application. Thus, requiring payment of the basic filing fee under the Consolidated Appropriations Act in order for an application to be used as a basis for foreign filing and for priority under 35 U.S.C. 120 is more compatible with the filing fee scheme set forth in the Consolidated Appropriations Act than is continuing the processing and retention fee practice.

The Consolidated Appropriations Act provides for the Office to prescribe the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of the application size fee specified in 35 U.S.C. 41(a)(1)(G). Thus, setting a paper size equivalent based upon the number of kilobytes of content that can fit onto a sheet of paper (given the current requirements for applications filed in part on CD and for paper size and margins) simply sets forth the procedures for determining the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of the application size fee.

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). Nevertheless, the Office is providing this opportunity for public comment on the changes proposed in this notice because the Office desires the benefit of public comment on these proposed changes.

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this notice have been reviewed and previously approved by OMB under OMB control numbers: 0651–0021, 0651–0031, and 0651–0032. The United States Patent and Trademark Office is not resubmitting any information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under these OMB control

numbers. The changes proposed in this notice concern the procedures for payment of the filing fee, search fee, examination fee, and the application size fee, including setting forth which fees must be paid in order for an application to be processed and retained by the Office such that it may be used as the basis for foreign filing and for benefit claims under 35 U.S.C. 120 and § 1.78(a).

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

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

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.16 is amended by revising paragraphs (f) and (s) to read as follows:

§ 1.16 National application filing, search, and examination fees.

* * * * *

(f) Surcharge for filing any of the basic filing fee, the search fee, the examination fee, or oath or declaration on a date later than the filing date of the application, except provisional applications:

By a small entity (§ 1.27(a))—$65.00
By other than a small entity—$130.00

* * * * *

(s) Application size fee for any application under 35 U.S.C. 111 filed on or after December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof (see § 1.52(f) for applications submitted in whole or in part on an electronic medium):

By a small entity (§ 1.27(a))—$125.00
By other than a small entity—$250.00

* * * * *

3. Section 1.21 is amended by removing and reserving paragraph (l):

§ 1.21 Miscellaneous fees and charges.

* * * * *

(l) [Reserved]

* * * * *

4. Section 1.52 is amended by revising paragraph (f)(1) to read as follows:

§ 1.52 Language, paper, writing, margins, compact disc specifications.

* * * * *

(f)(1) Any sequence listing in an electronic medium in compliance with §§ 1.52(e) and 1.821(c) or (e), and any computer program listing filed in an electronic medium in compliance with §§ 1.52(e) and 1.96, will be excluded when determining the application size fee required by § 1.16(s) or § 1.492(j). For purposes of determining the application size fee required by § 1.16(s) or § 1.492(j), for an application the specification and drawings of which, excluding any sequence listing in compliance with § 1.821(c) or (e), and any computer program listing filed in an electronic medium in compliance with §§ 1.52(e) and 1.96, are submitted in whole or in part on an electronic medium other than the Office electronic filing system, each two kilobytes of content submitted on an electronic medium shall be counted as a sheet of paper.

* * * * *

5. Section 1.53 is amended by revising paragraph (f)(5) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(f) * * *

(5) If applicant does not pay the basic filing fee during the pendency of the application, the Office may dispose of the application.

* * * * *

6. Section 1.78 is amended by removing paragraph (a)(1)(iii) and revising paragraph (a)(1)(ii) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross references to other applications.

(a)(1) * * *

(ii) Entitled to a filing date as set forth in § 1.53(b) or § 1.53(d) and have paid therein the basic filing fee set forth in § 1.16 within the pendency of the application.

* * * * *

7. Section 1.492 is amended by revising paragraphs (h) and (j) to read as follows:

§ 1.492 National stage fees.

* * * * *

(h) Surcharge for filing any of the search fee, the examination fee, or the oath or declaration later than thirty months from the priority date pursuant to § 1.495(c):

By a small entity (§ 1.27(a))—$65.00
By other than a small entity—$130.00

* * * * *

(j) Application size fee for any international application for which the basic national fee was not paid before December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof (see § 1.52(f) for applications submitted in whole or in part on an electronic medium):

By a small entity (§ 1.27(a))—$125.00
By other than a small entity—$250.00

Dated: February 22, 2005.

Jon W. Dudas,

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

[FR Doc. 05–3743 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–IN–0007; FRL–7875–4]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the particulate matter (PM) and sulfur dioxide (SO_2) emission requirements for Pfizer, Inc. (Pfizer). Pfizer operates a medicinal chemical manufacturing facility in Vigo County, Indiana. On October 7, 2004, Indiana submitted a request for PM and SO_2 emission limit revisions as an amendment to its State Implementation Plan (SIP). Pfizer has removed five boilers from its facility. Indiana has requested the deletion of the site-specific PM and SO_2 emission limits for all five removed boilers. A new boiler has replaced three of the removed boilers. It is subject to the applicable

New Source Performance Standards. There will be no increase in PM or SO_2 emissions as a result of the requested revisions.

DATES: Written comments must be received on or before March 30, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2004–IN–0007 by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments. Agency Web site: *http://docket.epa.gov/rmepub/index.jsp*. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: *mooney.john@epa.gov*.

Fax: (312) 886–5824.

Mail: You may send written comments to:

John Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John Mooney, Chief, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2004–IN–0007. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov website are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.epa.gov/rmepub/index.jsp*. 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 RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please telephone Matt Rau at (312) 886–6524 before visiting the Region 5 Office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524. *Rau.matthew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information.
A. Does This Action Apply to me?
B. What Should I Consider as I Prepare my Comments for EPA?
II. What Action is EPA Taking Today?
III. Where can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

I. General Information

A. Does This Action Apply to Me?

This action applies to a single source, Pfizer, Incorporated in Vigo County, IN.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit Confidential Business Information to EPA through RME, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Taking Today?

The EPA is proposing to approve revisions to the particulate matter and sulfur dioxide emission requirements for Pfizer. On October 7, 2004, Indiana submitted a request for PM and SO_2 emissions limit revisions as an amendment to its SIP. Pfizer is replacing three boilers and removing two additional boilers. Indiana requested deleting the limits for all five boilers. The new boiler is subject to the new source performance standard limits for PM and SO_2 emissions which are not being revised. The requested SIP revisions consist of the limit deletions only. There will be no increase in PM or SO_2 emissions from the requested revisions. Pfizer operates a medicinal chemical manufacturing facility in Vigo County, Indiana.

III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**.

Copies of the request and the EPA's analysis are available electronically at RME or in hard copy at the above address. Please telephone Matt Rau at (312) 886–6524 before visiting the Region 5 Office.

Dated: February 10, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 05–3676 Filed 2–25–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 05–59; FCC 05–35]

Assessment and Collection of Regulatory Fees for Fiscal Year 2005

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2005. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Comments are due March 8, 2005, and reply comments are due March 18, 2005. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 29, 2005.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L. LaLonde@omb.eop.gov*, or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444 or Rob Fream. Office of Managing Director at (202) 418–0408. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *Initial Paperwork Reduction Act of 1995 Analysis:* This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due April 29, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1064.

Title: Regulatory Fee Assessment True-Ups.

Form No.: Not applicable.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities.

Estimated Number of Respondents: 1,650.

Estimated Time Per Response: .25 hours.

Frequency of Response: Annually.

Estimated Total Annual Burden: 413 hours.

Estimated Total Annual Costs: $0.

Privacy Act Impact Assessment: This information collection does not affect individuals or households; thus, there is no impact under the Privacy Act.

Needs and Uses: The Commission collects Congressionally-mandated regulatory fees from its regulatees based upon a schedule of fees that it establishes each year in an annual rulemaking proceeding. As part of our modernization efforts, we are able to provide regulatory fee assessments to select categories of regulatees: (1) Cable television operators, (2) media services licensees and (3) commercial mobile radio service (CMRS) licensees. Along with the fee assessment notices that we intend to send to these three categories of regulatees, we will provide them with a ''true-up'' opportunity to correct, update or otherwise rectify their assessed fee amounts well before the actual due date for payment of regulatory fees. This ''true-up'' collection of information is necessary because it enables regulatees to confirm for themselves what their regulatory fee payment obligations will be, well before their fees are due. The ''true-up'' opportunity also serves to provide the Commission with a higher degree of certainty in its regulatory fee payment expectations for the fiscal year.

Adopted: February 11, 2005; Released: February 15, 2005.

By the Commission:

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I. Introduction

1. In this *Notice of Proposed Rulemaking (NPRM),* we propose to collect $280,098,000 in regulatory fees for Fiscal Year (FY) 2005. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1]

II. Discussion

A. Development of FY2005 Fees

1. Calculation of Revenue and Fee Requirements

2. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees (Attachment C).[2] For FY 2005, this allocation was done using FY 2004 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 2.6 percent to reflect the increase in regulatory fees from FY 2004 to FY 2005. These FY 2005 amounts were then divided by the number of payment units in each fee category to determine the unit fee.[3] In instances of small fees, such as licenses that are renewed over a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded in accordance with 47 U.S.C. 159(b)(2).

2. Additional Adjustments to Payment Units

3. In calculating the FY 2005 regulatory fees proposed in Attachment D, we further adjusted the FY2004 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.[4] Where appropriate, we adjusted and/or rounded our final estimates to take into consideration variables that may impact the number of payment units, such as waivers and/or exemptions that may be filed in FY 2005, and fluctuations in the number of licensees or station operators due to economic, technical or other reasons. Therefore, when we note that our estimated FY 2005 payment units are based on FY 2004 actual payment units, we may have rounded the number for FY 2005 or adjusted it slightly to account for these variables.

4. Additional factors are considered in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.

B. Commercial Mobile Radio Service (CMRS) Messaging Service

5. In our FY 2003 *Report & Order* (68 FR 48445, August 13, 2003), we noted that in recent years there has been a significant decline in the number of CMRS Messaging units—from 40.8 million in FY 1997 to 19.7 million in FY 2003—a decline of 51.7 percent.[5] This trend is continuing. For example, in the FY 2004 regulatory fee cycle, the number of CMRS Messaging units for which regulatory fees were paid declined to 13.5 million. This is consistent with our *Ninth Annual CMRS Competition Report,* which estimates the number of paging-only subscribers at the end of 2003 to be 11.2 million units.[6] We also note that in recent years there have been no significant changes in the level of regulatory oversight for this fee category. For these reasons, we propose to continue our policy of maintaining the CMRS Messaging subscriber regulatory fee at the rate calculated in FY 2003 and FY 2004 to avoid further contributing to the financial hardships associated with a declining subscriber base.

C. Local Multipoint Distribution Service (LMDS)

6. In the *FY 2004 NPRM,*[7] we again sought comment on the appropriate fee classification for LMDS.[8] Commenters urged the Commission to classify LMDS as a microwave service, arguing that LMDS is operationally, functionally, and legally similar to 24 and 39 GHz services in the microwave fee category. We rejected this argument because

[1] 47 U.S.C. 159(a).

[2] It is important to note that the required increase in regulatory fee payments of approximately 2.6 percent in FY 2005 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of estimated payment units in a service category, the actual fee itself is sometimes increased by a number other than 2.6 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact of the fee increase may be greater.

[3] In most instances, the fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, subscriber fee, etc.

[4] The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). We also consulted industry sources including but not limited to *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast* and *Annual CMRS Competition Report.* For additional information on source material, see Attachment B.

[5] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15992, at paragraph 21 (2003) (*FY 2003 Report and Order*).

[6] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Ninth Report,* FCC 04–216, released Sept. 28, 2004, at paragraph 177 (*Ninth Annual CMRS Competition Report*).

[7] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Notice of Proposed Rulemaking*, 19 FCC Rcd 5795, 5797–8, at paragraph 5 (2004) (*FY 2004 NPRM*).

[8] In the *FY 2003 NPRM,* we sought comment on the appropriate fee classification of the Local Multipoint Distribution Service (LMDS). Some commenters urged that LMDS be classified in the microwave fee category. We declined to do so because technological developments and emerging commercial applications suggested that usage of LMDS could evolve differently than services in the microwave fee category. We recognized, however, that ''substantive distinctions did exist between MDS and LMDS, and that they should not be placed in the same fee category.'' Therefore, we created a separate LMDS fee category and stated that we would ''initiate a specific proceeding that addresses the policies and fee structure governing LMDS and other wireless services.'' *See FY 2003 Report and Order*, 18 FCC Rcd 15985, 15988–9, at paragraphs 6–10 (2003).

LMDS licenses are, as a factual matter, quite different than other Part 101 fixed microwave services in the upper frequency bands (above 15 GHz). While these three services are licensed on a geographic basis allowing licensees to place multiple stations within the authorized service areas, most microwave stations are currently licensed on a site-by-site basis thereby requiring, depending on the frequency band, multiple individual licenses to serve a particular geographic area or multiple points therein.[9] Even when the fees for LMDS licensees are compared with the fees for licensees in the 24 and 39 GHz bands, we did not find current fee assessments to impose a disproportionate burden on LMDS licensees.

7. However, we did identify an anomaly in FY 2004 between LMDS Block A and LMDS Block B licenses. Block A licenses are authorized for 1150 MHz of spectrum, more than seven times the amount of spectrum authorized for Block B licenses (150 MHz). Currently, LMDS regulatory fees are assessed on a per-license basis. Using the authorized bandwidth for each license as the basis for comparison, we noted that the LMDS fee for Block A licenses in FY2004 was significantly lower on a per megahertz basis than the fee for Block B licenses. For example, on a per MHz basis, Block B licenses, which are authorized for 150 MHz in the 31,000–31,075/31,225–31,300 MHz bands, paid $1.80 per MHz in FY2004, whereas Block A licenses authorized for 1150 MHz of spectrum paid $0.24 per MHz. Because this anomaly appears to create a disproportionate fee obligation on LMDS Block B licenses, on our own motion we propose in FY 2005 to exercise our authority pursuant to section 9(b)(3) and amend the fee schedule to assess LMDS regulatory fees on a per megahertz basis. This proposed action would thereby place fee assessments on Block A and Block B licenses more in line with the benefits received under the respective licenses in terms of their authorized bandwidth, which varies substantially, as noted above.

8. Following auctions 17 and 23, half of all of the licenses were Block A licenses and half were Block B licenses. Since then, some of the original licenses have been divided among other licensees pursuant to the Commission's license disaggregation and partitioning policies and procedures and others have been surrendered back to the FCC. Based on the FY 2005 revenue amount to be collected from the LMDS fee category ($94,050),[10] the per megahertz per unit fee is $0.44, which is based on a total authorized bandwidth of 1,300 MHz and estimated units of 165 Block A units and 165 Block B units.[11] This methodology of calculating LMDS regulatory fees incorporates the differences in bandwidth use between Block A and Block B licenses, as well as differences in the number of units between Block A and Block B licenses. Using the per MHz per unit fee of $0.44, the regulatory fee for LMDS Block A licenses is calculated to be $505 per license, and the regulatory fee for LMDS Block B licenses is calculated to be $65 per license.[12]

9. We seek comment on our proposal to use the above methodology for calculating regulatory fees for LMDS. We are aware of the dramatic one-year increase in regulatory fees that would result for Block A licensees if we were to adopt the above per-MHz methodology. Therefore, so as to minimize the impact of the fee increase, we seek comment on whether we should graduate the increase in increments over a brief period of years.

10. Additionally, we seek general comment on applying the per-MHz methodology to LMDS Block A and Block B licenses that have been partitioned and disaggregated. We also seek comment on whether to continue to use a fee calculation process that does not distinguish between LMDS Block A and LMDS Block B licenses. A fee calculation process that does not distinguish between Block A and Block B licenses would result in a regulatory fee of $285 per LMDS license.[13] Finally, we seek comment on other proposals to address the assessment of regulatory fees for LMDS.

D. International Bearer Circuits

11. The Commission currently assesses regulatory fees on international carriers based on the number of active international bearer circuits the carrier had the previous year.[14] In response to our *FY 2004 NPRM*, several commenters requested that the Commission change the regulatory fee regime for international carriers.[15] In the *FY 2004 Report and Order* we found that we needed a more complete record on these issues and stated that we would seek comment on them in our 2005 regulatory fees proceeding.

12. In this proceeding we seek comment on possible changes to the regulatory fees assessed on international carriers. Specifically we seek comment on possible bases, other than active circuits, for assessing regulatory fees on international carriers.[16]

13. Several carriers raised concerns with the use of international bearer circuits as the basis for assessing regulatory fees in the 2004 regulatory fee proceeding. They argued that basing fees on the number of active circuits an international carrier has favors older, lower-capacity systems to the detriment of newer, higher-capacity systems. Specifically the commenters argued that (1) the Commission's present methodology does not take into account the reduced regulation of non-common carrier (also known as ''private'') submarine cable operators, and (2) imposing fees based on a company's ''lit and sold'' (also known as ''active'') bearer circuit capacity is at odds with how non-common carrier submarine cable operators actually sell capacity, thereby requiring operators to spend

[9] *Id.*

[10] *See* Attachment C.

[11] The per megahertz per unit fee is calculated as follows:

165 Block A units times 1,150 MHz used = 189,750 (total MHz used by Block A licensees).

165 Block B units times 150 MHz used = *24,750* (total MHz used by Block B licensees).

Total = 214,500 (total MHz used by Block A & B licensees).

Per MHz Per Unit Fee = $94,050 divided by 214,500 = $0.44.

[12] LMDS Block A Licenses: $0.44 per MHz per unit times 1,150 MHz bandwidth = $506, rounded to $505. LMDS Block B Licenses: $0.44 per MHz per unit times 150 MHz bandwidth = $66, rounded to $65.

[13] A regulatory fee that does not distinguish between Block A and Block B LMDS licenses is calculated as follows: $94,050 (total expected FY 2005 revenue) divided by 330 (estimated units) = $285 per license.

[14] Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers for active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, and also including active circuits to themselves or their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01–76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe—International and Satellite Services Licensees for FY 2004* at 3 (released July 2004) (the fact sheet is available on the FCC web-site at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC–249904A4.pdf)*.

[15] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2004, Report and Order, 19 FCC Rcd 11662, 11671–72, at paragraphs 26–30 (2004) (*FY 2004 Report and Order*).

[16] Because of the complexity of this issue, we will review the comments and reply comments, but we will not implement any action in FY 2005.

time determining if regulatory fees are applicable based on the Commission's definition of ''active.''

14. Tyco proposed the following changes be made to the regulatory regime: (1) Separate the non-common carrier submarine cable operator subcategory from the existing international bearer circuit fee category by creating a new non-common carrier submarine cable operator category; (2) allocate the current revenue requirement for the bearer circuit fee category between two new fee categories based on the regulatory burden of each new category; and (3) adopt a flat, per-cable-landing-license fee for non-common carrier submarine cable operators. Several commenters supported Tyco's position. Several commenters also noted that satellite operators provide international bearer circuits on a non-common carrier basis, and that circuit fees should include both non-common carriers as well as private submarine cable providers.

15. The Commission concluded in the *FY 2004 Report and Order* that these arguments warranted further consideration, and that a fee system based on cable landing licenses and international section 214 authorizations, rather than international bearer circuits, would be administratively simpler for both the Commission and carriers.[17] The Commission also noted that a fee system based on licenses/authorizations could provide an incentive for carriers to initiate new services and to use new facilities more efficiently.[18]

16. The assessment of regulatory fees on international carriers based on active international circuits is set out in the fee schedule in section 9 of the Communications Act.[19] The statute provides the Commission with the authority to amend the fee schedule. 47 U.S.C. 159(b)(3). Section 9(b)(3) requires the Commission to amend the schedule if the Commission determines that amendment is necessary to comply with the general fee authority set forth in section 9(b)(1)(A) of the Communications Act. Section 9(b)(3) also grants the Commission authority to ''add, delete, or reclassify service in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in the law.'' [20] We seek comment on whether a change to the computation of fees for the international bearer circuit category or a reclassification of the category is warranted in light of the Commission's authority to amend the fee schedule.[21] If a reclassification of the category is proposed, commenters should specifically address the Commission rulemakings or changes in law that justify the reclassification.

17. Commenters should address possible alternative methods of assessing regulatory fees on international carriers, for example whether regulatory fees should be assessed based on the holding of an international section 214 authorization or a cable landing license. As noted above, Tyco proposed to separate the non-common carrier submarine cable operator subcategory from the existing international bearer circuit fee category, thereby creating a new non-common carrier submarine cable operator category. We seek comment on the Tyco proposal. Commenters should address how to allocate the current international bearer circuit revenue requirement between non-common carrier submarine cable operators and the remaining circuit fee category.

E. Multichannel Video Distribution and Data Service (MVDDS)

18. In 2002 the Commission established the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band (12 GHz band),[22] totaling 500 megahertz of contiguous spectrum that is licensed by 214 service areas (''MVDs''). MVDDS spectrum is used to facilitate the delivery of new video and broadband communications services, such as local television programming and high-speed Internet access.[23] The technical rules reflect a carefully crafted balance in which the Commission affords protection to the Direct Broadcast Satellite (DBS) service and the non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) while allowing the entrance of MVDDS.[24]

19. The Commission established MVDDS because it had concluded that a fourth provider in the MVPD marketplace would generate significant public interest benefits, such as lower prices, improved service quality, increased innovation, and increased service to unserved or underserved rural areas.[25] However, the Commission found that ''open eligibility for in-region cable operators [would] pose a significant likelihood of substantial competitive harm'' because ''cable operators have a strong incentive to prevent entry by new MVPD providers.''[26] Therefore, cable operators and entities holding attributable interests in cable operators must divest these interests within ninety days of being granted an MVDDS license whose geographic service area significantly overlaps the cable operator's service area.[27]

20. On January 27, 2004, the Commission completed the auction of the 214 MVDDS licenses (''Auction No. 53''), raising (in net bids) a total of $118,721,835. In this auction, ten winning bidders won a total of 192 MVDDS licenses, which the Commission issued later in 2004.[28]

[17] *FY 2004 Report and Order* at paragraph 29.

[18] *Id.*

[19] 47 U.S.C. 159(g).

[20] 47 U.S.C. 159(b)(3).

[21] On December 15, 2004, counsel for Tyco Telecommunications (US) Inc. submitted a letter addressing the Commission's legal authority to amend the schedule of regulatory fees pursuant to section 9(b)(3), 47 U.S.C. 159(b)(3). Letter from Kent D. Bressie, Harris, Wiltshire & Grannis, to David Krech, FCC, dated December 15, 2004. A copy of the letter has been placed in the record for this proceeding. We seek comment on the analysis presented in the letter.

[22] Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide a Fixed Service in the 12.2–12.7 GHz Band, ET Docket No. 98–206, *Memorandum Opinion and Order and Second Report and Order,* 17 FCC Rcd 9614, 9680 (2002) (*MVDDS Second R&O*).

[23] MVDDS licensees may use the 12.2–12.7 GHz band for any digital fixed non-broadcast service (broadcast services are intended for reception of the general public and not on a subscribership basis) including one-way direct-to-home/office wireless service. *See* 47 CFR 101.1407 (Permissible operations for MVDDS).

[24] *See generally* subpart P of 47 CFR Part 101.

[25] 25 *MVDDS Second R&O,* 17 FCC Rcd at 9680.

[26] 26 *Id.*

[27] 47 CFR 101.1412(a). ''Cable operator'' means a company that is franchised to provide cable service, as defined in 47 CFR 76.1000(e), in all or part of the MVDDS license area, id. § 101.1412(b). ''Significant overlap'' occurs when a cable operator's subscribers in the MVDDS license area make up 35 percent or more of the households in that MVDDS license area which subscribe to one or more Multichannel Video Program Distributors (MVPDs), as defined in 47 CFR 76.1000(e). *See* 47 CFR 101.1412(c) and (e). The winning bidder for the MVDDS license of the New York service area (MVD001), *inter alia,* requested and received a 270-day extension of the 90-day divestiture deadline, *see* 47 CFR 101.1412(g)(4), of the Commission's MVDDS/cable cross-ownership rule. *See* DTV Norwich, LLC, Application for Multichannel Video Distribution and Data Service License, MVD001–New York, Request for Waiver of Section 101.1412(g)(4) of the Commission's Rules, *Order,* File No. 0001618606–MVD001, DA 04–3044 (released September 23, 2004) (*DTV Norwich Waiver Order*).

[28] *See* Wireless Telecommunications Bureau Grants Multichannel Video Distribution and Data Service Licenses, *Public Notice,* DA 04–2331 (released July 27, 2004) (granting 154 licenses); Wireless Telecommunications Bureau Grants Multichannel Video Distribution and Data Service Licenses to South.Com LLC, DA 04–2547, *Public Notice,* (released August 18, 2004) (granting 37 licenses); and *DTV Norwich Waiver Order* (granting license for MVD001). All of the grants are subject to conditions.

MVDDS licenses are issued for a ten-year term beginning on the date the initial authorization is granted.[29] Licensees must provide ''substantial service'' within five years of the grant, which must be documented at license renewal time.[30] As of the third quarter 2004, MVDDS equipment was still under development. Because MVDDS spectrum can be used to provide non-video, *i.e.*, broadband data services,[31] the Commission concluded that MVDDS does not fall within the Cable Television and DBS Subscribers regulatory fee category, which raises the question of whether MVDDS should be established as a new regulatory fee category.

21. Since MVDDS equipment is still under development, we propose to not establish regulatory fees for MVDDS as a new regulatory fee category in FY 2005. We seek comment on this proposal. In the alternative, if the Commission were to establish regulatory fees for MVDDS in FY 2005, we seek comment on equitable ways to assess fees for MVDDS based on the nature of this service, such as whether the fee should be flat or be set on a per-MHz basis. We also seek comment on whether the Commission should collect the fee on an annual basis, or whether we should collect it in advance to cover the term of the license fee when the application for license is filed.

F. Broadband Radio Service (BRS)/ Educational Broadband Service (EBS), (Formerly MDS/MMDS and ITFS)

22. On June 10, 2004, we adopted a *Report & Order and Further Notice of Proposed Rulemaking (R&O and FNPRM),* 69 FR 72048 (December 10, 2004), and also referred to as the BRS/ EBS proceeding) [32] that takes important steps to transform our rules and policies governing the licensing of the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS) in the 2500–2690 MHz band.[33] The actions taken in this proceeding initiated a fundamental restructuring of the band that will provide both existing ITFS and MDS licensees and potential new entrants with greatly enhanced flexibility in order to encourage the highest and best use of spectrum domestically and internationally, and the growth and rapid deployment of innovative and efficient communications technologies and services.[34] The R&O renamed the MDS service as the ''Broadband Radio Service'' (BRS). This new designation connotes a more accurate description of the services we anticipate will develop in the band.The *R&O* also renamed the ITFS service as the Educational Broadband Service'' (EBS), which more accurately describes the kinds of the services that we anticipate will develop in the band.[35] The *R&O,* among other things, implemented geographic area licensing for all licensees in the band, which gives licensees increased flexibility while greatly reducing administrative burdens on both licensees and the Commission. We note that geographic area licensing will reduce the total number of BRS licenses because, in most cases, separate licenses will no longer be necessary for each transmitter a licensee places in service.

23. In the *FNPRM,* we sought comment on issues relating to regulatory fees.[36] We note that, other than renaming our MDS/MMDS regulatory fee category to BRS and adjusting its estimated number of payment units, any other changes to the regulatory fee rules we adopt in the BRS/EBS proceeding will not be adopted in time to take effect in FY 2005. If new regulatory fee rules are adopted in the BRS/EBS proceeding, the Commission will make appropriate adjustments in the appropriate regulatory fee cycle, which will presumably be the cycle for FY 2006 or beyond.

G. Regulatory Fees for AM and FM Construction Permits

24. At the inception of our regulatory fee program in FY 1994, the regulatory fee amount for construction permits was set at an amount that, when compared to licensed stations, was commensurate to the limited nature of station operations under the terms of a construction permit. Each year since FY 1994, the unit fee for AM, FM, and full-service VHF and UHF television construction permits was calculated by determining the proportion of the amount to be collected by each respective fee category, divided by the number of estimated units, as illustrated in Attachment C. However, since the inception of the program in FY 1994, the amount of fees that we have been directed to collect each year has steadily increased, while the number of estimated payment units for these construction permits has steadily decreased. This combination of increasing expected revenue and decreasing payment units for these construction permits has resulted in a regulatory unit fee that is higher than that of some licensed stations.

25. To rectify this situation, we propose beginning in FY 2005 to set the AM, FM, VHF, and UHF construction permit fee to be no higher than the regulatory fee associated with the lowest licensed station for that fee category. Because there are unit and revenue variables in assessing the per-unit regulatory fee, thereby causing the fee to change each fiscal year, it may be necessary to make revenue adjustments each fiscal year to keep the per unit regulatory fee for construction permits at the level of the lowest licensed fee for AM, FM, VHF, and UHF stations. We seek comment on whether construction permit fees should be held at the level of the lowest licensed fee for their respective fee categories (*e.g.* AM, FM, VHF, and UHF stations), and whether any adjustments that have to be made to hold the construction permit fee at the level of the lowest respective licensed fee should be spread across only a narrow group of fee categories, such as AM, FM, VHF, and UHF stations, or across all fee categories.

H. Clarification of Policies and Procedures

1. Ad Hoc Issues Concerning Our Regulatory Fee Exemption Policies

26. Pursuant to 47 CFR 1.1162, the Commission does not establish regulatory fees for applicants, permittees and licensees who qualify as government entities or non-profit entities. Despite the language of 47 CFR

[29] 47 CFR 101.1413(a).

[30] 30 47 CFR 101.1413(b) and (c).

[31] MVDDS licensees may use this spectrum for any digital fixed non-broadcast Service (broadcast services are intended for reception of the general public and not on a subscribership basis) including one-way direct-to-home/office wireless service. Licensees are permitted to provide one-way video programming and data services on a non-common carrier and/or on a common carrier basis. Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return or upstream path. *See* 47 CFR 101.1407.

[32] *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands et al, *Report & Order and Further Notice of Proposed Rulemaking,* 19 FCC Rcd 14165 (2004) (*R&O and FNPRM*).

[33] The terms MDS and MMDS are often used interchangeably. The Commission coined the term ''MDS'' at a time when it was making only two channels available for the service, at 2150–2162 MHz. The Commission began using the term ''MMDS'' when formulating rules making additional channels for the service available in the 2500–2690 MHz band. In discussing this *Report & Order and Further Notice of Proposed Rulemaking,* we will use the term ''MDS'' to signify both services.

[34] Federal Communications Commission, Strategic Plan FY 2003–FY 2008 at 5 (2002) (*Strategic Plan*).

[35] Federal Communications Commission, Strategic Plan FY 2003–FY 2008 at 5 (2002) (*Strategic Plan*).

[36] *See* R&O and FNPRM, 19 FCC Rcd at 14293–97 paragraphs 351–359.

1.1162, we still encounter frequent uncertainty and comments from parties with respect to our fee exemption policies. Therefore, we believe it would be helpful for us to provide clarification of these policies.[37]

27. *Determination of Fee Code for a Facility:* The fee code is determined by the operational status of the facility as of October 1 of each year. This involves factors such as whether the facility is in construction permit status or licensed status and a variety of other factors. Every facility has a fee code. There is no prorating of regulatory fees. For example, if a facility is in construction permit status as of the close of business October 1, but a license is granted on or after October 2, that facility is considered to be in construction permit status for the entire year. Other facility changes during the course of the year, such as technical changes, are treated in the same manner.

28. *Establishment of Exempt Status:* State, local, and federal government agencies and IRS-certified not-for-profit entities are generally exempt from payment of regulatory fees. The Commission requires that each exempt entity have on file a valid IRS Determination Letter or certification from a government authority documenting its exempt status. In instances where there is a question regarding the exempt status of an entity, the FCC may request, at any time, for the entity to submit an IRS Determination Letter or certification from a government authority that documents its exempt status.

29. *Subsidiaries of Exempt Entities:* The licensee of a facility may be distinct from the ultimate owner. Exempt entities may hold one or more licenses for media facilities directly and/or through subsidiaries. Facilities licensed directly to an exempt entity and its exempt subsidiaries are excused from the regulatory fee obligation. However, licensees that are for-profit subsidiaries of exempt entities are subject to regulatory fees regardless of the exempt status of the ultimate owner.

Examples: A University owns a commercial facility whose profits are used to support the University and/or its programs. If the facility is licensed to the University directly, or to an exempt subsidiary of the University, it is exempt from regulatory fees. If, however, the license is held by a for-profit subsidiary, regulatory fees are owed, even though the University is an exempt entity.

A state pension fund is the majority owner of a for-profit commercial broadcasting firm. The facilities licensed to the for-profit broadcasting firm would be subject to regulatory fees, even though it is owned by an exempt agency.

30. *Responsible Party, and the Effects of Transfers of Control:* The entity holding the license for a facility as of the Fee Due Date is responsible for the regulatory fee for that facility. Eligibility for a regulatory fee exemption is determined by the status of the licensee as of the Fee Due Date, regardless of the status of any previous licensee(s).

2. Regulatory Fee Obligations for Digital Broadcasters

31. Our current schedule of regulatory fees does not include service categories for digital broadcasters. Licensees in the broadcast industry pay regulatory fees based on their analog facilities. For licensees that broadcast in both the analog and digital formats, the only regulatory fee obligation at present is for their analog facility. Moreover, a licensee that has fully transitioned to digital broadcasting and has surrendered its analog spectrum would have no regulatory fee obligation.

32. At this time, we regard it as premature to establish regulatory fee obligations for digital broadcasters. However, recognizing the Commission's initiatives to transition analog broadcasters to digital spectrum, we wish to begin to address these issues from a regulatory fee perspective, so that both the Commission and licensees can prepare for fee policy changes that may need to occur.

33. Therefore we seek comment on whether and when we should establish regulatory fee service categories for digital broadcasters. In particular, we seek comment on ways that we could most efficiently and seamlessly adjust our schedule of regulatory fees to account for the collection of fee revenue from digital broadcasters without harming early transitioners to digital spectrum or late transitioners from analog spectrum.

3. Regulatory Fee Obligations for AM Expanded Band Broadcasters

34. *AM Expanded Band Radio Station:* We are aware of uncertainty among licensees as to whether or not regulatory fees are owed for AM Expanded Band radio stations. The concept of the AM Expanded Band has its basis in the Commission's rules regarding experimental stations.[38] The AM Expanded Band was created to reduce interference in the upper standard band portion of the AM spectrum band by allowing stations to voluntarily move their broadcasts from the standard band to a point above 1605 kHz.[39]

35. Uncertainty about the fee status of AM Expanded Band stations may exist because AM Expanded Band radio service is not among our categories for general exemptions from regulatory fees, as defined in 47 CFR 1.1162. While not fitting a general exemption, we clarify here that, at this time, licensees of AM Expanded Band radio stations—stations authorized for broadcast in the 1605–1705 kHz range—are not required to pay regulatory fees for such stations. Licensees that operate a standard band AM station (540–1600 kHz) that is linked to an AM Expanded Band station are subject to regulatory fees for their standard band station only.

36. We also note that our decision not to require regulatory fee payments for AM Expanded Band stations is not synonymous with giving AM Expanded Band radio service a general exemption from regulatory fees. Because the movement to the expanded band is voluntary and helps to reduce interference in the standard bandwidth, we wish to continue our policy of not subjecting this relatively small group of stations to regulatory fees. However, at some future point when the migration of standard band broadcasters to the Expanded Band has advanced, we will consider establishing regulatory fee requirements for AM Expanded Band stations.

4. Effective Date of Payment of Multi-Year Wireless Fees

37. The first eleven fee categories in our Attachment D, Schedule of Regulatory Fees, constitute a general fee category known as multi-year wireless fees. Regulatory fees for this category are generally paid in advance, and for the amount of the entire 5-year or 10-year term of the license. Because payment of these regulatory fees is linked to the date of license renewal (or at the time of a new application), these fees can be paid at any time during the fiscal year. As a result, there has been some confusion as to the regulatory fee rate that should apply at the time of license renewal. Current fiscal year regulatory

[37] In the ensuing discussion, ''facility'' includes ''station'' and ''licensee'' includes ''permittee.'' ''October 1'' means the close of business on October 1, the first day of the government fiscal year. ''Fee Due Date'' means the close of business on the day determined to be the final date by which regulatory fees must be paid. The Fee Due Date usually occurs in August or September. An ''Exempt Entity'' is a legal entity that is relieved of the burden of paying annual regulatory fees.

[38] Definitions regarding AM Expanded Band stations are listed in many places in the Commission rules, including 47 CFR 73.14, 73.21, 73.30, and 73.37.

[39] *See* 47 CFR 73.14, 73.21, 73.30, and 73.37 of the Commission' rules for information regarding AM Expanded Band stations.

fees generally become effective 30 or 60 days after publication of the fees Report & Order in the **Federal Register**, or in some instances, 90 days after delivery of the Report & Order to Congress. Because current fiscal year regulatory fees have an effective date, only licensees (including new licensees) whose license renewal dates fall on or after this effective date pay regulatory fees at the new rate. Licensees whose license renewal dates fall before the current year effective date pay regulatory fees at the prior year rate, which, in other words, is the rate currently in effect before the new rate becomes effective.

I. Proposals for Notification, Assessment and Collection of Regulatory Fees

38. Each year, we generate public notices and fact sheets that notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures. In prior years, we disseminated these notices and fact sheets to regulatees through surface mail. We discontinued this practice two years ago, informing regulatees that with the widespread use of the Internet, sending public notices by surface mail was not an efficient use of our time and resources. We stated that we can better serve the public by providing these general notices on our website, while exploring ways to disseminate specific regulatory fee bills or assessments through surface mail.

39. Accordingly, in FY 2005 we will provide our public notices, fact sheets and all other relevant materials on our web site at *http://www.fcc.gov/fees/regfees.html,* just as we have done for the past several years. As a general practice, we will not send such information through surface mail. However, in the event that regulatees do not have access to the Internet, we will mail public notices and other relevant materials upon request. Regulatees and the general public may request such information by contacting the FCC CORES Help Desk at (877) 480–3201, Option 4.

40. Although last year we did not send public notices and fact sheets to regulatees en masse, we did send specific regulatory fee assessments or bills by surface mail to a select group of fee categories. Here, we believe that it is important to clarify the distinction between an assessment and a bill. An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounts receivable system as a current debt. A bill is distinct from an assessment in that it is automatically entered into our financial records as a debt owed to the Commission. Bills reflect the amount owed and have a due date of the last day of the fee payment window. Consequently, if a bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures.[40]

41. We are pursuing our billing initiatives as part of our effort to modernize our financial practices. Eventually, we intend to expand our billing initiatives to include all regulatory fee service categories. For now, based on the results of our assessment and billing initiatives from last year, and the resources currently available to us, we propose to proceed with our various FY 2005 initiatives as follows.

1. Interstate Telecommunications Service Providers (ITSPs)

42. In FY 2001, we began sending pre-completed FCC Form 159–W assessments to carriers in an effort to assist them in paying the Interstate Telecommunications Service Provider (ITSP) regulatory fee.[41] The fee amount on FCC Form 159–W was calculated from the FCC Form 499–A report, which carriers are required to submit by April 1st of each year. Throughout FY 2002 and FY 2003, we refined the FCC Form 159–W to simplify the regulatory fee payment process.[42] In FY 2004, we generated and mailed the same pre-completed FCC Form 159–W's to carriers under the same dissemination procedures, but we informed them that we will be treating the amount due on Form 159–W as a bill, rather than as an assessment. Other than the manner in which Form 159–W payments were entered into our financial system, carriers experienced no procedural changes regarding the use of the FCC Form 159–W when submitting payment of their FY 2004 ITSP regulatory fees.

43. For FY 2005, we propose to continue our Form 159–W billing initiative for ITSPs. We seek comment on this proposal and on ways that we could improve our billing initiative for ITSPs.

2. Satellite Space Station Licensees

44. Last year, for the first time, we mailed regulatory fee bills through surface mail to all licensees in our two satellite space station service categories. Specifically, geostationary orbit space station (''GSO'') licensees received bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1, 2003; and (2) were not co-located with and technically identical to another operational satellite on October 1, 2003 (*i.e.*, were not functioning as a spare satellite). Non-geostationary orbit space station (''NGSO'') licensees received bills requesting regulatory fee payment for systems that were licensed by the Commission and operational on or before October 1, 2003.

45. For FY 2005, we propose to continue our billing initiative for our two satellite space station categories: GSOs and NGSOs.

46. Finally, we emphasize that the bills that we propose to generate for our GSO and NGSO licensees will be only for the satellite or system aspects of their respective operations. GSO and NGSO licensees typically have regulatory fee obligations in other service categories (such as earth stations, broadcast facilities, etc.), and we expect satellite operators to meet their full fee payment obligations for their entire portfolio of FCC licenses. We seek comment on our proposal to generate regulatory fee bills for our two satellite space station service categories.

3. Media Services Licensees

47. In FY 2003 and FY 2004, we mailed fee assessment postcards to media services entities on a per-facility basis. The postcards served to notify licensees of the date when fee payments are due, the assessed fee amount for the facility, as well as other data attributes that we used in determining the fee amount.[43] We propose to continue our assessment initiative for media services licensees this year in a similar fashion.

48. As was the case last year, we propose to mail a single round of postcards to licensees and their other known points of contact listed in CDBS (Consolidated Database System) and in CORES (Commission Registration System), the Commission's two official

[40] *See* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

[41] *See FY 2001 Report and Order,* 16 FCC Rcd 13590 (2001) at paragraph 67. *See also* FCC Public Notice—Common Carrier Regulatory Fees (August 3, 2001) at 4.

[42] Beginning in FY2002, Form 159–W included a payment section at the bottom of the form that allowed carriers the opportunity to send in Form 159–W in lieu of completing Form 159 Remittance Advice Form.

[43] Fee assessments were issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations, and LPTV Translators/Boosters. Fee assessments were not issued for broadcast auxiliary stations, nor will they be issued for them in FY 2005.

databases for media services. By doing so, licensees and their other points of contact will all be furnished with the same information for each facility in question so that they can designate among themselves the payer of this year's fee. Mailing postcards to all interested parties at different addresses on file for each facility also encourages all parties to visit our Commission-authorized web site to update or correct information regarding the station, or to certify their fee-exempt status, if appropriate. The web site will be available again on-line throughout this summer.[44] In addition to using the postcards to direct parties to our authorized web site for updates and corrections, the postcards will also direct licensees to the telephone number of our FCC CORES Help Desk at (877) 480–3201, Option 4, where licensees can call to obtain clarification on procedures. We seek comment on our proposal to generate fee assessment postcards for media services entities.

49. Under our proposal, media services licensees would still be required to submit a completed Form 159 with their fee payments, despite having received an assessment postcard. We cannot guarantee that your regulatory fees will be posted accurately against your account if a Form 159 is not returned with your fee payment. We emphasize that the assessment postcards that we propose to mail to media services licensees are not to be used as a substitute to completing Form 159. Rather, we hope licensees will use the postcards as a tool to help them complete their Form 159.

50. We also emphasize that the most important data element that media services licensees need to include on their Form 159 is their station's facility ID. The facility ID is a unique identifier that never changes over the course of a station's existence. Despite the fact that we prominently display a station's facility ID on the station's assessment postcard, and Form 159 filing instructions call for each station's facility ID and call sign to be provided, we typically receive many incomplete Form 159s that do not provide the facility ID of the station whose fee is being paid.

4. Commercial Mobile Radio Service (CMRS) Cellular and Mobile Services

51. In our *FY2004 NPRM,* we proposed to mail assessments to Commercial Mobile Radio Services (CMRS) cellular and mobile service providers using information from the Numbering Resource Utilization Forecast (NRUF) form.[45] We proposed that subscriber data from the NRUF form and the Local Number Portability (LNP) database be used to compute and assess a regulatory fee obligation. Upon the suggestion of some of our commenters to our *NPRM,* we decided to provide entities who filed an NRUF form an opportunity to revise their subscriber counts before making a regulatory fee payment.[46] We propose to continue our procedure of giving entities an opportunity to revise their subscriber counts again this year by sending two rounds of assessment letters, an initial assessment and a final assessment letter. If this exercise again proves to be successful, we will be sending these letters next year as ''bills'', which will have Debt Collection Improvement Act (DCIA) implications if the assessment fee based on these subscriber counts is not paid by the due date of next year's regulatory fees.

52. As in FY 2004, we again propose to send an assessment letter that is based on NRUF data[47] that includes a list of the carrier's Operating Company Numbers (OCNs) upon which the assessment is based. The letters will not include assigned number counts by OCNs, but rather an aggregate of assigned numbers for each carrier. If the number of subscribers on the initial assessment letter differs from the subscriber count they provided on the NRUF form, CMRS cellular and mobile service providers can amend their initial assessment letter to correctly identify their subscriber count as of December 31, 2004. Assessment letters that are amended should indicate the specific reason for the change, such as the purchase or the sale of a subsidiary, the date of the transaction, and any other information that will help to justify a reason for the change. If we receive no response to our initial assessment letter, we will assume that the initial assessment is correct and will expect the fee payment to be based on the number of subscribers listed on the initial assessment. We will review all responses and determine whether a change in the number of subscribers is warranted. As in previous years, operators will certify their subscriber counts in Block 30 of the FCC Form 159 Remittance Advice when making their regulatory fee payments.

53. Although two assessment letters will be mailed to carriers that have filed an NRUF form, it is conceivable that some carriers will not be sent any letters of assessment because they did not file the NRUF form. For these carriers, we again propose to use the methodology[48] that is currently in place for CMRS Wireless services. They should use their subscriber count as of December 31, 2004 and submit payment accordingly on FCC Form 159. However, whether a carrier receives a letter of assessment or computes the subscriber count itself, the Commission reserves the right, under the Communications Act, to audit the number of subscribers upon which regulatory fees are paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the initial assessment letter, we again propose that we reserve the right to assess the carrier for the difference between what was paid and what should have been paid.

54. After having the benefit of using NRUF data last year, we will clarify some of the issues raised last year. First, we propose to derive the subscriber count from NRUF data based on ''assigned'' number counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out''), which should reflect a more accurate subscriber count. Second, as a result of number pooling, many wireless carriers receive their new numbers as thousand-number blocks and that, within each block, up to 100 numbers can be retained by the donating carrier. Because retained numbers are reported on the NRUF form as ''assigned'' to the holder of the thousand block, a concern was raised last year that this anomaly would result in a lower count for the donating carrier and a higher count for the recipient carrier. Although we are unable to correct this anomaly at this time, we believe our proposal to give carriers an opportunity to revise their subscriber count should alleviate any potential harm resulting from this phenomenon. And finally, because we are requiring carriers to confirm their subscriber counts on an aggregate basis, a carrier should be able to identify its subscriber count accurately as of December 31, 2004, regardless of whether the carrier uses data in the NRUF report, a Securities and Exchange (SEC) filing, the 477 report, or some other certified financial statement. Because we have

[44] The Commission-authorized web site is *http://www.fccfees.com.*

[45] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Notice of Proposed Rulemaking,* 19 FCC Rcd 5795, 5801, at paragraph 20 (2004) *(FY 2004 NPRM).*

[46] *See FY 2004 Report and Order,* 19 FCC Rcd 11662, 11676–11677, at paragraphs 48–49 (2004).

[47] Our proposal to continue to use NRUF data is subject to action taken in response to a Petition for Reconsideration of the FY 2004 Fee Order filed by Cingular Wireless LLC filed on August 6, 2004.

[48] Federal Communications Commission, Regulatory Fees Fact Sheet, ''What You Owe—Commercial Wireless Services, July 2004, page 1.

found subscriber counts reported by carriers on the NRUF form to be very accurate, we propose to continue to use the NRUF report [49] as the basis for our CMRS cellular/mobile provider assessments.

5. Cable Television Subscribers

55. Last year, we generated regulatory fee assessment letters for that segment of the cable television industry that was listed in selected publicly available data sources. The data sources that we selected for reference were the *Broadcasting and Cable Yearbook 2003–2004 (''Yearbook'')* [50] and industry statistics published by the National Cable and Telecommunications Association (''NCTA'').[51] We also permitted cable operators for the first time, regardless of whether or not they were listed in the selected data sources, to make regulatory fee payments based on their companies' aggregate subscriber counts, rather than requiring them to sub-report subscriber counts on a per community unit identifier (''CUID'') basis.

56. We generated assessment letters for each of the cable operators listed in the *Yearbook,* as well as the 25 largest multiple-system operators (''MSOs''), as listed on NCTA's web page. The cable operators that received assessment letters were given the opportunity to respond to the Commission to rectify their subscriber counts before making their fee payments. The remainder of the cable television industry did not receive assessment letters. Regardless of whether or not a company was listed in the *Yearbook* or on NCTA's web page, all cable operators were instructed to base their fee obligations on their basic subscriber counts as of December 31, 2003, with the understanding that we would corroborate the counts with other publicly available data sources.

57. This year, we propose to conduct a similar assessment initiative, but with different procedures. Specifically, we will generate fee assessment letters for the cable operators who are on file as having paid regulatory fees last year for their basic cable subscribers. Under our proposal, our letter to each operator would announce the due date for payment of FY 2005 regulatory fees; reflect the subscriber count for which the operator paid FY 2004 regulatory fees; and request that the operator access a Commission-authorized web site to provide its aggregate count of basic cable subscribers as of December 31, 2004—the date that the Commission requires operators to use as the basis for determining their regulatory fee obligations for basic cable subscribers. If the number of subscribers as of December 31, 2004 differs from the amount paid for last year, operators would be required to provide a brief explanation for the differing subscriber counts and indicate when the difference occurred. Cable operators who do not have access to the Internet would be able to contact the FCC CORES Help Desk at (877) 480–3201, Option 4, to provide their subscriber count as of December 31, 2004. We seek comment on our proposed assessment initiative.

58. Some cable operators may not have made regulatory fee payments last year. For example, a new company may have become operational after the first day of the fiscal year and therefore they did not have a regulatory fee obligation in FY 2004; or an existing company did not make a payment because it filed a petition for waiver of regulatory fees for FY 2004 based on financial hardship. Regardless of the circumstance, we emphasize that not receiving a regulatory fee assessment letter in FY 2005 would not excuse an operator from the obligation to pay FY 2005 regulatory fees. We expect payment from all non-exempt cable operators, not just those that made FY2004 payments and/or received assessment letters for FY2005 fees.

59. Actual payment procedures for cable operators would be the same as they were in previous years. Operators would continue to complete the FCC Form 159 Remittance Advice when making their payment, and would continue to certify their December 31, 2004 subscriber count in Block 30 of the Form 159.

60. Finally, we seek comment on a proposal to require the cable industry to annually report their basic subscriber counts to the Commission prior to paying regulatory fees for the fiscal year in question. For example, by June 1st of a given fiscal year, we would require that operators report the number of subscribers on December 31st of the preceding year. The Commission would then use the subscriber counts received on June 1st to audit regulatory fee payments that are collected later in the fiscal year.

61. Currently, subscriber counts are self-reported and certified by cable operators when they make their regulatory fee payments to the Commission at the end of each fiscal year. Self-reporting and certifying subscriber counts does not furnish us with data that we can use to audit regulatory fee payments. Therefore, we believe that a cable industry reporting requirement specific to regulatory fees may be necessary and we are therefore seeking comment on the proposal. We do not intend to implement any such reporting requirement for the collection of FY 2005 regulatory fees.

J. Future Streamlining of the Regulatory Fee Assessment and Collection Process

62. We continue to welcome comments on a broad range of options concerning our commitment to reviewing, streamlining and modernizing our statutorily required fee-assessment and collection procedures. Our areas of particular interest included: (1) The process for notifying licensees about changes in the annual regulatory fee schedule and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, *i.e.* through surface mail, e-mail, or some other mechanism; (3) the fee payment process, including how the agency's electronic payment system can be improved; and (4) the timing of fee payments, including whether we should alter the existing fee payment ''window'' in any way.

III. Procedural Matters

A. Payment of Regulatory Fees

1. *De Minimis* Fee Payment Liability

63. As in the past, regulatees whose total FY 2005 regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from payment of FY 2005 regulatory fees.

2. Standard Fee Calculations and Payment Dates

64. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

(a) *Media Services:* The responsibility for the payment of regulatory fees rests with the holder of the permit or license as of October 1, 2004. However, in instances where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(b) *Wireline (Common Carrier) Services:* Fees must be paid for any authorization issued on or before October 1, 2004. However, where a license or permit is transferred or

[49] Our proposal to continue to use NRUF data is subject to action taken in response to a Petition for Reconsideration of the FY 2004 Fee Order filed by Cingular Wireless LLC filed on August 6, 2004.

[50] *Broadcasting and Cable Yearbook 2003–2004,* by Reed Elsevier, Inc., Newton, MA, 2003. Subscriber counts reported in Section C, ''Multiple System Operators, Independent Owners and Cable Systems,'' page C–3.

[51] NCTA maintains an updated list of the 25 largest multiple-system operators at its web site located at *http://www.ncta.com.*

assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(c) *Wireless Services:* Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): Fees must be paid for any authorization issued on or before October 1, 2004. The number of subscribers, units or circuits on December 31, 2004 will be used as the basis from which to calculate the fee payment. For small multi-year wireless services, the regulatory fee will be due at the time of authorization or renewal of the license, which is generally for a period of five or ten years and paid throughout the year.

(d) *Multichannel Video Programming Distributor Services (basic cable television subscribers and CARS licenses):* The number of subscribers on December 31, 2004 will be used as the basis from which to calculate the fee payment.[52] For CARS licensees, fees must be paid for any authorization issued on or before October 1, 2004. The responsibility for the payment of regulatory fees for CARS licenses rests with the holder of the permit or license on October 1, 2004. However, in instances where a CARS license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(e) *International Services:* For earth stations and geostationary orbit space stations, payment is calculated on a per operational station basis. For non-geostationary orbit satellite systems, payment is calculated on a per operational system basis. The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2004. However, in instances where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due. For international bearer circuits, payment is calculated on a per active circuit basis as of December 31, 2004.

[52] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2004, rather than on a count as of December 31, 2004.

65. The Commission strongly recommends that entities submitting more than twenty-five (25) Form 159–C's use the electronic Fee Filer program when sending their regulatory fee payment. The Commission will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees.

B. Enforcement

66. As a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, a late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Regulatory fee payment must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window, and not merely postmarked by the last day of the window. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 (''DCIA''). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and § 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window.

67. Furthermore, we recently amended our regulatory fee rules effective November 1, 2004, to provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made. See 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910. Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.

C. Comment Period and Procedures

68. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before March 8, 2005, and reply comments on or before March 18, 2005. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[53]

69. Comments filed through the ECFS are sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must submit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address.>'' A sample form and directions will be sent in reply.

70. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be hand delivered or by messenger delivery, sent by commercial overnight courier, or mailed by first-class mail through the U.S. Postal Service (please note that the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express

[53] *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998), available at <*http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf*>.

Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

71. Parties who choose to file by paper must also submit their comments on diskette. Two copies of the diskettes must be submitted. One copy is to be sent to Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The other copy is to be sent to Office of Managing Director, Federal Communications Commission, 445 12th Street, SW., 1–C848, Washington, DC 20554. These submissions must be in a Microsoft Windows™-compatible format on a 3.5″ floppy diskette. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number MD Docket No. 04–73), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file.

72. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Center, Federal Communications Commission, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and through the Commission's Electronic Comment Filing System (ECFS) *http://www.gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi*. Those seeking materials in alternative formats (computer diskette, large print, audio recording, and Braille) should contact Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov.*

D. Ex Parte Rules

73. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.[54]

E. Paperwork Reduction Act Analysis

74. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due April 29, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

F. Initial Regulatory Flexibility Analysis

75. As required by the Regulatory Flexibility Act,[55] we have prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

G. Authority and Further Information

76. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended. It is ordered that this NPRM is adopted.[56] It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Attachment A—Initial Regulatory Flexibility Analysis

77. As required by the Regulatory Flexibility Act (RFA),[57] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in the present *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2004.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in paragraph 75. The Commission will send a copy of the *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[58] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[59]

I. Need for, and Objectives of, the Proposed Rules

78. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of $280,098,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Legal Basis

79. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[60]

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

80. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if

[54] 47 CFR 1.1203 and 1.1206(b).

[55] *See* 5 U.S.C. 603.

[56] 47 U.S.C. 154(i)– (P28P1.XXX)(j), 159, & 303(r).

[57] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[58] 5 U.S.C. 603(a).

[59] *Id.*

[60] 47 U.S.C. 154(i) and (j), 159, and 303(r).

adopted.[61] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[62] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[63] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[64]

81. *Small Businesses.* Nationwide, there are a total of 22.4 million small businesses, according to SBA data.[65]

82. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.[66]

83. *Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[67] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[68] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

84. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.''[69] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[70] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

85. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[71] According to Commission data,[72] 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

86. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[73] According to Commission data,[74] 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1.500 or fewer employees. In addition, 35 carriers have reported that they are ''Other Local Service Providers.'' Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed action.

87. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[75] According to Commission data,[76] 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

88. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[77] According to Commission data,[78] 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

89. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such

[61] 5 U.S.C. 603(b)(3).

[62] 5 U.S.C. 601(6).

[63] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[64] 15 U.S.C. 632.

[65] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[66] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[67] 5 U.S.C. 601(5).

[68] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

[69] 15 U.S.C. 632.

[70] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[71] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 513310 in October 2002).

[72] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (Aug. 2003) (hereinafter ''Trends in Telephone Service''). This source uses data that are current as of December 31, 2001.

[73] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[74] ''Trends in Telephone Service'' at Table 5.3.

[75] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[76] ''Trends in Telephone Service'' at Table 5.3.

[77] 13 CFR 121.201, NAICS code 517310 (changed to 513330 in October 2002).

[78] ''Trends in Telephone Service'' at Table 5.3.

a business is small if it has 1,500 or fewer employees.[79] According to Commission data,[80] 761 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

90. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[81] According to Commission data,[82] 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

91. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[83] According to Commission data,[84] 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

92. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[85] According to Commission data,[86] 37 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

93. *800 and 800-Like Service Subscribers.*[87] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[88] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.[89] According to our data, at the end of January, 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

94. *International Service Providers.* The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 million or less in average annual receipts.[90] For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.[91] Of this total, 273 firms had annual receipts of under $10 million, and an additional 24 firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

95. The second category—Other Telecommunications—includes ''establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' [92] According to Census Bureau data for 1997, there were 439 firms in this category that operated for the entire year.[93] Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional six firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

96. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' [94] and ''Cellular and Other Wireless Telecommunications.''[95] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[96] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or

[79] 3 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[80] ''Trends in Telephone Service'' at Table 5.3.

[81] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[82] ''Trends in Telephone Service'' at Table 5.3.

[83] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[84] ''Trends in Telephone Service'' at Table 5.3.

[85] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[86] ''Trends in Telephone Service'' at Table 5.3.

[87] We include all toll-free number subscribers in this category, including those for 888 numbers.

[88] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[89] FCC, Common Carrier Bureau, Industry Analysis Division, Study on Telephone Trends, Tables 21.2, 21.3, and 21.4 (Feb. 19, 1999).

[90] 13 CFR.121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in October 2002).

[91] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513340 (issued October 2000).

[92] Office of Management and Budget, North American Industry Classification System, page 513 (1997) (NAICS code 513390, changed to 517910 in October 2002).

[93] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513390 (issued October 2000).

[94] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[95] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[96] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

more.[97] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[98] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[99] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

97. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' [100] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[101] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[102] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999.[103] Thus, under this size standard, the great majority of firms can be considered small entities.

98. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' [104] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[105] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[106] Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data.[107] We have estimated that 294 of these are small, under the SBA small business size standard.[108]

99. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' [109] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[110] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[111] Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

100. In the Paging Second Report and Order, the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[112] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[113] The SBA has approved this definition.[114] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.[115] Fifty-seven companies claiming small business status won 440 licenses.[116] An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[117] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[118]

[97] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[98] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[99] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[100] Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 514191, ''On-Line Information Services'' (changed to current name and to code 518111 in October 2002).

[101] 13 CFR 121.201, NAICS code 518111.

[102] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[103] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[104] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[105] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[106] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[107] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[108] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[109] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[110] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[111] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[112] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paragraphs 178–181 (Paging Second Report and Order); *see also* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paragraphs 98–107 (1999).

[113] Paging Second Report and Order, 12 FCC Rcd at 2811, paragraph 179.

[114] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[115] *See* ''929 and 931 MHz Paging Auction Closes,'' Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[116] *See* ''929 and 931 MHz Paging Auction Closes,'' Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[117] *See* ''Lower and Upper Paging Band Auction Closes,'' Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[118] *See* ''Lower and Upper Paging Bands Auction Closes,'' Public Notice, 18 FCC Rcd 11154 (WTB 2003).

Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 608 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services.[119] Of these, we estimate that 589 are small, under the SBA-approved small business size standard.[120] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

101. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years.[121] The SBA has approved these definitions.[122] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

102. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[123] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[124] According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in wireless telephony.[125] We have estimated that 294 of these are small under the SBA small business size standard.

103. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[126] For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[127] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[128] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[129] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[130]

104. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses.[131] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

105. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less.[132] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[133] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[134] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[135] A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[136] The SBA has approved these small business size standards.[137] A third auction

[119] *See* Trends in Telephone Service, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers that are Small Businesses) (May 2002).

[120] 13 CFR 121.201, NAICS code 517211.

[121] 121 Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order, 12 FCC Rcd 10785, 10879, paragraph 194 (1997).

[122] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[123] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[124] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[125] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[126] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7850–7852, paragraphs 57–60 (1996); *see also* 47 CFR 24.720(b).

[127] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7852, paragraph 60.

[128] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[129] FCC News, ''Broadband PCS, D, E and F Block Auction Closes,'' No. 71744 (released January 14, 1997).

[130] *See* ''C, D, E, and F Block Broadband PCS Auction Closes,'' *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

[131] *See* ''C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 2339 (2001).

[132] Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking,* 10 FCC Rcd 175, 196, paragraph 46 (1994).

[133] *See* ''Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674,'' *Public Notice,* PNWL 94–004 (released Aug. 2, 1994); ''Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787,'' *Public Notice,* PNWL 94–27 (released Nov. 9, 1994).

[134] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making,* 15 FCC Rcd 10456, 10476, paragraph 40 (2000).

[135] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making,* 15 FCC Rcd 10456, 10476, paragraph 40 (2000).

[136] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making,* 15 FCC Rcd 10456, 10476, paragraph 40 (2000).

[137] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless

Continued

commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[138] Three of these claimed status as a small or very small entity and won 311 licenses.

106. *Lower 700 MHz Band Licenses.* We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[139] We have defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[140] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[141] Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is ''entrepreneur,'' which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[142] The SBA has approved these small size standards.[143] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[144] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[145] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[146]

107. *Upper 700 MHz Band Licenses.* The Commission released a Report and Order, authorizing service in the upper 700 MHz band.[147] This auction, previously scheduled for January 13, 2003, has been postponed.[148]

108. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, we adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[149] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[150] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[151] SBA approval of these definitions is not required.[152] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[153] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[154]

109. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[155] The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[156] The SBA has approved these small business size standards for the 900 MHz Service.[157] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[158] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder

Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[138] *See* ''Narrowband PCS Auction Closes,'' *Public Notice,* 16 FCC Rcd 18663 (WTB 2001).

[139] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022 (2002).

[140] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022, 1087–88, paragraph 172 (2002).

[141] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022, 1087–88, paragraph 172 (2002).

[142] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022, 1088, paragraph 173 (2002).

[143] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

[144] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 17 FCC Rcd 17272 (WTB 2002).

[145] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 18 FCC Rcd 11873 (WTB 2003).

[146] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 18 FCC Rcd 11873 (WTB 2003).

[147] Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order,* 16 FCC Rcd 1239 (2001).

[148] *See* ''Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Is Rescheduled,'' *Public Notice,* 16 FCC Rcd 13079 (WTB 2003).

[149] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299 (2000).

[150] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299, 5343, paragraph 108 (2000).

[151] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299, 5343, paragraph 108 (2000).

[152] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299, 5343, paragraph 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. section 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[153] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 18026 (2000).

[154] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[155] 47 CFR 90.814(b)(1).

[156] 47 CFR 90.814(b)(1).

[157] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

[158] *See* ''Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,''' *Public Notice,* 18 FCC Rcd 18367 (WTB 1996).

claiming small business status won five licenses.[159]

110. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[160] In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.[161] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

111. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

112. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.[162] According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year in 1997, had 1,000 or more employees.[163] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

113. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions.

In the 220 MHz Third Report and Order, we adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[164] This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[165] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[166] The SBA has approved these small size standards.[167] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[168] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[169] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[170] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[171]

114. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for ''Cellular and Other Wireless Telecommunications.'' This definition provides that a small entity is any such entity employing no more than 1,500 persons.[172] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PMLR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[173]

115. The Commission's 1994 Annual Report on PLMRs[174] indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could

[159] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

[160] *See*, ''800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 17162 (2000).

[161] *See*, ''800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 1736 (2000).

[162] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[163] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513322 (October 2000).

[164] Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order,* 12 FCC Rcd 10943, 11068–70, paragraphs 291–295 (1997).

[165] *Id.* at 11068, paragraph 291.

[166] *Id.*

[167] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[168] *See generally* ''220 MHz Service Auction Closes,'' *Public Notice,* 14 FCC Rcd 605 (WTB 1998).

[169] *See* ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,'' *Public Notice,* 14 FCC Rcd 1085 (WTB 1999).

[170] *See* ''Phase II 220 MHz Service Spectrum Auction Closes,'' *Public Notice,* 14 FCC Rcd 11218 (WTB 1999).

[171] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

[172] *See* 13 CFR 121.201, NAICS code 517212.

[173] *See generally* 13 CFR 121.201.

[174] Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at paragraph 116.

potentially impact every small business in the United States.

116. *Fixed Microwave Services.* Fixed microwave services include common carrier,[175] private operational-fixed,[176] and broadcast auxiliary radio services.[177] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[178] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

117. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[179] An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[180] The SBA has approved these small business size standards.[181] The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices proposed herein.

118. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[182] The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[183] An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[184] The SBA has approved these small business size standards in the context of LMDS auctions.[185] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning that won 119 licenses.

119. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs).[186] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[187] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[188] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[189] The SBA has approved of these definitions.[190] At this time, we cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future

[175] *See* 47 CFR 101 *et seq.* (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

[176] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[177] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[178] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[179] *See* Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order,* 12 FCC Rcd 18600 (1997), 63 Fed.Reg. 6079 (Feb. 6, 1998).

[180] *Id.*

[181] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998) (VoIP); See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Hector Barreto, Administrator, Small Business Administration, dated January 18, 2002 (WTB).

[182] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making,* 12 FCC Rcd 12545, 12689–90, paragraph 348 (1997).

[183] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making,* 12 FCC Rcd 12545, 12689–90, paragraph 348 (1997).

[184] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making,* 12 FCC Rcd 12545, 12689–90, paragraph 348 (1997).

[185] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[186] *See* ''Interactive Video and Data Service (IVDS) Applications Accepted for Filing,'' *Public Notice*, 9 FCC Rcd 6227 (1994).

[187] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fourth Report and Order,* 9 FCC Rcd 2330 (1994).

[188] Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *Report and Order and Memorandum Opinion and Order,* 15 FCC Rcd 1497 (1999).

[189] *Id.*

[190] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

120. *Location and Monitoring Service (LMS).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[191] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[192] These definitions have been approved by the SBA.[193] An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

121. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[194] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[195] The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[196] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

122. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[197] We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[198] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

123. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[199] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars.[200] In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

124. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies (UHF) television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[201] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[202] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[203]

125. *Multiple Address Systems (MAS).* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines ''small entity'' for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[204] ''Very small business'' is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[205] The SBA has approved of these definitions.[206] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The

[191] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order,* 13 FCC Rcd 15182, 15192, paragraph 20 (1998); *See also* 47 CFR 90.1103.

[192] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order,* 13 FCC Rcd at 15192, paragraph 20; *See also* 47 CFR 90.1103.

[193] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated February 22, 1999.

[194] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[195] BETRS is defined in § 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[196] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[197] The service is defined in § 22.99 of the Commission's rules, 47 CFR 22.99.

[198] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October 2002).

[199] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[200] Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92–257, *Third Report and Order and Memorandum Opinion and Order,* 13 FCC Rcd 19853 (1998).

[201] This service is governed by Subpart I of Part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

[202] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[203] *Id.*

[204] *See* Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order,* 15 FCC Rcd 11956, 12008, paragraph 123 (2000).

[205] *Id.*

[206] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated June 4, 1999.

Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.[207] Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

126. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the ''Cellular and Other Wireless Telecommunications'' definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.[208] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

127. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons.[209] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[210] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[211] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[212] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

128. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[213] ''Very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[214] The SBA has approved these definitions.[215] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

129. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[216] In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[217] The SBA has approved of this standard.[218] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[219] Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.[220]

130. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,[221] which includes all such companies generating $12.5 million or less in annual receipts.[222] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[223] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[224] Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

131. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is

[207] *See* ''Multiple Address Systems Spectrum Auction Closes,'' *Public Notice,* 16 FCC Rcd 21011 (2001).

[208] *See* 13 CFR 121.201, NAICS code 517212.

[209] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[210] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513322 (issued October 2000).

[211] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[212] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[213] Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz, *Report and Order,* 15 FCC Rcd 16934, 16967, paragraph 77 (2000) (24 GHz Report and Order); *See also* 47 CFR 101.538(a)(2).

[214] 24 GHz *Report and Order,* 15 FCC Rcd at 16967, paragraph 77; *See also* 47 CFR 101.538(a)(1).

[215] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, Small Business Administration, dated July 28, 2000.

[216] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act & Competitive Bidding, *Report and Order,* 10 FCC Rcd 9589, 9593, paragraph 7 (1995) (MDS Auction R&O).

[217] 47 CFR 21.961(b)(1).

[218] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Bureau, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of $40 million size standard for MDS auction).

[219] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See* MDS Auction R&O, 10 FCC Rcd at 9608, paragraph 34.

[220] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $12.5 million or less). *See* 13 CFR 121.201, NAICS code 517910.

[221] 13 CFR 121.201, NAICS code 517510.

[222] *Id.*

[223] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4 (issued October 2000).

[224] *Id.*

pending, educational institutions are included in this analysis as small entities.[225] There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

132. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually.[226] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[227] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies proposed herein.

133. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[228] The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.[229] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies proposed herein.

134. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [230] The Commission has determined that there are 67,700,000 subscribers in the United States.[231] Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[232] Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450.[233] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[234] and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

135. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.[235] The SBA has created a small business size standard for Cable and Other Program Distribution.[236] This standard provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.[237] Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies proposed herein.

136. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and other Program Distribution, consisting of all such companies having annual receipts of no more than $12.5 million.[238] According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year.[239] Of this total, 1,180 firms had annual receipts of $10 million or less, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[240] Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

137. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. No auction has yet been held in this service, although an action has been scheduled for January 14, 2004.[241] Accordingly, there are no licensees in this service.

138. *Amateur Radio Service.* These licensees are believed to be individuals, and therefore are not small entities.

139. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or

[225] In addition, the term ''small entity'' under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on ITFS licensees.

[226] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[227] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization)'', Table 4, NAICS code 513220 (issued October 2000).

[228] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

[229] Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

[230] 47 U.S.C. 543(m)(2).

[231] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, *Public Notice,* DA–01–158 (January 24, 2001).

[232] 47 CFR 76.901(f).

[233] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operators, Public Notice, DA–01–0158 (released January 24, 2001).

[234] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[235] *See* 47 U.S.C. 573.

[236] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[237] *See http://www.fcc.gov/csb/ovs/csovscer.html* (current as of March 2002).

[238] 13 CFR 121.201, NAICS code 517510.

[239] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4 (issued October 2000).

[240] *Id.*

[241] ''Auctions of Licenses in the Multichannel Video Distribution and Data Service Rescheduled for January 14, 2004,'' *Public Notice*, DA 03–2354 (August 28, 2003).

radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[242] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[243] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

140. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[244] These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS).[245] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.[246] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

141. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[247] There are a total of approximately 127,540 licensees in these services. Governmental entities[248] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[249]

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

142. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 (''FCC Remittance Advice''), and pay a regulatory fee based on the number of licenses or call signs.[250] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and

[242] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[243] Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

[244] 47 CFR Part 90.

[245] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 CFR Part 95.

[246] 13 CFR 121.201, NAICS Code 517212.

[247] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[248] 47 CFR 1.1162.

[249] 5 U.S.C. 601(5).

[250] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

143. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

144. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[251] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[252] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[253] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996*, Public Law 194–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[254]

145. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[255] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

146. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section III of this IRFA, *supra,* we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

147. *The Omnibus Appropriations Act for FY 2005,* Public Law 108–447, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2005.[256] As noted, we seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

148. We have previously used cost accounting data for computation of regulatory fees, but found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are proposing in this *Notice of Proposed Rulemaking* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

149. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.,* footnote 250, *supra.*

VI. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

150. None.

Attachment B—Sources of Payment Unit Estimates For FY 2005

In order to calculate individual service fees for FY 2005, we adjusted FY 2004 payment units for each service to more accurately reflect expected FY 2005 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). The industry sources we consulted include, but are not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc, as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2005 estimates with actual FY 2004 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2005 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2005 payment units are based on FY 2004 actual payment units, it does not necessarily mean that our FY 2005 projection is exactly the same number as FY 2004. It means that we have either rounded the FY 2005 number or adjusted it slightly to account for these variables.

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[251] 47 CFR 1.1164.

[252] 47 CFR 1.1164(c).

[253] Public Law 104–134, 110 Stat. 1321 (1996).

[254] 31 U.S.C. 7701(c)(2)(B).

[255] 47 CFR 1.1166.

[256] 47 U.S.C. 159(a).

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, 218-219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau Competition Report estimates.
AM/FM Radio Stations	Based on estimates from Media Services Bureau estimates, adjusted for exemptions, and actual FY 2004 payment units.
UHF/VHF Television Stations	Based on Media Services Bureau estimates and actual FY 2004 payment units.
AM/FM/TV Construction Permits	Based on Media Services Bureau estimates and actual FY 2004 payment units.
LPTV, Translators and Boosters	Based on actual FY 2004 payment units.
Broadcast Auxiliaries	Based on actual FY 2004 payment units.
BRS (formerly MDS/MMDS)	Based on Wireless Telecommunications Bureau estimates and actual FY 2004 payment units.
Cable Television Relay Service (CARS) Stations	Based on actual FY 2004 payment units.
Cable Television System Subscribers	Based on Media Services Bureau industry estimates of subscribership, and actual FY 2004 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2004 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2005 revenue growth/decline for industry, and projections by the Wireline Competition Bureau.
Earth Stations	Based on actual FY 2004 payment estimates and projected FY 2005 units.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data base estimates.
International Bearer Circuits	Based on FY 2004 actual units.
International HF Broadcast Stations, International Public Fixed Radio Service	Based on International Bureau estimates.

Attachment C—Calculation of FY 2005 Revenue Requirements and Pro–Rata Fees

Regulatory fees for the first ten fee categories below are collected by the Commisison in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	FY 2005 Payment Units	Years	FY 2004 Revenue Estimate	Pro-Rated FY 2005 Revenue Require-ment*	Computed New FY 2005 Regulatory Fee	Rounded New FY 2005 Regula-tory Fee	Expected FY 2005 Revenue
PLMRS (Exclusive Use)	3,400	10	340,000	349,068	10	10	340,000
PLMRS (Shared use)	46,000	10	2,300,000	2,361,342	5	5	2,300,000
Microwave	3,000	10	1,500,000	1,540,006	51	50	1,500,000
218-219 MHz (Formerly IVDS)	3	10	1,500	1,540	51	50	1,500
Marine (Ship)	3,900	10	585,000	600,602	15	15	585,000
GMRS	18,000	5	375,000	385,001	4	5	450,000
Aviation (Aircraft)	3,100	10	155,000	159,134	5	5	155,000
Marine (Coast)	962	10	96,200	98,766	10	10	96,200
Aviation (Ground)	1,600	5	120,000	123,200	15	15	120,000
Amateur Vanity Call Signs	8,000	10	162,119	166,443	2.08	2.08	166,443
AM Class A	66	1	198,375	203,666	3,086	3,075	202,950
AM Class B	1,592	1	2,421,075	2,485,646	1,561	1,550	2,467,600
AM Class C	956	1	841,500	863,943	904	900	860,400
AM Class D	1,769	1	2,784,800	2,859,072	1,616	1,625	2,874,625
FM Classes A, B1 & C3	3,045	1	5,715,500	5,980,390	1,964	1,975	6,013,875
FM Classes B, C, C0, C1 & C2	2,963	1	7,026,150	7,321,585	2,471	2,475	7,333,425
AM Construction Permits	113	1	33,945	34,850	308	310	35,030
FM Construction Permits[1]	98	1	267,300	53,929	550	550	53,900
Satellite TV	123	1	128,100	131,516	1,069	1,075	132,225
Satellite TV Construction Permit	3	1	1,560	1,602	534	535	1,605

Fee Category	FY 2005 Payment Units	Years	FY 2004 Revenue Estimate	Pro-Rated FY 2005 Revenue Require-ment*	Computed New FY 2005 Regulatory Fee	Rounded New FY 2005 Regula-tory Fee	Expected FY 2005 Revenue
VHF Markets 1-10	43	1	2,596,125	2,665,365	61,985	61,975	2,664,925
VHF Markets 11-25	61	1	2,654,400	2,725,194	44,675	44,675	2,725,175
VHF Markets 26-50	72	1	2,246,475	2,306,389	32,033	32,025	2,305,800
VHF Markets 51-100	118	1	2,161,725	2,219,379	18,808	18,800	2,218,400
VHF Remaining Markets	211	1	951,750	977,134	4,631	4,625	975,875
VHF Construction Permits	9	1	27,900	28,644	3,183	3,175	28,575
UHF Markets 1-10	84	1	1,599,750	1,682,187	20,026	20,025	1,682,100
UHF Markets 11-25	79	1	1,310,175	1,384,889	17,530	17,525	1,384,475
UHF Markets 26-50	115	1	1,088,100	1,156,891	10,060	10,050	1,155,750
UHF Markets 51-100	162	1	943,500	993,971	6,136	6,125	992,250
UHF Remaining Markets	181	1	301,950	310,003	1,713	1,725	312,225
UHF Construction Permits[1]	31	1	192,950	53,475	1,725	1,725	53,475
Broadcast Auxiliaries	25,000	1	250,000	256,668	10	10	250,000
LPTV/Trans-lators/Boosters	2,900	1	1,116,500	1,146,277	395	395	1,145,500
CARS Stations	900	1	135,000	138,601	154	155	139,500
Cable TV Systems	65,000,000	1	45,500,000	46,713,502	0.718	0.72	46,800,000
Interstate Tele-communication Service Providers	54,000,000,000	1	127,530,000	130,931,273	0.0024247	0.00243	131,220,000
CMRS Mobile Services (Cellular/Public Mobile)	166,000,000	1	38,250,000	39,565,080	0.238	0.24	39,840,000
CMRS Messaging	11,200,000	1	1,160,000	896,000	0.08	0.08	896,000

Fee Category	FY 2005 Payment Units	Years	FY 2004 Revenue Estimate	Pro-Rated FY 2005 Revenue Require-ment*	Computed New FY 2005 Regulatory Fee	Rounded New FY 2005 Regula-tory Fee	Expected FY 2005 Revenue
Services							
BRS[2]	1,800	1	432,000	443,522	246	245	441,000
LMDS A[3]	165	1	81,210	83,490	506	505	83,325
LMDS B[3]	165	1	10,590	10,890	66	65	10,725
International Bearer Circuits	3,600,000	1	7,056,000	7,244,186	2.01	2.01	7,236,000
International Public Fixed	1	1	1,750	1,797	1,797	1,800	1,800
Earth Stations	3,400	1	680,000	698,136	205	205	697,000
International HF Broadcast	5	1	3,725	3,824	765	765	3,825
Space Stations (Geostationary)	79	1	8,829,975	9,065,474	114,753	114,750	9,065,250
Space Stations (Non-Geostationary	5	1	657,000	674,522	134,904	134,900	674,500
****** Total Estimated Revenue to be Collected			272,821,674	280,098,062			280,693,228
****** Total Revenue Requirement			272,958,000	280,098,000			280,098,000
Difference			(136,326)	62			595,228

* 1.02615787 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 108-7 and 47 U.S.C. 159(a)(2)).

[1] The FM Construction Permit and UHF Construction Permit revenues were adjusted to reflect our proposal of setting the construction permit fee to the level of the lowest licensed fee for that class of service.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS), 19 FCC Rcd 14165 (FCC 04-135).

[3] The "FY 2004 Revenue Estimate" column for LMDS was adjusted to reflect the totals for LMDS Block A and LMDS Block B had this distinction been made in FY 2004.

Attachment D—FY 2005 Schedule of Regulatory Fees

Regulatory fees for the first eleven fee categories below are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10
Microwave (per license) (47 CFR part 101)	50
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	50
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	2.08
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.24
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	245
Local Multipoint Distribution Service–Block A (per call sign) (47 CFR, part 101)	505
Local Multipoint Distribution Service-Block B (per call sign) (47 CFR, part 101)	65
AM Radio Construction Permits	310
FM Radio Construction Permits	550
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	61,975
Markets 11-25	44,675
Markets 26-50	32,025
Markets 51-100	18,800
Remaining Markets	4,625

Fee Category	Annual Regulatory Fee (U.S. $'s)
Construction Permits	3,175
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	20,025
Markets 11-25	17,525
Markets 26-50	10,050
Markets 51-100	6,125
Remaining Markets	1,725
Construction Permits	1,725
Satellite Television Stations (All Markets)	1,075
Construction Permits – Satellite Television Stations	535
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	395
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	155
Cable Television Systems (per subscriber) (47 CFR part 76)	.72
Interstate Telecommunication Service Providers (per revenue dollar)	.00243
Earth Stations (47 CFR part 25)	205
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	114,750
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	134,900
International Bearer Circuits (per active 64KB circuit)	2.01
International Public Fixed (per call sign) (47 CFR part 23)	1,800
International (HF) Broadcast (47 CFR part 73)	765

FY 2005 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	625	475	375	450	550	725
25,001 – 75,000	1,225	925	550	675	1,125	1,250
75,001 – 150,000	1,825	1,150	750	1,125	1,550	2,300
150,001 – 500,000	2,750	1,950	1,125	1,350	2,375	3,000
500,001 – 1,200,000	3,950	2,975	1,875	2,250	3,750	4,400
1,200,001 – 3,000,00	6,075	4,575	2,825	3,600	6,100	7,025
>3,000,000	7,275	5,475	3,575	4,500	7,750	9,125

Attachment E—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules.[257] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.[258] Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the city grade (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[259] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

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Attachment F—FY 2004 Schedule of Regulatory Fees

[257] 47 CFR 73.150 and 73.152.

[258] *See* Map *of Estimated Effective Ground Conductivity in the United States,* 47 CFR 73.190 Figure R3.

[259] 47 CFR 73.313.

Fee Category	Annual Regulatory Fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10
Microwave (per license) (47 CFR part 101)	50
218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	50
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	2.08
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.25
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS/ MDS) (per call sign) (47 CFR part 21)	270
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	270
AM Radio Construction Permits	465
FM Radio Construction Permits	1,650
TV (47 CFR part 73) VHF Commercial	
Markets 1-10	60,375
Markets 11-25	41,475
Markets 26-50	29,175
Markets 51-100	17,575
Remaining Markets	4,050
Construction Permits	4,650
TV (47 CFR part 73) UHF Commercial	
Markets 1-10	17,775

Fee Category	Annual Regulatory Fee (U.S. $'s)
Markets 11-25	16,175
Markets 26-50	9,300
Markets 51-100	5,550
Remaining Markets	1,650
Construction Permits	5,675
Satellite Television Stations (All Markets)	1,050
Construction Permits – Satellite Television Stations	520
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	385
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	135
Cable Television Systems (per subscriber) (47 CFR part 76)	.70
Interstate Telecommunication Service Providers (per revenue dollar)	.00218
Earth Stations (47 CFR part 25)	200
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	114,675
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	131,400
International Bearer Circuits (per active 64KB circuit)	2.52
International Public Fixed (per call sign) (47 CFR part 23)	1,750
International (HF) Broadcast (47 CFR part 73)	745

FY 2004 RADIO STATION REGULATORY FEES						
Population Served	**AM Class A**	**AM Class B**	**AM Class C**	**AM Class D**	**FM Classes A, B1 & C3**	**FM Classes B, C, C0, C1 & C2**
<=25,000	600	450	350	425	525	675
25,001 – 75,000	1,200	900	525	625	1,050	1,175
75,001 – 150,000	1,800	1,125	700	1,075	1,450	2,200
150,001 – 500,000	2,700	1,925	1,050	1,275	2,225	2,875
500,001 – 1,200,000	3,900	2,925	1,750	2,125	3,550	4,225
1,200,001 – 3,000,00	6,000	4,500	2,625	3,400	5,775	6,750
>3,000,000	7,200	5,400	3,325	4,250	7,350	8,775

[FR Doc. 05–3822 Filed 2–25–05; 8:45 am]
BILLING CODE 6712–05–C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 10

[Docket No. OST–1996–1437]

RIN 2105–AD11

Maintenance of and Access to Records Pertaining to Individuals; Proposed Exemption

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: DOT proposes to add a system of records relating to aviation consumer protection to the list of DOT Privacy Act Systems of Records that are exempt from one or more provisions of the Privacy Act. Public comment is invited.

DATES: Comments are due April 29, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number OST–1996–1437 by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- 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.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the name of the DOT agency that has issued the rule to which the comment pertains and the docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You can access the docket for this notice by inserting the five-digit docket number into the DMS ''quick search'' function.

FOR FURTHER INFORMATION CONTACT: Yvonne Coates, Office of the Chief Information Officer, Department of Transportation, Washington, DC (202) 366–6964.

SUPPLEMENTARY INFORMATION: It is DOT practice to identify a Privacy Act system of records that is exempt from one or more provisions of the Privacy Act (pursuant to 5 U.S.C. 552a(j) or (k)) both in the system notice published in the **Federal Register** for public comment and in an Appendix to DOT's regulations implementing the Privacy Act (49 CFR part 10, Appendix A). This amendment proposes exemption from certain portions of the Privacy Act of a proposed record system—Aviation Consumer Complaint Application Online System (CCA)—to be used to track consumer complaints about scheduled airline service and air travel companies; included among these complaints are such matters as discrimination on the basis of physical handicap and race, religion, etc., which are violations of Federal law.

To aid in the law enforcement aspects of CCA, DOT proposes to treat it as it treats other law enforcement systems, by exempting it from the following provisions of the Privacy Act: (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) to the extent that CCA contains investigatory material compiled for law enforcement purposes, in accordance with 5 U.S.C. 552a(k)(2).

Analysis of Regulatory Impacts. This proposal is not a ''significant regulatory action'' within the meaning of Executive Order 12886. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this proposal would not have a significant economic impact on a substantial number of small entities, because the reporting requirements, themselves, are not changed and because it applies only to information on individuals that is maintained by the Federal Government.

This proposal would not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Collection of Information. This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Unfunded Mandates. Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregated, $100 million or more in any one year (adjusted for inflation) the UMRA analysis is required. This proposal would not impose Federal mandates on any State, local, or tribal governments or the private sector.

List of Subjects in 49 CFR Part 10

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

In consideration of the foregoing, DOT proposes to amend Part 10 of Title 49, Code of Federal Regulations, as follows:

1. The authority citation for Part 10 would continue to read as follows:

Authority: Public Law 93–579; 49 U.S.C. 322.

2. The Appendix would be amended in Part II.A. by adding a paragraph (19) immediately following paragraph (18) to read as follows:

Appendix to Part 10—Exemptions

* * * * *

Part II. Specific exemptions. A.

* * * * *

19. Aviation Consumer Complaint Application Online System (CCA).

* * * * *

Issued in Washington, DC, on February 16, 2005.

Eugene K. Taylor,

Deputy Chief Information Officer.

[FR Doc. 05–3759 Filed 2–25–05; 8:45 am]

BILLING CODE 4910–62–P

Notices

Federal Register

Vol. 70, No. 38

Monday, February 28, 2005

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Office of Inspector General; Delegation of Authority and Line of Succession

SUMMARY: This document amends Delegation of Authority No. 14–01, FR Doc. 99–15426, dated May 28, 1999, by realigning the order in which Assistant Inspectors General will act for the line of succession to serve as Acting Inspector General.

EFFECTIVE DATE: September 5, 2004.

FOR FURTHER INFORMATION CONTACT: Paula F. Hayes, (202) 712–0010.

This rule is hereby issued to effect a delegation of authority and provide a line of succession from the Inspector General as follows:

I. Pursuant to the authority vested in me by the Inspector General Act of 1978, as amended, in the event of death, disability, absence, resignation, or removal of the Inspector General, U.S. Agency for International Development, the officials designated below, in the order indicated, and in the absence of the specific designation of another official in writing by the Inspector General or the Acting Inspector General, are hereby authorized to and shall serve as Acting Inspector General. As Acting Inspector General, he/she shall perform the duties and are delegated the full authority and power ascribed to the Inspector General by law and regulation as well as those authorities delegated to the Inspector General by the Administrator, U.S. Agency for International Development:

1. Deputy Inspector General.
2. Assistant Inspector General for Audit.
3. Assistant Inspector General for Management.
4. Assistant Inspector General for Investigations.

II. Anyone designated by the Inspector General as acting in one of the positions listed above remains in the line of succession; otherwise, the authority moves to the next position.

III. This delegation is not in derogation of any authority residing in the above officials relating to the operations of their respective programs, nor does it affect the validity of any delegations currently in force and effect and not specifically cited as revoked or revised herein.

The authorities delegated herein may not be redelegated.

Dated: February 16, 2005.

James R. Ebbitt,

Acting Inspector General.

[FR Doc. 05–3773 Filed 2–25–05; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 22, 2005.

The Department of Agriculture has submitted the following information colleciton requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_ombSubmission@eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Perception of Risk, Trust, Responsibility, and Management Preferences Among Fire Prone Communities.

OMB Control Number: 0596–NEW.

Summary of Collection: The Forest and Rangeland Renewable Resource Research Act of 1978 (Public Law 95–307), direct the Secretary of Agriculture to conduct, support, and cooperate in investigations, experiments, tests, and other activities the Secretary deems necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas. The risk of fire and the impact of recent fires have been significant on the San Bernardino National Forest. The Forest Service (FS) will conduct a study using a questionnaire to gain a first-hand view from residents in four communities within the San Bernardino National Forest to help resource managers better understand the beliefs, perceptions, and behaviors of those residents.

Need and Use of the Information: The information collected will be used to construct a technical report on findings, to prepare journal articles for submission to peer view outlets, for presentations at scientific meetings, and for presentations to natural resource managers as appropriate. Without the information management decisions will be made on limited and anecdotal information regarding public values and perceptions as well as perceived responsibility in management of fire risk.

Description of Respondents: Individuals or households.

Number of Respondents: 286.

Frequency of Responses: Report: On occasion.

Total Burden Hours: 457.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–3753 Filed 2–25–05; 8:45 am]

BILLING CODE 3710–11–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), approved a petition for trade adjustment assistance (TAA) that was filed on January 21, 2005, by the Olive Growers Council, Visalia, California. The certification date is March 14, 2005. Beginning on this date, California black olive producers who produce and market their olives will be eligible to apply for fiscal year 2005 benefits during an application period ending June 13, 2005.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of processed olives contributed importantly to a decline in producer prices of black olives in California by 27.8 percent during January 2003 through December 2003, when compared with the previous 5-year average.

Eligible producers must apply to the Farm Service Agency for benefits. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and may receive an adjustment assistance payment, if certain program criteria are satisfied. Applicants must obtain the technical assistance from the Extension Service by September 12, 2005, in order to be eligible for financial payments.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers in California.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: February 16, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 05–3754 Filed 2–25–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lassen National Forest, Almanor Ranger District, California, Creeks Forest Health Recovery Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service proposes to develop a network of defensible fuel profile zones (DFPZ's), establish group selection harvest units, and conduct area thinnings on the Almanor Ranger District in the Lassen National Forest. The DFPZ's, group selection harvest units, and area thinnings total an estimated 5,905, 1,245, and 3,285 acres respectively, and are spread over a 33,000 acre project area. Included in this proposal are the use of National Forest system roads, the use of temporary roads, and the decommissioning of some system and temporary roads. The project would be implemented through a combination of commercial timber sales, service contracts, and force account crews. These management activities were developed to implement and be consistent with the Lassen National Forest (LNF) Land and Resource Management Plan (LRMP, 1993), as amended by the Herger-Feinstein Quincy Library Group Forest Recovery Act FEIS, FSEIS, and ROD's (1999, 2003), and the Sierra Nevada Forest Plan Amendment FEIS, FSEIS, and ROD's (2001, 2004).

Decision to Be Made: The decision to be made is whether to implement the proposed action as described above, to meet the purpose and need for action through some other combination of activities, or to take no action at this time.

Scoping Process: Comments concerning the scope of the analysis should be received in writing within 15 days of the date of publication of this Notice of Intent in the **Federal Register**.

The project was initially listed in the Forest's February 2004 quarterly edition of the Schedule of Proposed Actions (SOPA). Scoping letters were sent in June 2004 to those who responded to the SOPA and other identified interest and affected individuals and government agencies. In the SOPA, the mode of environmental documentation was predicted as an environmental assessment.

At this time, the environmental analysis will be documented in an environmental impact statement. Since only minor changes are being made to the proposed action that was previously scoped, the scoping period at this time is brief. Those who responded during the June 2004 scoping period will be contacted again. In addition, scoping letters previously received by the Forest Service from the first scoping period will continue to be used for this process. A public scoping meeting is not anticipated at this time.

The scoping process will be used to identify issues regarding the proposed action. An issue is defined as point of dispute, debate, or disagreement related to a specific proposed action based on its anticipated effects. Significant issues brought to our attention are used during an environmental analysis to develop alternatives to the proposed action. Some issues raised in scoping may be considered non-significant because they are: (1) Beyond the scope of the proposed action and its purpose and need; (2) already decided by law, regulation, or the Land and Resource Management Plan; (3) irrelevant to the decision to be made; or (4) conjectural and not supported by scientific or factual evidence.

Alternatives: Alternatives proposed to date are the Proposed Action as described above and the No Action.

Identification of Permits or Licenses Required: No permits or licenses have been identified to implement the proposed action.

Lead, Joint Lead, and Cooperating Agencies: The USDA Forest Service is the lead agency for this proposal; there are no cooperating agencies.

Estimated Dates for Filing: The expected filing date with the Environmental Protection Agency for the draft EIS April 18, 2005. The expected filing date for the final EIS is June 27, 2005.

Person to Which Comments May be Mailed: Comments may be submitted to: Alfred Vazquez District Ranger, Almanor Ranger District, at P.O. Box 767, Chester, CA, 96020 or (530) 258–5194 (fax) during normal business hours. The Almanor Ranger District business hours are from 8 am to 4:30 pm Monday through Friday. Electronic comments, in acceptable plain text (.txt), rich text (.rtf), or Word (.doc) formats, may be submitted to: *comments-pacificsouthwest-lassen-almanor@fs.fed.us* using Subject: Creeks Forest Health Recovery Project.

Reviewer's Obligation to Comment: The comment period on the draft EIS

will be 45 days from the date the Environmental Protection Agency publishes the notice of availability of the draft EIS in the **Federal Register**.

The Forest Service believes, 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 draft statements 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 contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement 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 proposal action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. 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 1503.3 in addressing these points.

FOR FURTHER INFORMATION CONTACT: Al Vazquez, District Ranger or Robin Bryant, Interdisciplinary Team Leader may be contacted by phone at (530) 258–2141 for more information about the proposed action and the environmental impact statement or at the Almanor Ranger District, P.O. Box 767, Chester, CA 96020.

Responsible Official and Mailing Address: Laurie Tippin, Forest Supervisor, 2550 S. Riverside Drive, Susanville, CA 96130 is the responsible official.

Dated: February 22, 2005.

Laurie Tippin,

Forest Supervisor, Lassen National Forest.

[FR Doc. 05–3746 Filed 2–25–05; 8:45 am]

BILLING CODE 5410–99–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Wednesday, March 23, 2005. The meeting is scheduled to begin at 6:30 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The agenda will include completing the prioritization of projects for the Scenic Recreation Area.

A direct public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the March 23rd by sending them to Designated Federal Official Paul Matter at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Paul Matter; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: February 18, 2005.

Y. Robert Iwamoto,

Deputy Forest Supervisor.

[FR Doc. 05–3747 Filed 2–25–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Flathead County Resource Advisory Committee (RAC) will meet in Kalispell, Montana on March 9th. The purpose of this meeting is to discuss upcoming RAC Projects.

DATES: The meeting will be held from 4 p.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Flathead County Commissioner's Office, Commissioner's Conference Room, 800 South Main, Kalispell, Montana 59901.

FOR FURTHER INFORMATION CONTACT: Kaaren Arnoux, Flathead National Forest, Administrative Assistant, (406) 758–5251.

SUPPLEMENTARY INFORMATION: The meeting is open to the public.

Denise Germann,

Public Affairs Specialist.

Cathy Barbouletos,

Forest Supervisor.

[FR Doc. 05–3750 Filed 2–25–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet March 18, 2005, (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public Comment, (3) Sub-committees, (4) Discussion/Approval of projects (Travelers Home and Hellhole trails, canary grass, Middle Fork Eel river barriers), (6) Matters before the group-discussion/action, (9) Next agenda and meeting date.

DATES: The meeting will be held on March 18, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo, CA 95428. (707) 983–8503; e-mail *rhurt@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by March 15, 2005. Public comment will have the opportunity to address the committee at the meeting.

Dated: February 22, 2005.

Blaine Baker,

Designated Federal Official.

[FR Doc. 05–3767 Filed 2–25–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta-Trinity National Forest National Recreation Area

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta-Trinity National Forest National Recreation Area will meet at the Redding Convention Center in Redding California on March 5, 2005. The purpose of this meeting is to discuss changes to the Management Guide of the Shasta-Trinity National Recreation Area. Topics include; reclassification of Recreation Occupancy Vehicles (ROV) based on size rather than amenities, reclassification of ROV permits to ''tenure and provisional'' and expanding the spectrum of services on Shasta Lake.

The meeting is open to the public. A forum for public input will be provided and individuals will have the opportunity to share their comments with the Shasta-Trinity National Forest National Recreation Area.

DATES: March 5, 2005.

ADDRESSES: Redding Convention Center, 700 auditorium Drive, Redding, California 96001.

FOR FURTHER INFORMATION CONTACT: Michael R. Odle, Asst. Public Affairs Officer.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input sessions will be provided and individuals will have the opportunity to share their comments with the Shasta-Trinity National Forest National Recreation Area.

Dated: February 18, 2005.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 05–3745 Filed 2–25–05; 8:45 am]

BILLING CODE 4310–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue one new and four revised conservation practice standards in Section IV of the FOTG. The new standard is Salinity and Sodic Management (610). The revised standards are: Dry Hydrant (432), Forage Harvest Management (511), Access Road (560) and Spoil Spreading (572). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: February 9, 2005.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 05–3723 Filed 2–25–05; 8:45 am]

BILLING CODE 3410–16–P

ARCTIC RESEARCH COMMISSION

[USARC 05–09]

Notice of a Meeting

February 4, 2005.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 75th Meeting in Columbus, OH on March 3–4, 2005. The Business Session open to the public will convene at 9 a.m. Thursday, March 3. The Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 74th Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Report.

The focus of the Meeting will be reports and updates on programs and research projects affecting the Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will reconvene at 9 a.m. Friday, March 4, 2005. 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.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 05–3791 Filed 2–25–05; 8:45 am]

BILLING CODE 7555–01–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Notice of Postponement of Sunshine Act Meeting Scheduled for March 2, 2005

The March 2, 2005, public meeting of the Chemical Safety and Hazard Investigation Board (CSB) in connection with its investigation into three separate

incidents at the Honeywell International Inc. plant in Baton Rouge, Louisiana in 2003, is being temporarily postponed. The public meeting was originally scheduled to begin at 10 a.m. local time on March 2, 2005, at the Holiday Inn Select, Executive Center, 4728 Constitution Avenue, Baton Rouge, LA 70808. The original **Federal Register** notice announcing the meeting was published on Wednesday, February 16, 2005, 70 FR 7924. The meeting will be rescheduled after new information has been reviewed.

On July 20, 2003, a release of chlorine gas from the Honeywell plant resulted in injuries to seven plant workers and issuance of a shelter-in-place advisory for residents within a half-mile radius. On July 29, 2003, a one-ton cylinder at the same plant released its contents to the atmosphere, fatally injuring a plant worker by exposure to toxic antimony pentachloride. On August 13, 2003, two workers at the plant were exposed to toxic hydrofluoric acid (HF), and one of them was hospitalized.

For more information, please contact Daniel Horowitz at the Chemical Safety and Hazard Investigation Board at (202) 261–7600, or visit the CSB Web site at: *http://www.csb.gov*.

Dated: February 23, 2005.

Christopher J. Kirkpatrick,

Attorney-Advisor.

[FR Doc. 05–3895 Filed 2–24–05; 10:15 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1374]

Expansion of Foreign-Trade Zone 24, Pittston, PA

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 Eastern Distribution Center, Inc., grantee of FTZ 24, submitted an application to the Board for authority to expand the zone to include a site at the Valley View Business Park/Jessup Small Business Center (1,076 acres, Site 2) in the Boroughs of Jessup and Archbald, Pennsylvania, within the Wilkes-Barre/Scranton Customs port of entry (FTZ Docket 9–2004; filed 3/11/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 13284, 3/22/04) 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 24 is approved, subject to the Act and the Board's regulations, including section 400.28.

Signed in Washington, DC, this 9th day of February, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–3806 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1373]

Grant of Authority for Subzone Status; L'Oreal USA, Inc. (Cosmetic and Beauty Products), Pulaski County, AR

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 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, the Arkansas Department of Economic Development, grantee of Foreign-Trade Zone 14, has made application to the Board for authority to establish a special-purpose subzone at the cosmetic and beauty products manufacturing and warehousing facilities of L'Oreal USA, Inc., located in Pulaski County, Arkansas (FTZ Docket 15–2004, filed 4/12/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 20854–20855, 4/19/04); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the cosmetic and beauty products manufacturing and warehousing facilities of L'Oreal USA, Inc., located in Pulaski County, Arkansas (Subzone 14E), at the locations described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed in Washington, DC, this 9th day of February, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–3807 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1372]

Grant of Authority for Subzone Status; Tumi, Inc. (Luggage), Vidalia, GA

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 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, the Savannah Airport Commission, grantee of Foreign-Trade

Zone 104, has made application to the Board for authority to establish special-purpose subzone at the luggage warehousing and distribution facility of Tumi, Inc., located in Vidalia, Georgia (FTZ Docket 26–2004, filed 6/16/04, as amended 8/12/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 34993, 6/23/04 and 69 FR 51630, 8/20/04); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the luggage distribution facility of Tumi, Inc., located in Vidalia, Georgia (Subzone 104D), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed in Washington, DC, this 9th day of February, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–3808 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1368]

Expansion of Foreign-Trade Zone 176, Rockford, IL, Area

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 Greater Rockford Airport Authority, grantee of Foreign-Trade Zone 176, submitted an application to the Board for authority to expand FTZ 176 to include three sites (923 acres) in Rochelle (Ogle County), Illinois, and a site (74 acres) in Woodstock (McHenry County), Illinois, adjacent to the Rockford Customs port of entry (FTZ Docket 23–2004; filed 5/25/04; amended 9/24/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 30871, 6/1/04 and 69 FR 58883, 10/1/04), 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, as amended, is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 176 is approved as amended, 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 in Washington, DC, this 9th day of February, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–3810 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1369]

Expansion of Foreign-Trade Zone 57, Charlotte, NC

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 North Carolina Department of Commerce, grantee of FTZ 57, submitted an application to the Board for authority to expand the zone to include sites at the Lakemont West Business Park, the West Logistics facility, the West Pointe Business Park, and the Ridge Creek Distribution Center in Charlotte (Mecklenburg County), within the Charlotte Customs port of entry (FTZ Docket 41–2004; filed 9/2/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 55405, 9/14/04) 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 57 is approved, subject to the Act and the Board's regulations, including section 400.28, and subject to the Board's standard 2,000-acre activation limit for the overall zone project, and further subject to a sunset provision that would terminate authority for the proposed sites on January 31, 2012, unless the sites are activated under FTZ procedures.

Signed in Washington, DC, this 9th day of February, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–3809 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1376]

Expansion of Foreign-Trade Zone 8; Toledo, OH, Area

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 Toledo-Lucas County Port Authority, grantee of Foreign-Trade Zone 8, submitted an application to the Board for authority to expand FTZ 8 to include a site (207 acres, Site 5) at the Ohio Northern Global Distribution & Business Center located in Walbridge (Wood County), Ohio, within the Toledo/Sandusky Customs port of entry (FTZ Docket 24–2004; filed 6104);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 31957, 6/8/04) 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 8 is approved, subject to the Act and the

Board's regulations, including Section 400.28.

Signed at Washington, DC, this 17th day of February 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–3812 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 9–2005]

Foreign-Trade Zone 40, Cleveland, OH; Request for Manufacturing Authority (Oil Burner Units)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cleveland-Cuyahoga County Port Authority, grantee of FTZ 40, requesting authority on behalf of the R.W. Beckett Company for the manufacture of oil burner units under FTZ procedures within proposed Site 13 of FTZ 40 in Lorain County, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 22, 2005.

R.W. Beckett operates a manufacturing facility (200 employees) within proposed site 13 of FTZ 40 for the production of burner units for oil furnaces. The finished products would enter the United States duty free. Imported inputs are projected to comprise 29 percent of the value of finished products produced under FTZ procedures.

The company indicates that the foreign inputs that may be admitted under FTZ procedures are the following: oil igniter; solenoid valve; burner motor (AC); transformer; and electronic timer. Duty rates on the proposed imported components currently range from 1.7 to 6.6 percent.

This application requests authority for R.W. Beckett to conduct the activity under FTZ procedures, which would exempt the company from Customs duty payments on the foreign components used in export activity. On its domestic sales, the company would be able to choose the duty rate that applies to finished products for the foreign components noted above. The company would also be exempt from duty payments on foreign merchandise that becomes scrap/waste. The application indicates that the savings would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is April 29, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 16, 2005.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Cleveland U.S. Export Assistance Center, Suite 700, 600 Superior Avenue, East, Cleveland, OH 44114.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–3813 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1375]

Expansion of Foreign-Trade Zone 24, Pittston, PA

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 Eastern Distribution Center, Inc., grantee of FTZ 24, submitted an application to the Board for authority to expand FTZ 24-Site 1 to include an additional parcel (29 acres, Site 1B) in Pittston Township and to include three additional sites (863 acres, Sites 3–5) in Pittston Township and Jenkins Township, Pennsylvania, within the Wilkes-Barre/Scranton Customs port of entry (FTZ Docket 11–2004; filed 3/17/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 13812, 3/24/04) 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 24 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 in Washington, DC, this 9th day of February, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–3805 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–1–2005]

Foreign-Trade Zone 61—San Juan, PR, Application for Temporary/Interim Manufacturing Authority, Shell Chemicals Yabucoa, Inc. (Petrochemical Complex), Yabucoa, PR

An application has been submitted to the Executive Secretary of the Foreign-Trade Zones Board (the Board) by the Puerto Rico Trade and Exports Company, grantee of FTZ 61, requesting temporary/interim manufacturing (T/IM) authority within Subzone 61I at the Shell Chemicals Yabucoa, Inc. (Shell) petrochemical plant, located in Yabucoa, Puerto Rico. The application was filed on February 11, 2005.

The Shell facility (192 employees, 76,000 BPD capacity) is located within Subzone 61I. Under T/IM procedures, the company has requested authority to produce sulfur, distillate fuels, liquid petroleum gas and petroleum gas (HTS 2503.00, 2710.19, 2711.14, 2711.19 and 2711.29, duty rate ranges from duty-free

to 10.5¢/barrel). The company will source crude oil (HTS 2709.00, duty rate of 5.25¢ or 10.5¢/barrel) from abroad. T/IM authority could be granted for a period of up to two years. Shell has also submitted a request for permanent FTZ manufacturing authority (*see* Docket 8–2005), which includes additional products and feedstocks.

FTZ procedures for would exempt Shell from customs duty payments on the foreign components used in export production. The company anticipates that some 37 percent of the facility's shipments will be exported. On its domestic sales, the company would be able to choose the customs duty rates for certain petrochemical feedstocks by admitting foreign crude oil in non-privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. *Submissions via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is March 30, 2005.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above.

Dated: February 11, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–3803 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–2005]

Foreign-Trade Zone 61—San Juan, PR, Application for Manufacturing Authority—Subzone 61I, Shell Chemicals Yabucoa, Inc., Yabucoa, PR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Trade and Exports Company, grantee of FTZ 61, requesting manufacturing authority on behalf of Shell Chemicals Yabucoa, Inc. (Shell) within Subzone 61I at the Shell petrochemical complex in Yabucoa, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 11, 2005.

Subzone 61I (76,000 BPD capacity 190 employees) was approved by the Board in 1997 for the manufacture of fuel products and certain petrochemical feedstocks and refinery by-products (Board Order 893, 62 FR 32290, 6/13/97). Board Order 893 included a time limit on the authority to admit non-privileged foreign status crude into the refinery. This authority expired on September 30, 2000, and the applicant is now seeking to have the authority reinstated.

The subzone is located on a 241-acre site at Route 901, Km. 2.7 and Yabucoa Harbor, Yabucoa, Puerto Rico, some 45 miles southeast of San Juan. The refinery is used to produce fuels and petrochemical products. All of the crude oil (80 percent of inputs) is sourced from abroad. Shell has also submitted an application for temporary/interim manufacturing authority at the subzone (Docket T–1–2005).

Zone procedures would exempt the refinery from customs duty payments on the foreign products used in its exports (37 percent of production). On domestic sales, the company would be able to choose the customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude in non-privileged foreign status. The duty rates on inputs range from 5.25 cents/barrel to 10.5 cents/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. *Submissions via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is April 29, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 16, 2005).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Export Assistance Center, Midtown Building, 10th floor, 420 Ponce de Leon Ave., San Juan, Puerto Rico 00918.

Dated: February 11, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–3804 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1370]

Grant of Authority for Subzone Status; Black & Decker Corporation (Power Tools, Lawn and Garden Tools, Fasteners, and Home Products), Fort Mill, SC

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 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, the South Carolina State Ports Authority, grantee of FTZ 38, has made application to the Board for authority to establish special-purpose subzone status at the tool, fastener, and home product warehousing/distribution facility of Black & Decker Corporation, located in Fort Mill, South Carolina (FTZ Docket 16–2004, filed 04–29–04).

Whereas, notice inviting public comment has been given in the **Federal Register** (69 FR 25372, 5/6/04); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the tool, fastener, and home product warehousing/distribution facility of Black & Decker Corporation, located in Fort Mill, South Carolina (Subzone 38E), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed in Washington, DC, this 9th day of February, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–3811 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–828]

Stainless Steel Wire Rod From Taiwan: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 23, 2005.

FOR FURTHER INFORMATION CONTACT: Malcolm A. Burke or Howard Smith at (202) 482–3584 or (202) 482–5193, respectively; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2004, the Department of Commerce (the Department) received a timely request from Carpenter Technology Corporation (Carpenter), the sole petitioner in the instant proceeding, to conduct an administrative review of sales made by Walsin Lihwa Corporation (Walsin) and any of its affiliated parties. In that request, Carpenter specifically identified Outokumpu Stainless (Outokumpu) as an affiliate of Walsin. On October 22, 2004, the Department initiated an administrative review of the antidumping duty order on stainless steel wire rod from Taiwan for the period September 1, 2003, through August 31, 2004, and published a notice in the **Federal Register**. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 62022 (October 22, 2004). On November 4, 2004, Carpenter informed the Department that in that mis-identified Outokumpu on November 12, 2004. On December 23, 2004, Carpenter withdrew its request for an administrative review of Walsin.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws its request within 90 days of the publication date of the notice of initiation thereof. Because Carpenter withdrew its review request within the 90-day time limit, the Department is rescinding this review and will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: February 18, 2005.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–3835 Filed 2–25–05; 8:45 am]

BILLING CODE 3510–DS–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') has submitted a public information collection request (ICR) entitled Senior Corps Grant Application, formerly National Senior Service Corps Grant Application to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Angela Roberts, at (202) 606–5000, extension 111. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods listed in the address section, within 30 days from the date of publication in this **Federal Register**.

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov.*

Supplementary Information: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Propose ways to enhance the quality, utility and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on December 5, 2004. The summary of comments received is as follows: A total of 17 written responses were received that represented a total of 39 individuals. One letter was written on behalf of an Association including the collective comments of 23 individuals. Each written response contained numerous separate comments or statements. In summary:

(a) Two comments were received about adding the DUNS number to Part I—Application Facesheet. The Corporation agrees and will do so.

(b) Two comments requested that the questions contained in both the Part III—Narrative and Part IV—Work Plans be clarified and contain more detail. The revised application includes these changes.

(c) Five comments were received about Part II—Budget, of which 3 were incorporated. The three reflected in the revised information collection are to clarify the types of items to enter on each budget line item; to provide clearer instruction; and to more thoroughly define the category on the budget form called ''xcess.'' Two comments were not included: A request to update formulas in a spreadsheet template, because the spreadsheet is no longer used; and a request to list the types of required documentation needed to respond to an audit. This last request is beyond the scope of the grant application's purpose. The information requested by the respondent can be found in Program Regulations.

(d) Two commenters thought the estimated burden was too low. The Corporation believes that burden estimate is adequate, particularly with upcoming improvements to the eGrants system, and has retained the original annualized time estimates.

(e) There was one comment each about the Volunteer Station Roster, requesting a standard user-friendly format; and one comment about sorting the list of Service Categories in the grant application in the same order as is used in the Progress Report. Both suggestions were incorporated.

(f) From a total of 9 general comments, 7 were beyond the scope of this information collection. Comments included two pleas to provide more federal funds to grantees; a request to change the method used to capture outcomes and outcome-based programming; a request to standardize at least one programmatic outcome for all RSVP grantees nationwide; one request to restrict the number of new data elements as much as possible. One general comment addressed the Corporation's ongoing system of ''grading'' its grantees on outcomes, which is factually incorrect, as the Corporation does not grade its grantees in this manner. Another comment asked the Corporation to lower the age and income eligibility for its Foster Grandparent and Senior Companion Programs, which was established and can only be changed through a legislative change. Two general comments asked for copies of the revised application package, which were provided.

(g) The 43 remaining comments, comprising the majority of all comments, requested changes to the Corporation's electronic grants management system, eGrants. While beyond the scope of this information collection, Senior Corps will share these comments with the Corporation's eGrants team. Also, Senior Corps will prepare an update for its grantees about the soon-to-debut version of eGrants Phase II, including the problems reported by the public that it will solve.

Description: The Corporation is seeking approval of the Senior Corps Grant Application which is used by current and prospective grantees to apply for sponsorship of projects under the Retired and Senior Volunteer Program (RSVP); the Foster Grandparent Program (FGP); the Senior Companion Program (SCP); the Senior Demonstration Program (SDP); and the Special Volunteer Program—Homeland Security (SVP). Completion of the Grant Application is required to be considered for sponsorship and the receipt of associated federal funds and benefits. Changes proposed include:

• Additional instructions to clarify budget, narrative, work plan, and performance measures sections;

• Updated the list of Service Categories used by applicants to identify the types of needs the national service participants meet;

• Use of a standard format for the supplemental Station Roster that is both user-friendly and that collects consistent information.

• New fields adopted by the eGovernment Initiative, including the required DUNS number; and

• Accurate correlation to the flow and references contained in the Corporation's electronic grants management system, eGrants, that is used by its grantees.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: Senior Corps Grant Application.

OMB Number: 3045–0035.

Agency Number: CNCS Form 424–NSSC.

Affected Public: Sponsors of National Senior Service Corps (Senior Corps) grants.

Total Respondents: 1,317.

Frequency: Annual.

Average Time Per Respondent: 13.5 for current grantees, and 16.5 for first time applicants.

Estimated Total Burden Hours: 17,121.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $4,600.

Dated: February 22, 2005.

Tess Scannell,

Director, Senior Corps.

[FR Doc. 05–3716 Filed 2–25–05; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. section 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed use of a modified version of the OMB-approved Standard Form 269A, ''Financial Status Report (Short Form).'' This modified form is and would be exclusively used for financial reporting on grants awarded for the AmeriCorps program. This modified financial status report is currently in use by AmeriCorps grantees in the same format for which comments are being now being solicited. Grantees in the AmeriCorps program use the modified Standard Form 269A to report cumulative financial status and activity, typically over a semi-annual period specified by the grant award provisions.

The modified Standard Form 269A for AmeriCorps grantees differs from the regular Standard Form 269A in only one respect. On lines 10b and 10c where total ''Recipient share of outlays'' and ''Federal share of outlays'' are normally reported, respectively, the modified form requires two sub-total amounts to be recorded. Lines 10b and 10c are each split into (1) ''Member Support'' and (2) ''Operational Expense'' categories of outlays. It is necessary to collect sub-totals rather than totals to maintain adequate federal financial management integrity since member support and operational expense categories of grantee spending require different rates at which the grantee must provide matching funds (recipient share).

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 29, 2005.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attention: Ms. Margaret Rosenberry, Director, Office of Grants Management, Room 9805, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 565–2850, Attention Ms. Margaret Rosenberry, Associate Director.

(4) Electronically through the Corporation's e-mail address system: *prosenbe@cns.gov* with the subject line of the message indicating, ''Public Comment on AmeriCorps Modified SF–269A Form.''

FOR FURTHER INFORMATION CONTACT: Margaret Rosenberry, (202) 606–5000, ext. 124, or by e-mail at *prosenbe@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background

AmeriCorps program regulations set the matching funds (recipient share) requirements for participant benefits (also known as member support) and other AmeriCorps program costs (also known as operational expense) at different matching rates. These rates are currently set at 15% and 33%, respectively, with the member support component requiring cash match only.

Current Action

The Corporation seeks to extend a currently approved collection using a modified Standard Form 269A. Other than re-labeling the form with a more descriptive title to differentiate its use from the unmodified Standard Form 269A, and re-labeling the types of outlays to also be more descriptive, the modified form is unchanged from existing use. The Corporation requires 100% electronic reporting. The current modified form is due to expire on March 31, 2005.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Financial Status Report; Standard Form 269A (Modified)

OMB Number: 3045–0103.

Agency Number: SF 424–NSSC.

Affected Public: Current and prospective recipients of AmeriCorps program grants.

Total Respondents: 732.

Frequency: Semi-annually, with few exceptions.

Average Time Per Response: Estimated at 2.0 hours. Grantees using electronic financial reporting tools provided by the Corporation may reduce the average time per response by up to 75%.

Estimated Total Burden Hours: 2,928 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 22, 2005.

Margaret Rosenberry,

Director, Office of Grants Management.

[FR Doc. 05–3826 Filed 2–25–05; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning a new information collection for an examination of the Points of Light Foundation Strengthen Communities AmeriCorps*VISTA Initiative (POLF–VISTA Initiative). The Corporation proposes to conduct data collection request around volunteer recruitment and management activities from volunteer centers participating in the

POLF–VISTA Initiative, as well as the community organizations that utilize the services of these volunteer centers.

Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by April 29, 2005.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attn: Kelly Arey, Department of Research and Policy Development, Rm 8100, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom, Room 6010, at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

(3) By fax to: 202–565–2785, Attn: Kelly Arey, Research Analyst.

(4) Electronically through the Corporation's e-mail address system: *karey@cns.gov*.

(5) Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kelly Arey, (202) 606–5000 ext. 197, or by e-mail at *karey@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

Background

The Corporation is strongly committed to evaluating the effectiveness of its programs. Through this effort, the Corporation will survey the volunteer centers that serve as placement sites for the POLF–VISTA Initiative and their community partners that receive services as part of this initiative in order to assess the experiences of stakeholders and examine how they implement volunteer recruitment and management best practices.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: Examination of Points of Light Foundation Strengthening Communities AmeriCorps*VISTA Initiative.

OMB Number: None.

Agency Number: None.

Affected Public: Non-profit organizations.

Total Respondents: 109.

Frequency: Once.

Average Time Per Response: 10 minutes.

Estimated Total Burden Hours: 1090 minutes.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 22, 2005.

Robert Grimm,

Director, Department of Research and Policy Development.

[FR Doc. 05–3827 Filed 2–25–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting.

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 24 and 25 February 2005.

Time(s) of Meeting: 0800–1700, 24 February 2005; 0800–1200, 25 February 2005.

Place: Institute for Defense Analysis.

1. *Agenda:* The Army Science Board FY05 Summer Study on ''Modularity'' will be holding a meeting on 24 and 25 February 2005. The meeting will be held at the Institute for Defense Analysis (IDA). The meeting will begin at 0800 hrs on the 24th and will end at approximately 1200 hrs on the 25th. For further information, please contact Melanie McAnney at either *Melanie.mcanney@hqda.army.mil* or (703) 604–7479. Thank you.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 05–3790 Filed 2–25–05; 8:45 am]

BILLING CODE 3710–08–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, March 16, 2005. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the offices of Wolf, Block, Schorr and Solis-Cohen, LLP, 1650 Arch Street, Philadelphia, Pennsylvania, in the 26th floor conference room.

The conference among the commissioners and staff will begin at 9:30 a.m. Topics of discussion will include: a status report on the development of numeric values for existing water quality in the Lower Delaware; a report of the Water Management Advisory Committee; a report of the Flow Management Technical Advisory Committee; a proposal to amend Resolution No. 2002–33 relating to the operation of Lake Wallenpaupack during drought watch, drought warning and drought operations (previously noticed as a resolution to amend the Water Code and Comprehensive Plan relating to the coordinated operation of lower basin and hydroelectric reservoirs during a basinwide drought); a report on the February 17–18, 2005 meeting of the Expert Panel for the Phase 2 TMDL for PCBs in the Delaware Estuary; and a proposal to amend the Water Quality Regulations, Water Code and Comprehensive Plan by establishing pollutant minimization plan requirements for point and non-point discharges following issuance of a TMDL or assimilative capacity determination.

The subjects of the public hearing to be held during the 1:30 p.m. business

meeting include the dockets listed below:

1. *Forest Park Water (North Penn and North Wales Water Authorities) D–65–76 CP–9.* An application to treat and discharge additional wastewater resulting from the proposed expansion of the Forest Park Water Treatment Plant located in Chalfont Borough, Bucks County, Pennsylvania. The applicant clarifies and disinfects up to 2 million gallons per day (mgd) of filter backwash and rinse water prior to discharging to Pine Run in the Neshaminy Creek Watershed. The potable water filtration plant will be expanded from 30 to 40 mgd to meet the existing Water Allocation Permit limit. Therefore, no expansion of the Point Pleasant Pumping Station on the Delaware River is required. The expanded waste water treatment and water filtration facilities will continue to serve portions of Bucks and Montgomery Counties, both in Pennsylvania.

2. *Borough of Phoenixville D–67–80 CP–2.* An application to upgrade a 4 million gallon per day sewage treatment plant (STP) to meet proposed nitrification standards and to improve effluent disinfection. The project is located off the intersection of Main Street and Second Avenue in Phoenixville Borough, Chester County, Pennsylvania. The project will continue to serve Phoenixville Borough, Schuylkill Township and East Pikeland Township, all in Chester County. STP effluent will continue to be discharged to the non-tidal Schuylkill River in an area designated as Modified-Recreational in the DRBC Comprehensive Plan. No expansion of annual average treatment capacity is proposed, but the ability to treat wet weather related surges will be significantly improved.

3. *Waste Management Disposal Services of Pennsylvania, Inc. D–88–54–2.* An application to modify a landfill leachate treatment plant discharge to the tidal Delaware River via a constructed discharge cove in Water Quality Zone 2. The treatment plant serves the Tullytown and GROWS Landfills and is located off Bordentown Road in Falls Township, Bucks County, Pennsylvania. The existing 0.1 million gallon per day leachate treatment plant utilizes the Best Available Treatment Technology but cannot consistently meet effluent total dissolved solids and color limits. The docket holder has requested modification to its docket to allow an increase in the average discharge concentration of Total Dissolved Solids to 10,000 mg/l from the current 6,560 mg/l and an increase in the maximum effluent limit for True Color to 1,500 units from the current 750 units on a platinum-cobalt scale. In support of its requested modifications, the docket holder has completed an environmental study that indicates the changes would result in no significant impact to the Delaware Estuary. No increase in treatment plant capacity is proposed. The docket holder also proposes to construct two effluent storage tanks at the GROWS leachate treatment plant to replace an existing tank and seeks approval to haul leachate to a proposed transfer station that will reroute flow to the Morrisville Borough sewage treatment plant, just upstream on the tidal Delaware River within Water Quality Zone 2.

4. *County of Bucks—Neshaminy Manor Complex D–91–36 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to continue withdrawal of 6.0 mg/30 days to supply the applicant's commercial and institutional water supply distribution system from existing Wells Nos. 4 and 5 in the Lockatong and Stockton formations, respectively. The project is located in Doylestown Township, Bucks County, Pennsylvania and is located in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Talamore at Oak Terrace Inc. D–93–30–2.* An application for renewal of a ground water withdrawal project to continue to supply up to 5.0 million gallons per 30 days (mg/30 days) of water for supplemental irrigation of the applicant's golf course from three existing wells, all in the Stockton Formation. No change in the existing allocation is proposed. The project is located in the Park Creek Watershed in Horsham Township, Montgomery County, in the Southeast Pennsylvania Ground Water Protected Area.

6. *Sealed Air Corporation D–94–81–2.* An application for renewal of a ground water withdrawal project to continue to supply up to 8.0 million gallons per thirty days of water for industrial process from existing Wells Nos. PW–1 and PW–2 located in the Buffalo Springs Formation. No increase in allocation is proposed. The project is located in the Schuylkill River Watershed in the City of Reading, Berks County, Pennsylvania.

7. *Audubon Water Company D–2004–4 CP.* An application for approval of a ground water withdrawal project to supply up to 14.688 mg/30 days of water to the applicant's public water distribution system from new Well No. AWC–14 in the Stockton Formation, 1.44 mg/30 days of water from Wells Nos. 1, 2 and 3 and to increase the existing withdrawal from all wells to 49.79 mg/30 days. The project wells are located in the Pine Run and Schuylkill River watersheds in Lower Providence Township, Montgomery County, Pennsylvania, in the Southeastern Pennsylvania Ground Water Protected Area.

8. *West Bradford Township D–2004–22 CP.* An application to construct a 0.146 million gallon per day (mgd) sewage treatment plant (STP) to serve a proposed 286 home development on the 559 acre DuPont Estate property off the intersection of Lone Eagle and Romansville Roads in West Bradford Township, Chester County, Pennsylvania. Following secondary treatment in oxidation lagoons, disinfected effluent will be spray applied to 26 adjacent acres at a rate of 0.16 inches per hour. A 14.7 million gallon storage pond will be provided to hold effluent for up to 100 days during prolonged cold or wet weather periods; therefore, no discharge to Broad Run in the West Branch Brandywine Creek Watershed is required.

9. *Mobile Pipe Line Company D–2004–36–1.* An application to construct a new 12-inch diameter refined petroleum products pipeline under the Delaware River to replace a common-trench dual pipeline, which is also used to convey liquid petroleum products (gasoline, heating oil and diesel fuel). The proposed pipeline crossing of the tidal Delaware River in DRBC Water Quality Zone 3 will utilize the best available technology to install the new pipeline approximately 30 to 50 feet below the bottom of the Delaware River, via the directional drilling method. The proposed 5,200 foot long pipeline will be connected on the New Jersey side of the Delaware Estuary with a proposed 1,400 foot long conventional trench pipeline to the Valero Refinery in Greenwich Township, Gloucester County. On the Pennsylvania side of the Delaware River, the proposed pipeline will be connected to a proposed 1,350 foot long conventional trench pipeline in Tinicum Township, Delaware County, where it will convey the flow to the existing distribution system. Less than one acre of wetlands will be disturbed, and that will be of temporary duration. The proposed pipeline will be pressure-tested using up to 50,000 gallons of potable water from the Philadelphia Water Department, which has adequate existing capacity, prior to the discharge to the Delaware Estuary via an existing energy-diffusing and chlorine-dissipating drainage swale.

10. *Mafco Worldwide Corporation D–2004–38–1.* An application for approval of a ground water and surface

water withdrawal project to supply up to 11 million gallons per 30 days (mg/30 days) of water to the applicant's industrial food processing facility from Wells Nos. 1 East and 3 West and up to 11 mg/30 days from the Delaware River intakes and to limit the existing withdrawal from all sources to 11 mg/30 days. The project is located in the Delaware River in the City of Camden, Camden County, New Jersey.

11. *Alcoa Extrusions, Inc. D–2005–1–1.* An application for an existing industrial wastewater treatment plant to process up to 0.1 million gallons per day and to continue to discharge to the West Branch Schuylkill River through five existing outfalls. No modification of the existing plant or increase in flow is proposed. The applicant is a manufacturing facility located in Cressona Borough, Schuylkill County, Pennsylvania.

In addition to the public hearing on the dockets listed above, the Commission's 1:30 p.m. business meeting will include a public hearing and possible action on a resolution to amend Resolution No. 2002–33 relating to the operation of Lake Wallenpaupack during drought watch, drought warning and drought operations (previously noticed as a resolution to amend the Water Code and Comprehensive Plan relating to the coordinated operation of lower basin and hydroelectric reservoirs during a basinwide drought); and a resolution to amend the Water Quality Regulations, Water Code and Comprehensive Plan by establishing pollutant minimization plan requirements for point and non-point discharges following issuance of a TMDL or assimilative capacity determination.

The public hearing on the resolution to amend Resolution No. 2002–33 is the second public hearing on this item and is limited to comments on Paragraph 1.B.2. of the resolution. Paragraph 1.B.2. provides that during drought warning and drought operations, Lake Wallenpaupack will be utilized with consideration given to established flow and temperature targets in the Upper Delaware River and in the West Branch Delaware, East Branch Delaware, and Neversink Rivers. Comment on all other aspects of the resolution was closed following a public hearing on January 19, 2005.

The meeting will also include: adoption of the Minutes of the January 19, 2005 business meeting; announcements; a report on basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; and an opportunity for public dialogue. Draft dockets and the resolutions scheduled for public hearing or action on March 16, 2005 will be posted on the Commission's Web site, *http://www.drbc.net*, where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500 ext. 221 with any docket-related questions.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the commission secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: February 22, 2005.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 05–3768 Filed 2–25–05; 8:45 am]

BILLING CODE 6360–01–P

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 March 30, 2005.

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: February 22, 2005.

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: Reinstatement.

Title: OSERS Peer Review Data Form.

Frequency: Biennially.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses: 2,500. Burden Hours: 1,250.

Abstract: OSERS Peer Review Data Form will be used to evaluate applications submitted under Part D of the Individuals with Disabilities Education Improvement Act (IDEIA, H.R. 1350). The law indicates that ''peer review panels shall include, to the extent practicable, parents of children with disabilities, individuals with disabilities, and persons from diverse backgrounds''

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 2650. 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. 05–3715 Filed 2–25–05; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

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 proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 29, 2005.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 23, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Financial Status and Program Performance Closeout Report/Final Report.

Frequency: End of 6-year performance period.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 175.

Burden Hours: 6,125.

Abstract: The Closeout Report will be used by the Department of Education to determine whether recipients of GEAR UP have made substantial progress towards meeting the objectives of their respective projects, as outlined in their grant applications and/or subsequent work plans. In addition, the final report will enable the Department to evaluate each grant project's fiscal operations for the entire grant performance period, and compare total expenditures relative to federal funds awarded, and actual cost-share/matching relative to the total amount in the approved grant application. This report is a means for grantees to share the overall experience of their projects and document achievements and concerns, and describe effects of their projects on participants being served; project barriers and major accomplishments; and evidence of sustainability. The report will be GEAR UP's primary method to collect/analyze data on students' high school graduation and immediate college enrollment rates.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2687. 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 Joseph Schubart at his e-mail address *Joe.Schubart@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. E5–790 Filed 2–25–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information: Native Hawaiian Education Program

Notice inviting applications for new awards for fiscal year (FY) 2005.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.362A.

DATES: *Applications Available:* February 28, 2005. *Deadline for Transmittal of Applications:* April 14, 2005.

Eligible Applicants: Native Hawaiian educational organizations; Native Hawaiian community-based organizations; public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language, and consortia of the previously mentioned organizations, agencies, and institutions.

Estimated Available Funds: $12,733,000. Contingent upon the availability of funds and quality of applications, the Secretary may make additional awards for FY 2006 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $375,000 to $1,100,000.

Estimated Average Size of Awards: $500,000 (The size of the awards will be commensurate with the nature and scope of the work proposed).

Estimated Number of Awards: 20 to 30.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Native Hawaiian Education program is to support innovative projects that enhance the educational services provided to Native Hawaiian children and adults. These projects may include those activities authorized under section 7205(a)(3) of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv) and (b)(2)(v), the following competitive preference priority is from section 7205(a)(2) of the ESEA, and the invitational priority is from allowable activities specified in section 7205(a)(3) of the ESEA.

Competitive Preference Priority: For FY 2005 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award a maximum of 5 points (total) to an application, depending on the extent to which the application meets this priority.

The Secretary will give a competitive preference to applicants proposing projects that are designed to address one or more of the following:

(a) Beginning reading and literacy among students in kindergarten through third grade;

(b) The needs of at-risk children and youth;

(c) The needs in fields or disciplines in which Native Hawaiians are underemployed; and

(d) The use of the Hawaiian language in instruction.

Within this competitive preference priority, we are particularly interested in applications that address the following invitational priority.

Invitational Priority: For FY 2005 this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is: Early Childhood Activities, Special Education, and Higher Education.

To meet this priority, an applicant must propose a project that will use grant funds for one or more of the following:

1. The development and maintenance of a statewide Native Hawaiian early education and care system to provide a continuum of services for Native Hawaiian children;

2. Activities that meet the special needs of Native Hawaiian students with disabilities; and

3. Activities to enable Native Hawaiians to enter and complete programs of postsecondary education.

Program Authority: 20 U.S.C. 7515–7517; Consolidated Appropriations Act, 2005 (Pub. L. 108–447).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $12,733,000. Contingent upon the availability of funds and quality of applications, the Secretary may make additional awards for FY 2006 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $375,000 to $1,100,000.

Estimated Average Size of Awards: $500,000 (The size of the awards will be commensurate with the nature and scope of the work proposed).

Estimated Number of Awards: 20 to 30.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Native Hawaiian educational organizations; Native Hawaiian community-based organizations; public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instruction in the Native Hawaiian language; and consortia of the previously mentioned organizations, agencies, and institutions.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching requirements, but the program does have a supplement-not-supplant funding requirement. Funds made available under this program may be used only to supplement and expand programs and authorities in the area of education to further the purposes of the Native Hawaiian Education program (section 7203(3) of the ESEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* To obtain a copy of the application package via the Internet use the following address: *http://www.ed.gov/programs/nathawaiian/applicant.html.*

Individuals may also obtain a copy of the application package by contacting the program contact person listed in this section.

Address and mail your request for information to: Beth Fine, U.S. Department of Education, 400 Maryland Ave., SW., room 3W223, Washington, DC 20202–6200. Telephone: (202) 260–1091 or by e-mail: *beth.fine@ed.gov* or Francisco Ramirez, U.S. Department of Education, 400 Maryland Ave., SW., room 3W225, Washington, DC 20202–6200. Telephone: (202) 260–1541 or by e-mail: *francisco.ramirez@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the application narrative (text plus all figures, charts, tables, and diagrams) to the equivalent of no more than 30 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Begin numbering at the right bottom of the first page in Arabic numerals (''1'') and number the pages consecutively throughout the document.
- Include all critical information in the program narrative, eliminating the need for appendices.

The recommended page limit does not apply to the cover sheet; the budget section, including the budget narrative justification; the assurances and certifications; or the project abstract and the resumes.

3. *Submission Dates and Times:*

Applications Available: February 28, 2005.

Deadline for Transmittal of Applications: April 14, 2005.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. Other Submission Requirements in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Under section 7205(b) of the ESEA, not more than five percent of funds provided to a grantee under this competition for any fiscal year may be used for administrative purposes. We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under Exception to Electronic Submission Requirement.

a. *Electronic Submission of Applications.* Applications for grants under the Native Hawaiian Education Program—CFDA Number 84.362A must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesdays; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application should comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the attention of the Native Hawaiian Education Program at (202) 742–5418.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) one of the persons listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contacts) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

* You do not have access to the Internet; or

* You do not have the capacity to upload large documents to the Department's e-Application system; and

* No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the

Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Beth Fine, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W223, Washington, DC 20202–6200 or Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W225, Washington, DC 20202–6200. FAX: (202) 260–8969.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.362A), 400 Maryland Avenue, SW., Washington, DC 20202–4260. or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.362A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.362A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package. The maximum possible score for this competition is 105 points (100 points under the selection criteria and 5 points under the competitive preference). The maximum possible points for each criterion are as follows:

a. Significance (20 points).

b. Quality of Project Design (35 points).

c. Quality of Project Personnel (10 points).

d. Quality of Management Plan (15 points).

e. Quality of Project Evaluation (20 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the Applicable Regulations section of this notice. We reference the regulations outlining the terms and conditions of an award in the Applicable Regulations section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has developed three measures for evaluating the overall effectiveness of the Native Hawaiian Education Program: (1) Increasing the percentage of teachers who participate in professional development activities under the program that address the unique educational needs of program participants; (2) increasing the percentage of Native Hawaiian children who participate in early education programs and improve on measures of school readiness and literacy; and (3) increasing the percentage of students participating in the program who will meet or exceed proficiency standards in mathematics, science or reading.

All grantees will be expected to submit an annual performance report addressing these performance measures, to the extent that they apply to the grantee's project.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Beth Fine, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W223, Washington, DC 20202–6200. Telephone: (202) 260–1091 or by e-mail: *beth.fine@ed.gov* or Francisco Ramirez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W225, Washington, DC 20202–6200. Telephone: (202) 260–1541 or by e-mail: *francisco.ramirez@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 22, 2005.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E5–798 Filed 2–25–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Demonstration Projects To Ensure Students With Disabilities Receive a Quality Higher Education; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.333A.

DATES:

Applications Available: February 28, 2005.

Deadline for Transmittal of Applications: April 18, 2005.

Deadline for Intergovernmental Review: June 17, 2005.

Eligible Applicants: Institutions of higher education.

Estimated Available Funds: $6,919,000.

Estimated Range of Awards: $100,000 to $350,000 per year.

Estimated Average Size of Awards: $277,000.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Demonstration Projects to Ensure Students with Disabilities Receive a Quality Higher Education program provides grants to institutions of higher education (IHEs) to develop innovative demonstration projects. The purpose of the demonstration program is to provide technical assistance and professional development for faculty and administrators of IHEs in order to provide them with the skills and supports that they need to teach students with disabilities. IHEs funded under this program also will widely disseminate research and training to enable faculty and administrators in other IHEs to meet the educational needs of students with disabilities.

Program Authority: 20 U.S.C. 1140–1140d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, 86, 97, 98, and 99.

Because there are no program specific regulations for the Demonstration Projects to Ensure Students with Disabilities Receive a Quality Higher Education program, applicants should refer to the authorizing statute in Part D, Title VII, of the Higher Education Act of 1965, as amended (HEA).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,919,000.

Estimated Range of Awards: $100,000 to $350,000 per year.

Estimated Average Size of Awards: $277,000.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:*

You may obtain an application package via the Internet by downloading the package from the program Web site at: *http://www.ed.gov/programs/disabilities/index.html.*

You may also obtain a copy of the application package by contacting Shedita Alston, U.S. Department of Education, 1990 K Street, NW., room 7089, Washington, DC 20006–8526. Telephone: 202–502–7808 or by e-mail at: *Shedita.Alston@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 30 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the coversheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: February 28, 2005.

Deadline for Transmittal of Applications: April 18, 2005.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-

Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. Other Submission Requirements in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 27, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under Exception to Electronic Submission Requirement.

a. *Electronic Submission of Applications.* Applications for grants under the Demonstration Projects To Ensure Students with Disabilities Receive a Quality Higher Education Competition-CFDA Number 84.333A must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), and all necessary assurances and certifications.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Department's e-Application system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed

statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Shedita Alston, U.S. Department of Education, 1990 K Street, NW., room 7089, Washington, DC 20006–8526. FAX: (202) 502–7699.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.333A), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number: 84.333A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.333A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:*

We identify administrative and national policy requirements in the application package and reference these and other requirements in the Applicable Regulations section of this notice.

We reference the regulations outlining the terms and conditions of an award in the Applicable Regulations section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under this grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.720.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), two measures have been developed in evaluating the overall effectiveness of the Demonstration Projects To Ensure Students With Disabilities Receive A Quality Higher Education Program: (1) The difference between the rate at which students with documented disabilities complete courses taught by faculty trained in project activities, and the rate at which other students complete those courses and (2) the percentage of faculty trained in project activities that incorporate elements of training into their classroom teaching.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Shedita Alston, U.S. Department of Education, 1990 K Street, NW., room 7089, Washington, DC 20006–8526. Telephone: 202–502–7808 or by e-mail: *Shedita.Alston@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734, or if the TDD number is not available, use the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 23, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. E5–799 Filed 2–25–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Publication of the Petition for Waiver and Granting of the Application for Interim Waiver of Samsung Air Conditioning From the DOE Residential and Commercial Package Air Conditioner and Heat Pump Test Procedures (Case No. CAC–009)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and solicitation of comments.

SUMMARY: Today's notice publishes a Petition for Waiver from Samsung Air Conditioning (Samsung). The Samsung Petition requests a waiver of the test procedures applicable to residential and commercial package air conditioners and heat pumps. The Department of Energy (DOE) is soliciting comments, data, and information with respect to the Petition for Waiver.

Today's notice also grants an Interim Waiver to Samsung from the existing Department of Energy (DOE or Department) test procedures applicable to residential and commercial package air conditioners and heat pumps.

DATES: The Department will accept comments, data, and information with respect to this Petition for Waiver not later than March 30, 2005.

ADDRESSES: You may submit comments, identified by case number CAC–009, by any of the following methods:

- Mail: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121.
- Telephone: (202) 586–2945. Please submit one signed paper original.
- Hand Delivery/Courier: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket: For access to the docket to read copies of public comments received, this notice, and the Petition for Waiver and Application for Interim Waiver, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room. Please note: The Department's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer housing waiver petition materials.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9611; e-mail: *Michael.Raymond.ee.doe.gov;* or Francine Pinto, Esq., or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507; e-mail: *Francine.Pinto@hq.doe.gov,* or *Thomas.DePriest@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the ''Energy Conservation Program for Consumer Products other than Automobiles.'' Part C of Title III (42 U.S.C. 6311–6317) provides for an energy efficiency program entitled ''Certain Industrial Equipment,'' which is similar to the program in Part B, and which includes commercial air conditioning equipment, packaged boilers, water heaters, and other types of commercial equipment.

Today's notice involves both residential products under Part B, and commercial equipment under Part C. Both parts specifically provide for definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. With respect to test procedures, both parts generally authorize the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293, 6314)

Samsung's petition requests a waiver from both the residential and commercial test procedures for its DVM products, which are sold for both residential and commercial use.

As noted above, the test procedures for residential products appear at 10 CFR Part 430, Subpart B, Appendix M.

For commercial package air-conditioning and heating equipment, EPCA provides that the test procedures shall be those generally accepted industry testing procedures developed or recognized by the Air-Conditioning and Refrigeration Institute (ARI) or by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992. (42 U.S.C. 6314(a)(4)(A)) This section also provides for the Secretary of Energy to amend the test procedure for a product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria. (42 U.S.C. 6314(a)(4)(B)) On October 21, 2004, the Department published a direct final rule, effective December 20, 2004, adopting ARI Standard 210/240–2003 for small commercial package air conditioning and heating equipment with capacities ≤65,000 Btu/h and ARI Standard 340/360–2000 for small commercial package air conditioning and heating equipment with capacities ≥65,000 Btu/h and <135,000 Btu/h. (69 FR 61962) The capacities of Samsung's DVM products sold for commercial use fall in a range covered by ARI Standard 340/360–2000. Therefore, it is the applicable test procedure for this commercial equipment.

The Department's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products. These provisions are set forth in 10 CFR 430.27. The Department proposed waiver provisions for covered commercial equipment on December 13, 1999 (64 FR 69597), as part of the commercial furnace test procedure rule. The waiver provisions for commercial equipment are substantively identical to those for covered consumer products. The Department published a final rule on October 21, 2004, codifying this process in 10 CFR 431.201, effective November 22, 2004. (69 FR 61915)

The waiver provisions allow the Assistant Secretary for Energy Efficiency and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics that prevent testing according to the

prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. (10 CFR Sections 430.27(a)(1), 431.201(a)(1)) Waivers generally remain in effect until final test procedure amendments become effective, thereby resolving the problem that is the subject of the waiver.

The waiver process also allows the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. (10 CFR 430.27(a)(2), 431.201(a)(2)) An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On October 7, 2003, Samsung filed an Application for Interim Waiver and a Petition for Waiver from the test procedures applicable to residential and commercial package air conditioning and heating equipment. In particular, Samsung requested a waiver from the residential test procedures contained in 10 CFR Part 430, Subpart B, Appendix M, and, for commercial products, a waiver from the test procedures in ARI 210/240 (1989), and from the test procedures contained in ARI 210/240 (1994), that the Department, at the time, proposed to adopt. As discussed above, for Samsung's commercial products, the applicable test procedure is now ARI 340/360–2000. Samsung requests a waiver from the test procedures for the following basic product models:

Commercial: Any product using these outdoor units: RVMH100FAMOU, RVMC100FAMOU, RVMC070FAMOU. For these products, the applicable test procedure is ARI 340/360–2000.

Residential: Any product using these outdoor units: RVMH050CBMOU, RVMC050CBMOU. DVM indoor units: AVMKH020CAOU, AVMKC020CAOU, AVMKH032CAOU, AVMKC032CAOU, AVMKH040CAOU, AVMKC040CAOU, AVMCH052CAOU, AVMCC052CAOU, AVMCH072CAOU, AVMCC072CAOU, AVMCH105CAOU, AVMCC105CAOU, AVMBH020CAOU, AVMBC020CAOU, AVMBH032CAOU, AVMBC032CAOU, AVMBH040CAOU, AVMBC040CAOU, AVMBH052CAOU, AVMBC052CAOU, AVMBH072CAOU, AVMBC072CAOU, AVMHH105CAOU, AVMHC105CAOU, AVMHH128CAOU, AVMHC105CAOU, AVMDH052CAOU, AVMDC052CAOU, AVMDH072CAOU, AVMDC072CAOU, AVMWH020CAOU, AVMWCH020CAOU, AVMWH032CAOU, AVMWC032CAOU, AVMWH040CAOU, AVMWC040CAOU, AVMWH052CAOU, AVMWC052CAOU, AVMWH072CAOU, AVMWC072CAOU. For these products, the applicable test procedure is the residential test procedure contained in 10 CFR Part 430, Subpart B, Appendix M.

Samsung seeks a waiver from the applicable test procedures because, Samsung asserts, the current test procedures evaluate its DVM (Digital Variable Multi) systems in a manner not representative of their true energy efficiency. Samsung claims that the energy usage of its DVM systems cannot be representatively measured using the current test procedures for the following reasons:

1. Unlike the DVM system, no product currently for sale in the U.S. offers the ability of a direct expansion system to vary its capacity every 20 seconds between 10% and 100% of the building design load, and no existing test procedure can provide a method for rating at those capacity points.

2. No existing test procedure requires calculating Integrated Part Load Values (IPLV) in the heating mode.

3. No existing test procedure accounts for the benefits of the DVM system's zoned cooling. No existing test standard allows for the inherent benefits of eliminating duct loss in a ductless system.

4. No existing test procedure provides a method for testing and rating a system that utilizes one outdoor unit and sixteen indoor units.

5. No existing test procedure can provide a method for rating systems where the type and capacity of the indoor unit can be mixed in the same system. The DVM system can mix together six different indoor models with seven different capacities, resulting in over 1,000 combinations.

The Samsung petition requests that DOE grant a waiver from existing test procedures until such time as a representative test procedure is developed and adopted for this class of products. Samsung intends to work with ARI to develop appropriate test procedures.

Samsung also requested an Interim Waiver to allow it to work with manufacturers of similar products and industry organizations to develop a test procedure that accurately reflects the operation and energy consumption of these types of units. An Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. (10 CFR 430.27(g), 431.201(e)(3))

Samsung's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic hardship Samsung will likely experience if its Application for Interim Waiver is denied. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. For Samsung's commercial DVM products, it appears likely that the Petition for Waiver will be granted. The Samsung DVM products are quite similar to the Mitsubishi City Multi products, for which DOE granted a waiver. (69 FR 52660, August 27, 2004) The Mitsubishi waiver was granted because Mitsubishi's products cannot be tested according to the prescribed test procedures, for two reasons: (1) Test laboratories cannot test products with so many indoor units (up to sixteen—the practical limit is about five); and (2) there are 58 indoor unit models, so for each outdoor unit, there are well over 1,000,000 combinations, and it is impractical to test so many combinations.

Samsung's commercial outdoor units are capable of operating up to sixteen indoor units. Samsung's system also allows for over 1,000 combinations of indoor and outdoor units. The upper limit on the number of indoor units that are currently able to be tested is about six. The Samsung commercial systems (with 100k and 72k Btu/hr outdoor units) will therefore experience the same testing problems that prompted DOE to grant Mitsubishi a waiver.

Samsung's residential models, with a 50k Btu/hr outdoor unit, are capable of operating up to seven indoor units. This would still be difficult to test, but it is not clear that it could not be tested. However, although it may be possible to test Samsung's residential DVM systems, it is not practical to do so. For standard split system air conditioners with one indoor unit, DOE's regulations allow use of an alternative rating method (ARM) for generating efficiency ratings of different combinations of indoor and outdoor units. There is no such ARM for systems with more than one indoor unit, so Samsung would

have to test every combination offered for sale. With up to seven indoor units of six different types, thousands of combinations are possible, and it would not be practical to test so many combinations. This is the second of the two reasons for which Mitsubishi received a waiver; therefore, it appears likely that Samsung's residential DVM products will also be granted a waiver.

Therefore, Samsung's Application for an Interim Waiver from the DOE test procedure for its DVM systems is granted. Hence, it is ordered that:

The Application for Interim Waiver filed by Samsung is hereby granted for any Samsung DVM product using these outdoor units: RVMH100FAMOU, RVMC100FAMOU, RVMC070FAM0U, RVMC050CBM0U, and RVMH050CBM0U. Samsung shall not be required to test or rate these products on the basis of the currently applicable test procedure, which is ARI 340/360–2000 for the first three of the above outdoor units, which are commercial, and the test procedures contained in 10 CFR Part 430, Subpart B, Appendix M, for the latter two, which are residential.

This Interim Waiver is based upon the presumed validity of statements and allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

The Department is publishing Samsung's Petition for Waiver in its entirety. The Petition contains no confidential information. The Department solicits comments, data, and information with respect to the Petition. The Department is particularly interested in receiving comments and views of interested parties concerning any alternate test procedures, modifications to test procedures, or alternative rating methods, which the Department could use to fairly represent the energy efficiency of Samsung's DVM products. Any person submitting written comments must also send a copy of such comments to the petitioner. 10 CFR 430.27(b)(1)(iv).

Issued in Washington, DC, on February 22, 2005.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Samsung Air Conditioning

2865 Pellissier Place
Whittier CA 90601

October 7th 2003

Mr. Michael Raymond
Office of Building Research and Standards
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585–0121

Dear Mr. Raymond

I am writing this letter to you in regard to the process for a Petition for Waiver and application for interim waiver of test procedures.

Samsung Air Conditioning, acting through it's exclusive distributors in the USA, Quietside Corporation hereby petitions the United States Department of Energy for a Waiver of all Test procedures and makes application for an interim waiver pursuant to the provisions of 10 CFR 431.29.

To support this petition, please consider the following submission.

1. Models Covered by the Scope of This Petition

The Samsung DVM system products consist of three capacities of Outdoor units, nominally 100,000 Btu/h, 72,000 Btu/h and 50,000 Btu/h, operating on 208/230V–3Ph–60Hz (100k & 72k units) and 208/230V–1Ph–60Hz (50k unit).

These units are available in both Cooling only and Heat Pump models (72k is Cooling only) and these outdoor units can be matched with six different types of indoor unit—

Built in Duct
Low Silhouette Duct
High Static Pressure Duct
4 Way Ceiling Cassette
1 Way Ceiling Cassette
High Wall Mount unit

These indoor units are available in capacities from 7,000 Btu/h to 44,000 Btu/h depending on the model type.

Appendix 1: Full model list and description of items covered by petition

2. Inherent Characteristics of the Samsung DVM System

The Samsung DVM system is a Commercial and Residential multi split, multi zoned variable refrigerant flow system that will provide either heating or cooling to the building as dictated by the individual zone temperature.

The 100k & 72k Outdoor units are capable of operating up to 16 indoor units, and the 50,000 Btu/h Outdoor unit is capable of operating up to 7 indoor units

All of the indoor units are capable of operating independently, with their own temperature and fan speed setting. Based on those controls the outdoor unit will then determine the cooling or heating capacity delivered into the zones. The outdoor unit uses the following inputs to determine the capacity required by the zone—

Set Temperature (User selectable)
Room temperature (Measured in the return air of the unit)
Refrigerant temperature at the Evaporator Inlet
Refrigerant temperature at the Evaporator Outlet
Outdoor ambient temperature

The Samsung DVM system cannot provide simultaneous Heating and Cooling functions into the zones, however it will operate to satisfy the building demands in the following manner—

First unit calling for operation
Majority rules for the building
All other zone requirements

The Outdoor and Indoor units communicate the control information listed above every 20 seconds to calculate the indoor capacity required for the next 20 seconds of operation, allowing the unit to correctly assess the load characteristics of the building and adjust the capacity output accordingly.

The method for controlling the capacity is to vary the quantity of refrigerant flowing through the entire system at any given time.

The compressor(s) used in the Samsung DVM system are manufactured by Copeland in Sidney OH, and are a ''Digital Scroll'' type. This revolutionary compressor allows the system capacity to be varied from 10% to 100% depending on the indoor load. This is accomplished by allowing the fixed and orbiting scrolls inside the compressor to separate during unloaded periods, which stops refrigerant flow through the compressor and operates the compressor motor in an unloaded fashion, which greatly reduces the power consumed by the compressor,

The outdoor unit also uses variable speed condenser fan motor(s) which can alter condenser airflow to exactly suit the outdoor air temperature and building load to ensure the unit operates in the most efficient manner possible.

The Indoor units all utilize an Electronic Expansion Valve (EEV) which operates over a 480 step range from fully closed to fully open. This extensive range allows precise monitoring of the refrigerant quantity entering the evaporator coil and hence the cooling or heating capacity of the unit.

This type of product will almost always operate below the 100% capacity threshold (part load versus full load operation), and due to the enhanced capacity control range of the DVM system it can operate at 10% capacity if the building load has reduced to that point.

This type of operation is very similar to the Water Chilling units as detailed in ARI standard 550/590.

3. Waiver Requirements

Samsung/Quietside seeks a waiver of all current test standards until a test standard can be developed and adopted that will provide the HVAC market in the United States (US) with a fair and accurate assessment of the DVM system energy consumption and efficiency levels.

The current test procedures in place may evaluate the DVM system in a manner that is not representative of the true energy efficiency of the DVM system and provide inaccurate ratings which would be used to compare the DVM system with other forms of Air Conditioning/Heat Pumps in the market.

Due to the constant variation of the system capacity it is patently inaccurate to rate the unit at its full load capacity or at any other fixed point of capacity when the unit capacity is constantly varying between 10% and 100% of the capacity.

Any test method utilized to rate these types of full variable refrigerant flow units should be indicative of the ability of these units to operate at 10%, 20%, 30% * * * 100% as this is the true operation of the unit in the field.

During 2002 a committee was formed by ARI to discuss alternate test methods for this type of multi split variable refrigerant flow unit, however to this date no additional test methodology has been adopted by the committee. As the Department is aware the timeframe for drafting and approving such a standard may be months or even years. The International Standards Organization have been currently working on a standard of their own for several years at this point in time.

Due to the lack of an approved standard at this present time, the energy savings provided by the DVM System would not be accurately represented should it be tested under the current standards. This inaccurate representation will have a negative impact upon the sales of both the Samsung DVM system and other Variable Refrigerant Volume systems. This will not only greatly affect the business revenue of Quietside and Samsung, but it will prevent the country from realizing energy savings, particularly in the area of peak load usage reduction.

To summarize, the test waiver for the DVM system is requested for the following reasons:

A. No product currently for sale in the USA offers the ability of a direct expansion system to vary its capacity every 20 seconds between 10% and 100% of the building design load, and no existing test standard can provide a method for providing ratings at those capacity points.

B. No existing test standard allows for IPLV to be calculated in the Heating mode.

C. No existing test standard provides for the benefits of diversity due to the inherent ability of the DVM System to provide zoned cooling. Also no existing test standard provides for credit for negating duct loss from the nonducted units available with this system.

D. No existing test standard provides a method to test and rate a system that utilizes one outdoor unit and 16 indoor units.

E. No existing test standard can provide a method for rating systems where the type and capacity of indoor unit can be used. The DVM system can mix 6 different indoor models in up to 7 different capacities. For example a 100,000 Btu/h system can use 2 x 11,000 Btu/h units of different models, 2 x 13,000 Btu/h units of additional models, 2 x 24,000 Btu/h models from additional models and still not be at 100% capacity load. The total number of unit combinations available is over 1,000, not including the ability to over or under size the indoor capacity with regard to the outdoor unit capacity.

4. Similar Equipment Currently Offered for Sale in the U.S.

Sanyo
Mitsubishi Comfort Systems
Mitsubishi Electric U.S.

The above companies currently offer similar systems for sale in the United States, these systems offer similar advantages and energy savings inherent to all Variable Refrigerant Flow units, however no other manufacturer utilizes the ''Digital Scroll'' technology and the capacity range of the DVM system.

Mitsubishi Electric U.S. currently has a test waiver proposal in front of the Department that has been published for comment in the **Federal Register**.

5. Reasons for Granting a Test Waiver to the DVM System

The Samsung DVM System is currently offered for sale in the U.S. marketplace, however the lack of an existing or proposed test standard has resulted in the unit having to be provided with Energy Guide labels detailing a 10 SEER, the lowest possible rating. The true SEER of the DVM system would be a minimum of 50% higher.

This failure to correctly rate the energy efficiency of the unit also does not allow the performance of the DVM system to be certified by the ARI (no applicable test standard or test availability), which causes a misconception of the efficiency level of the DVM system and provides wholly inaccurate data to the U.S. consumer.

These types of Variable Refrigerant Flow products are very well established in the Asian and European markets, based on the high levels of efficiency and comfort provided to the end user. U.S. consumers should not be excluded from these benefits due to the lack of an applicable test standard, and should not be beholden to inaccurate data that will heavily disadvantage the DVM system or any other Variable Refrigerant Flow system in a very competitive marketplace.

Independent testing of the DVM system against conventional Air conditioning systems shows an average of over 30% reduction on energy consumption, not even including the reduction in peak load operating consumption.

Samsung test data, showing EER values (Watt for Watt) shows almost a full EER point increase over VAV and compressor control units, and a similar increase over an Inverter Variable Refrigerant Flow system. This test data is included in Appendix 2.

The disadvantage of the lack of an applicable test standard will not only impact the potential sales of the DVM system, but also result in economic losses not only for Samsung and Quietside but also for the Copeland Corporation who have spent considerable time and resources in developing the ''Digital Scroll'' compressors.

Samsung/Quietside formally urges the Department to grant an interim waiver from existing test standards and allow Quietside to work in conjunction with the other manufacturers of Variable Refrigerant Flow products and the various organizations involved in our industry to formulate a test standard that accurately reflects the operation and energy consumption of these types of units.

Should the Department have any comments or questions regarding this petition please do not hesitate to contact the undersigned.

Yours truly,

John Miles

Director of Engineering and Technical Support

Appendix 1 : Full Model List Samsung DVM System Products
Appendix 2 : Samsung performed Tests detailing Energy Efficiency versus Delivered Capacity for the DVM System

I hereby certify that copies of this petition and application for Interim Waiver of test standards have been mailed to the following companies who are known to market similar Variable Refrigerant Flow products

Mitsubishi Electric US
4505–A Newpoint Place
Lawrenceville GA 30043
Attn: William Rau, President, HVAC Advanced Products Division

Sanyo
1165 Allgood Road, Suite #22
Marietta, GA 30062
Attn: Tetsushi Yamashita, Engineering Manager, HVAC

Mitsubishi Heavy Industries Climate Control Inc
3030 E. Victoria Street
Rancho Dominguez CA 90221
Attn: Caesar Ceballos, Technical Support Manager

APPENDIX 1.—SAMSUNG DVM SYSTEM PRODUCTS AND CAPACITIES

2003 Model	Description	Btu/h cooling/ heating
RVMH100FAMOU	Condensing Unit Heat Pump	95,500/107,500
RVMC100FAMOU	Condensing Unit Cooling Only	95,500/107,500
RVMH050CBMOU	Condensing Unit Heat Pump	50,000/55,000
RVMC050CBMOU	Condensing Unit Cooling Only	50,000/55,000
RVMC070FAMOU	Condensing Unit Cooling Only	76,000/85,000
AVMKH020CAOU	1–Way Ceiling Cassette Heat Pump	7,000/7,500
AVMKC020CAOU	1–Way Ceiling Cassette Cooling Only	7,000/7,500
AVMKH032CAOU	1–Way Ceiling Cassette Heat Pump	11,000/12,000
AVMKC032CAOU	1–Way Ceiling Cassette Cooling Only	11,000
AVMKH040CAOU	1–Way Ceiling Cassette Heat Pump	13,500/14,500

APPENDIX 1.—SAMSUNG DVM SYSTEM PRODUCTS AND CAPACITIES—Continued

2003 Model	Description	Btu/h cooling/ heating
AVMKC04OCAOU	1–Way Ceiling Cassette Cooling Only	13,500
AVMCH052CAOU	4–Way Ceiling Cassette Heat Pump	18,000/19,000
AVMCC052CAOU	4–Way Ceiling Cassette Cooling Only	18,000
AVMCH072CAOU	4–Way Ceiling Cassette Heat Pump	24,000/26,000
AVMCC072CAOU	4–Way Ceiling Cassette Cooling Only	24,000
AVMCH105CAOU	4–Way Ceiling Cassette Heat Pump	36,000/39,000
AVMCC105CAOU	4–Way Ceiling Cassette Cooling Only	36,000
AVMBH020CAOU	Built-In Duct Heat Pump	7,000/7,500
AVMBC020CAOU	Built-In Duct Cooling Only	7,000
AVMBH032CAOU	Built-In Duct Heat Pump	11,000/12,000
AVMBC032CAOU	Built-In Duct Cooling Only	11,000
AVMBH040CAOU	Built-In Duct Heat Pump	13,500/14,500
AVMBC040CAOU	Built-In Duct Cooling Only	13,500
AVMBH052CAOU	Built-In Duct Heat Pump	18,000/19,000
AVMBC052CAOU	Built-In Duct Cooling Only	18,000
AVMBH072CAOU	Built-In Duct Heat Pump	24,000/26,000
AVMBC072CAOU	Built-In Duct Cooling Only	24,000
AVMHH105CAOU	HSP Duct Heat Pump	36,000/39,000
AVMHC105CAOU	HSP Duct Cooling Only	36,000
AVMHH128CAOU	HSP Duct Heat Pump	44,000/47,000
AVMHC128CAOU	HSP Duct Cooling Only	44,000
AVMDH052CAOU	Low Silhouette Duct Heat Pump	18,000/19,000
AVMDC052CAOU	Low Silhouette Cooling Only	18,000
AVMDH072CAOU	Low Silhouette Duct Heat Pump	24,000/26,000
AVMDC072CAOU	Low Silhouette Cooling Only	24,000
AVMWH020CAOU	High Wall Mount Heat Pump	7,000/7,500
AVMWC020CAOU	High Wall Mount Cooling Only	7,000
AVMWH032CAOU	High Wall Mount Heat Pump	11,000/12,000
AVMWC032CAOU	High Wall Mount Cooling Only	11,000
AVMWH040CAOU	High Wall Mount Heat Pump	13,500/14,500
AVMWC040CAOU	High Wall Mount Cooling Only	13,500
AVMWH052CAOU	High Wall Mount Heat Pump	18,000/19,000
AVMWC052CAOU	High Wall Mount Cooling Only	18,000
AVMWH072CAOU	High Wall Mount Heat Pump	24,000/26,000
AVMWC072CAOU	High Wall Mount Cooling Only	24,000

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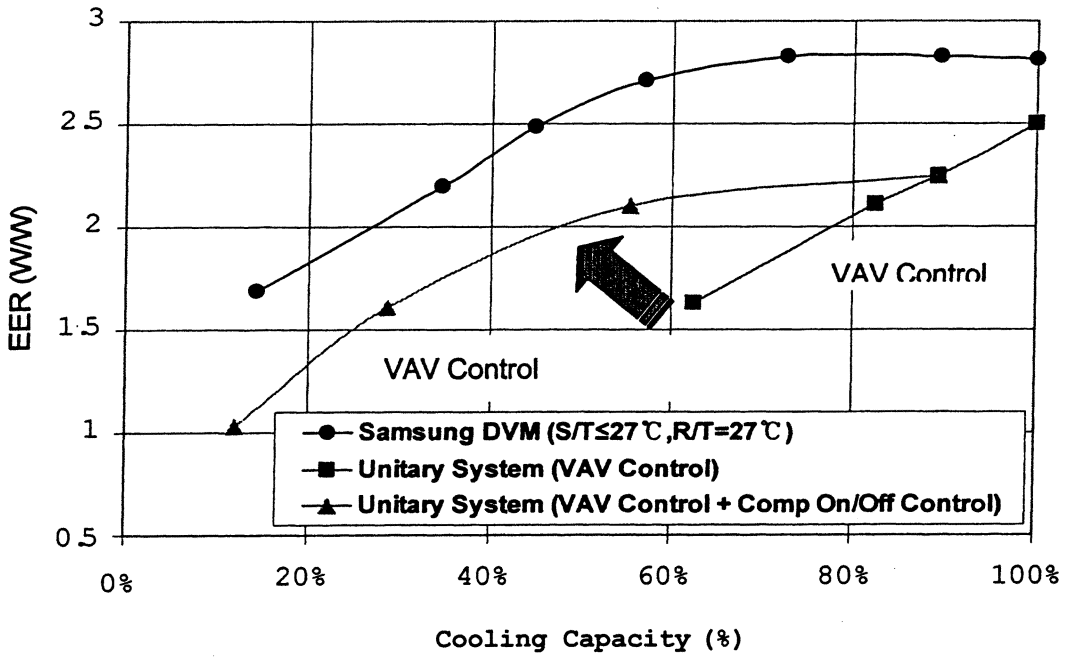
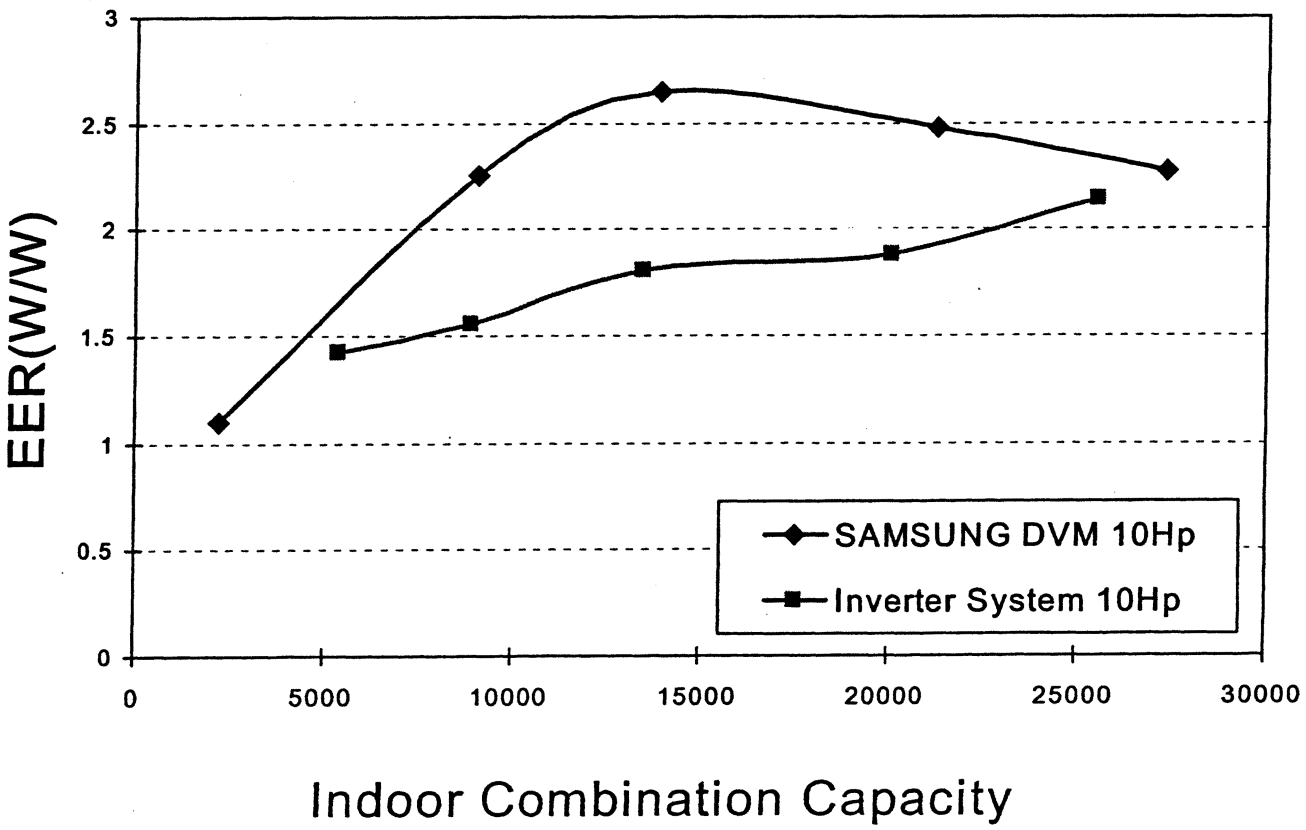
Appendix 2 - **DVM System Vs. UNITARY System**



Inverter versus DVM System



[FR Doc. 05–3782 Filed 2–25–05; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–125 and EL00–98–112]

San Diego Gas & Electric Company, Complainants 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; Notice of Compliance Filing

February 18, 2005.

On February 11, 2005, the City of Pasadena (Pasadena) submitted its emissions calculations in compliance with the Commission's Order issued November 23, 2004, in Docket Nos. EL00–95–100 and EL00–98–088, 109 FERC ¶ 61,218.

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, 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 the parties in 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.

Comment Date: 5 p.m. eastern time on March 4, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–787 Filed 2–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–20–000, et al.]

PPL Sundance Energy, LLC, et al.; Electric Rate and Corporate Filings

February 18, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PPL Sundance Energy, LLC, PPL Energy Plus, LLC, Arizona Public Service Company

[Docket No. EC05–20–000]

Take notice that on February 11, 2005, PPL Sundance Energy, LLC (PPL Sundance), PPL Energy Plus, LLC and Arizona Public Service Company (APS) (collectively, Applicants) filed with the Federal Energy Regulatory Commission a response to a deficiency letter issued on January 28, 2005, by Jamie L. Simler, Director, Division of Tariffs and Market Development—West, in connection with a section 203 application filed for authorization to acquire a 450 megawatt generating facility owned by PPL Sundance. Applicants request confidential treatment of certain supporting data contained in the filing.

Comment Date: 5 p.m. eastern time on March 2, 2005.

2. Duke Power, a Division of Duke Power Corporation

[Docket Nos. ER96–110–013 and EL05–4–000]

Take notice that on February 14, 2005, Duke Power, a division of Duke Energy Corporation (Duke Power) submitted a filing in compliance with the Commission's order issued December 15, 2004, in Docket No. ER96–110–010, *et al.*, 109 FERC ¶ 61,270.

Duke Power states that copies of the filing were served on parties on the official service list in the above-captioned proceed as well as its State commissions.

Comment Date: 5 p.m. eastern time on March 4, 2005.

3. Idaho Power Company

[Docket No. ER97–1481–007]

Take notice that on February 17, 2005, Idaho Power (IPC) submitted an amendment to its January 19, 2005, filing regarding IPC's revised generation market power screen analysis.

Comment Date: 5 p.m. eastern time on February 25, 2005.

4. PacifiCorp PPM Energy, Inc.

[Docket No. ER97–2801–005 and ER03–478–004]

Take notice that on February 14, 2005, PacifiCorp and PPM Energy, Inc. tendered for filing an updated market power analysis.

Comment Date: 5 p.m. eastern time on March 4, 2005.

5. Pacific Gas and Electric Company

[Docket No. ER03–1091–007]

Take notice that on February 11, 2005, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to its December 30, 2004, compliance filing regarding a Generator Special Facilities Agreement and Generator Interconnection Agreement between PG&E and Duke Energy Morro Bay LLC (Duke Morro Bay).

PG&E states that copies of this filing have been served upon Duke Morro Bay, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: 5 p.m. eastern time on March 4, 2005.

6. The Detroit Edison Company

[Docket Nos. ER04–14–006 and EL04–29–006]

Take notice that on February 11, 2005, The Detroit Edison Company (Detroit Edison) filed an amendment to its Ancillary Services Tariff, First Revised Volume No. 5, filed on December 2, 2004 to repaginate the tariff sheets in compliance with Order No. 614.

Comment Date: 5 p.m. eastern time on March 4, 2005.

7. California Independent System Operator Corporation

[Docket No. ER05–277–001]

Take notice that on February 14, 2005, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's order issued January 28, 2005, in Docket No. ER05–277–000, 110 FERC ¶ 61,082.

The ISO states that the filing has been served on all parties on the official service list for this proceeding. In addition, the ISO states that it has posting the filing on the ISO home page.

Comment Date: 5 p.m. eastern time on March 7, 2005.

8. California Independent System Operator Corporation

[Docket No. ER05–416–001]

Take notice that, on February 11, 2005, the California Independent System Operator Corporation (ISO) submitted an errata to its filing of December 30, 2004, in Docket No. ER05–416–000 regarding the ISO's revised transmission access charge rates effective January 1, 2005.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the participating transmission owners, and upon all parties with effective scheduling coordinator service agreements under the ISO Tariff. In addition, the ISO indicates that it is posting the filing on the ISO home page.

Comment Date: 5 p.m. eastern time on March 4, 2005.

9. Pacific Gas and Electric Company

[Docket No. ER05–565–000]

Take notice that on February 11, 2005, Pacific Gas and Electric Company (PG&E) tendered for filing an amended Appendix A to the interconnection agreement (IA) between PG&E and Silicon Valley Power (SVP) to update the point of interconnection information. PG&E states that the IA is on file with the Commission as Service Agreement No. 20, PG&E FERC Electric Tariff, Sixth Revised Volume No. 5.

PG&E states that copies of this filing were served upon SVP, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: 5 p.m. eastern time on March 4, 2005.

10. Florida Power & Light Company

[Docket No. ER05–568–000]

Take notice that on February 11, 2005, Florida Power & Light Company (FPL) submitted revised tariff sheets in compliance with Order No. 2003–B issued December 20, 2004, in Docket No. RM02–1–005, 109 FERC ¶ 61,287 (2004).

Comment Date: 5 p.m. eastern time on March 4, 2005.

11. Indianapolis Power & Light, Co.

[Docket No. ER05–569–000]

Take notice that on February 11, 2005, Indianapolis Power & Light Co. (IPL) tendered for filing an executed amended and restated Interconnection, Operation and Maintenance Agreement (agreement) between IPL and DTE Georgetown, LP (DTE). IPL requests an effective date of December 17, 2004.

IPL states that the filing has been served on DTE and the Indiana Utility Regulatory Commission.

Comment Date: 5 p.m. eastern time on March 4, 2005.

12. Hot Spring Power Company, LP

[Docket No. ER05–570–000]

Take notice that on February 11, 2005, Hot Spring Power Company, LP (Hot Spring) tendered for filing a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Hot Spring states that it proposes to own and operate a 720 MW gas-fired electric power plant near Malvern, Arkansas.

Comment Date: 5 p.m. eastern time on March 4, 2005.

13. MidAmerican Energy Company

[Docket No. ER05–571–000]

Take notice that on February 14, 2005, MidAmerican Energy Company (MidAmerican) submitted changes to its Open Access Transmission Tariff (OATT) in compliance with Order No. 2003–B issued December 20, 2004, in Docket No. RM02–1–005, 109 FERC ¶ 61,287 (2004) and to remove provisions related to transmission service for two retail access pilot programs in the state of Iowa known as Market Access Service and Extended Market Access Service.

MidAmerican states that copies of the filing have been served on the Iowa Utilities Board, the Illinois Commerce Commission, the South Dakota Public Utilities Commission and all customers having service agreement with MidAmerican under the OATT.

Comment Date: 5 p.m. eastern time on March 7, 2005.

14. Niagara Mohawk Power Corporation

[Docket No. ER05–572–000]

Take notice that on February 14, 2005, Niagara Mohawk Power Corporation, a National Grid Company, (Niagara Mohawk) submitted a Tri Lakes Agreement and a Conversion Agreement between Niagara Mohawk, the Power Authority of the State of New York, the Village of Tupper Lake, New York, and the Village of Lake Placid, New York.

Comment Date: 5 p.m. eastern time on March 7, 2005.

15. Pacific Gas and Electric Company

[Docket No. ER05–573–000]

Take notice that on February 14, 2005, as supplemented on February 17, 2005, Pacific Gas and Electric Company (PG&E) tendered for filing an amended generator special facilities agreement and generator interconnection agreement between PG&E and Duke Energy Morro Bay LLC (Duke Morro Bay).

PG&E states that copies of this filing have been served on Duke Morro Bay, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: 5 p.m. eastern time on March 7, 2005.

16. Public Service Company of New Mexico

[Docket No. ER05–574–000]

Take notice that on February 14, 2005, Public Service Company of New Mexico (PNM) tendered for filing revisions to its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 4, to incorporate the ministerial changes with respect to the Large Generator Interconnection Procedures and the Large Generator Interconnection Agreement issued December 20, 2004, in Order No. 2003–B. PJM requests an effective date of January 19, 2005.

PNM states that copies of the filing have been sent to all PNM large generation customers, to all entities that have pending large generation interconnection requests with PNM, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: 5 p.m. eastern time on March 7, 2005.

17. Southwest Power Pool, Inc.

[Docket No. ER05–576–000]

Take notice that on February 14, 2005, as supplemented February 15, 2005, Southwest Power Pool, Inc. (SPP) submitted for filing an Agreement for Wholesale Distribution Services Charges between Kansas Electric Power Cooperative, Inc. (KEPCo) and The Empire District Electric Company (Empire). SPP requests an effective date of June 1, 2004.

SPP states that copies of the filing have been served on KEPCO and Empire.

Comment Date: 5 p.m. eastern time on March 7, 2005.

18. ISO New England Inc., *et al.*

[Docket Nos. RT04–2–012 and ER04–116–012]

Take notice that, on February 11, 2005, ISO New England Inc., (ISO) and the New England transmission owners (consisting of Bangor Hydro-Electric Company; Central Maine Power Company; New England Power

Company; Northeast Utilities Service Company on behalf of its operating companies: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, and Holyoke Water Power Company; NSTAR Electric & Gas Corporation on behalf of its operating affiliates: Boston Edison Company, Commonwealth Electric Company, Canal Electric Company, and Cambridge Electric Light Company; The United Illuminating Company; Vermont Electric Power Company, Inc.; Fitchburg Gas and Electric Light Company; and Unitil Energy Systems, Inc.) submitted a report in compliance with the Commission order issued November 3, 2004, 109 FERC ¶ 61,147 (2004).

ISO states that copies of the filing have been served on all parties to this proceeding, on all Governance Participants (electronically), non-Participant Transmission Customers, and the governors and regulatory agencies of the six New England states.

Comment Date: 5 p.m. eastern time on March 4, 2005.

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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–788 Filed 2–25–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4160–007, et al.]

Dynegy Power Marketing, Inc., et al.; Electric Rate and Corporate Filings

February 17, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Dynegy Power Marketing, Inc., Bluegrass Generation Company, L.L.C., Cabrillo Power I LLC, Cabrillo Power II LLC, Calcasieu Power, LLC, Dynegy Danskammer, L.L.C., Dynegy Midwest Generation, Inc., Dynegy Roseton, L.L.C., El Segundo Power, LLC, Heard County Power, L.L.C., Long Beach Generation, LLC, Renaissance Power, L.L.C., Riverside Generating Company, L.L.C., Rockingham Power, L.L.C., Rocky Road Power, LLC, Rolling Hills Generating, L.L.C.

[Docket No. ER99–4160–007, ER02–506–004, ER99–1115–006, ER99–1116–006, ER00–1049–004, ER01–140–003, ER00–1895–004, ER01–141–003, ER98–1127–006, ER01–943–003, ER98–1796–005, ER01–3109–004, ER01–1044–004, ER99–1567–003, ER99–2157–003, and ER02–553–003]

Take notice that on February 10, 2005, the subsidiaries of Dynegy Inc. with market-based rate authority (collectively, Dynegy), submitted an errata to the updated triennial market power analysis filed on February 7, 2005, in compliance with the orders authorizing Dynegy to sell energy, capacity and ancillary services at market-based rates.

Dynegy states that copies of the filing were served on parties.

Comment Date: 5 p.m. eastern Time on March 3, 2005.

2. Indianapolis Power & Light Company

[Docket No. ER00–1026–010]

Take notice that on February 8, 2005, Indianapolis Power & Light Company (IPL) submitted a supplement to its updated triennial market power analyses update previously filed in this proceeding.

IPL states that copies of the filing were served upon the parties designated on the official service list in this docket.

Comment Date: 5 p.m. eastern time on March 1, 2005.

3. Delta Energy Center, LLC

[Docket No. ER02–600–003]

Take notice that on February 14, 2005, Delta Energy Center, LLC submitted a triennial updated market power analysis.

Comment Date: 5 p.m. eastern time on March 7, 2005.

4. Midwest Independent Transmission System Operator, Inc., Public Utilities with Grandfathered Agreements in the Midwest ISO Region

[Docket Nos. ER04–691–024 and EL04–104–023]

Take notice that on February 11, 2005, the Organization of MISO States (OMS) submitted offers of proof regarding the Midwest ISO's data confidentiality proposal pursuant to the Commission's order issued September 30, 2004, in Docket Nos. ER04–691–003 and EL04–104–003. OMS also submitted a response to the September 30, 2004 order.

The OMS states that it has served a copy of this filing electronically on 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, the OMS states that the filing has been posted electronically on the OMS Web site at *http://www.misostates.org* under the heading ''Filings to FERC'' for other interested parties in this matter.

Comment Date: 5 p.m. eastern time on March 3, 2005.

5. Midwest Independent Transmission System Operator, Inc., Public Utilities with Grandfathered Agreements in the Midwest ISO Region

[Docket No. ER04–691–025 and EL04–104–024]

Take notice that on February 15, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing pursuant to the Commission's August 6, 2004, order, Midwest Independent Transmission System, Inc., *et al.*, 108 FERC ¶ 61,163 (2004). The Midwest ISO states that the filing contains the Midwest ISO's certification of the reliability and readiness of its systems for market implementation on April 1, 2005.

The Midwest ISO states that it has electronically served a copy of this filing on 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, the Midwest ISO states that the filing has been posted electronically on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter and that it will provide copies to any interested parties upon request.

Comment Date: 5 p.m. eastern time on February 25, 2005.

6. California Independent System Operator Corporation

Docket No. ER05–224–001

Take notice that on February 10, 2005, the California Independent System Operator Corporation (CAISO) filed a response to the deficiency letter issued January 11, 2005, requesting additional information regarding CAISO's November 16, 2004, filing in Docket No. ER05–224–000.

CAISO states that this filing has been served on Mirant, the California Public Utilities Commission, and the California Electricity Oversight Board.

Comment Date: 5 p.m. eastern time on March 3, 2005.

7. Virginia Electric and Power Company

[Docket No. ER05–256–001]

Take notice that on February 4, 2005, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised generator interconnection and operating agreement between Dominion Virginia Power and CPV Cunningham Creek LLC (CPV) in compliance with *Virginia Electric Power Company*, 110 FERC ¶ 61,039 (2005).

Comment Date: 5 p.m. eastern time on March 10, 2005.

8. Pacific Gas and Electric Company

[Docket No. ER05–516–001]

Take notice that on February 9, 2005, Pacific Gas and Electric Company, (PG&E) submitted an amendment to its January 28, 2005, filing in Docket No. ER05–516–000 of two large facilities agreements and nine small facilities agreements executed by PG&E and the City and County of San Francisco.

Comment Date: 5 p.m. eastern time on March 2, 2005.

9. Avista Corporation

[Docket No. ER05–577–000]

Take notice that on February 15, 2004, Avista Corporation (Avista) tendered for filing revisions to its Open Access Transmission Tariff in compliance with Order No. 2003–B issued December 20, 2004, in Docket No. RM02–1–005, 109 FERC ¶ 61,287 (2004). Avista requests an effective date of January 19, 2005.

Avista states that copies of this filing were supplied to Avista's existing transmission customers.

Comment Date: 5 p.m. eastern time on March 8, 2005.

10. Sierra Pacific Resources Operating Companies

[Docket No. ER05–578–000]

Take notice that on February 15, 2005, the Nevada Power Company and Sierra Pacific Power Company filed amendments to the Sierra Pacific Resources Operating Companies Open Access Transmission Tariff in compliance with Order No. 2003–B issued December 20, 2004, in Docket No. RM02–1–005, 109 FERC ¶ 61,287 (2004).

Comment Date: 5 p.m. eastern time on March 8, 2005.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–579–000]

Take notice that on February 15, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted Amendment No. 1 to a Generation-Transmission Interconnection Agreement among Wisconsin Electric Power Company, the Midwest ISO and American Transmission Company LLC.

Midwest ISO states that a copy of this filing was served on the parties to this Interconnection Agreement.

Comment Date: 5 p.m. eastern time on March 8, 2005.

12. North American Electric Reliability Council

[Docket No. ER05–580–000]

Take notice that on February 15, 2005, the North American Electric Reliability Council (NERC) tendered for filing a revised version of its Transmission Line Loading Relief (TLR) standards. NERC states that the TLR standards have been revised to reflect the NERC functional model and, therefore, NERC proposes to replace its currently effective TLR standards with the revised standards.

Comment Date: 5 p.m. eastern time on March 8, 2005.

13. Virginia Electric and Power Company

[Docket No. ER05–581–000]

Take notice that on February 15, 2005, Virginia Electric and Power Company, (Dominion Virginia Power), tendered for filing revised tariff sheets (revised sheets) modifying provisions in the large generator interconnection procedures and the large generator interconnection agreement contained in Attachment O to its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5 (OATT) in compliance with Order No. 2003–B issued December 20, 2004, in Docket No. RM02–1–005, 109 FERC ¶ 61,287 (2004). Dominion Virginia Power requests an effective date of April 16, 2005.

Dominion Virginia Power states that copies of the filing letter were served upon customers under Dominion Virginia Power's OATT, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: 5 p.m. eastern time on March 8, 2005.

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 mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–789 Filed 2–25–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2005–0078, FRL–7878–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Survey on Environmental Management of Asthma, EPA ICR Number 1996.03, OMB Control Number 2060–0490

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 30, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2005–0078, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket (6102T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Conrath, Indoor Environments Division, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9389; fax number: (202) 343–2393; e-mail address: *conrath.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2005–0078, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742, fax: (202) 566–1741. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to www.epa.gov/edocket.

Affected entities: Entities potentially affected by this action are all individuals throughout the United States with publicly listed residential telephone numbers.

Title: National Survey on Environmental Management of Asthma

Abstract: Executive Order 13045, issued in 1997, directed each federal agency to identify, assess, and address environmental health and safety risks for children. This executive order also created the Task Force on Environmental Health Risks and Safety Risks in Children, co-chaired by the Secretary of Health and Human Services (HHS) and the Administrator of the Environmental Protection Agency. In April 1998, this Task Force identified four priority areas, one of which was childhood asthma. In response, EPA launched efforts to better understand the role that environmental factors, including airborne allergens and irritants, play in the onset of asthma and the triggering of asthma symptoms. Indoor allergens include those from house dust mites, cockroaches, mold, and animal dander. In addition, exposure to environmental tobacco smoke (ETS) has also been shown to be a major determinant of asthma symptoms.

EPA is working to integrate the management of environmental factors with the medical treatment of asthma, particularly among children and low-income populations. To evaluate the effectiveness of its current outreach efforts, EPA proposes to collect data from individual U.S. households through a telephone survey. This survey will be used to gain information regarding the number of individuals with asthma who have taken steps to improve the quality of their indoor environment as part of their approach to managing the disease, as well as any barriers they may have encountered while attempting to do so. EPA will compare the data gained from this survey to a similar survey completed in 2003. These data will help the Agency determine if it has reached its goal established by the Government Performance and Results Act of 1993 (GPRA). Specifically, EPA's goal is that 2.5 million people with asthma, including one million children and 200,000 low-income adults, will have taken steps to reduce their exposure to indoor environmental asthma triggers by 2005.

EPA intends to conduct the survey once during the period for which this ICR is in effect. EPA will conduct the survey in two phases. The first phase is intended to identify households where either an adult asthmatic or child with asthma resides. Individuals who participate in the first phase of EPA's survey will be chosen at random from U.S. households with publicly listed telephone numbers. EPA expects that 10 to 15 percent of individuals who participate in its screening survey will have asthma or live in a household with someone who does. After responding to several screening questions, adult asthmatics and parents of children with asthma will be invited to participate in a longer, more in-depth telephone survey. EPA intends to over-sample in communities known to have a high percentage of low-income households to ensure that the Agency is able to evaluate the effectiveness of its outreach efforts to this target population. The

National Survey on Environmental Management of Asthma is voluntary. EPA does not expect to receive confidential information from the individuals who voluntarily participate in the survey. However, if a respondent does consider the information submitted to be of a proprietary nature, EPA will assure its confidentiality based on the provisions of 40 CFR part 2, subpart B, ''Confidentiality of Business Information.''

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: EPA estimates the annual public reporting burden for this collection of information to be 1,339 hours. This is a total estimated burden of 4,017 hours for completion of this one-time survey. The estimated number of respondents is 52,591. The public reporting burden ranges between 3.5 minutes and 13.5 minutes per response, depending on whether or not the survey respondent has asthma or lives with someone who has asthma. This survey effort is expected to cost approximately $1.96 per respondent living in a non-asthmatic household; $3.36 per respondent living in an asthmatic household, but participating only in the screening survey; and $7.56 per respondent participating in both the screening survey and the survey itself. Respondents will incur no capital, start-up costs, or operation and maintenance costs as a result of this survey. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 22, 2005.

Thomas E. Kelly,

Director, Indoor Environments Division.

[FR Doc. 05–3793 Filed 2–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2002–0073, FRL–7877–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Recordkeeping and Period Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment and Feedstock Use of Ozone-Depleting Substances, EPA ICR Number 1432.22, OMB Control Number 2060–0170

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on May 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 29, 2005.

ADDRESSES: Submit your comments, referencing docket ID number No. OAR–2002–0073, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, (EPA/DC), Environmental Protection Agency, EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jabeen Akhtar, Office of Atmospheric Programs, Stratospheric Protection Division, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9313; fax number: 202–343–2338; e-mail address: *akhtar.jabeen@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2002–0073, which is available for public viewing at the EPA Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the EPA Air Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are:

Category	NAICS	Examples of potentially regulated entities
1. Industrial organic chemicals, NEC	325199	Producers, importers, or exporters of CBM.
2. Pharmaceutical preparations	325412	Transformers of CBM.
3. Pesticides and agricultural chemicals, NEC	32532	Transformers of CBM.
4. Chemicals and allied products, NEC	42269	Lab suppliers of CBM.
5. Testing laboratories, except veterinary testing labs	54138	Lab users of CBM.
6. Medical and diagnostic laboratories	6215	Lab users of CBM.
7. Research and development in the physical, engineering and life sciences	54171	Lab users of CBM.

Title: Recordkeeping and Period Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment and Feedstock Use of Ozone-Depleting Substances.

Abstract: With this renewal Information Collection Request (ICR), EPA's Office of Air and Radiation is renewing the ICR for the final rule for the phaseout of chlorobromomethane (CBM) (68 FR 42884) which imposed recordkeeping and reporting requirements associated with the production, import, export, recycling, destruction, transhipment, and feedstock use of CBM.

Producers, importers, and exporters are required to submit to EPA quarterly reports of the quantity of CBM in each of their transactions; they are also required to report the quantity of CBM transformed or destroyed. Producers, importers, and exporters are also required to maintain records such as Customs entry forms, bills of lading, sales records, and canceled checks to support their quarterly reports. The quarterly reports may be faxed or mailed to EPA, where they may be handled as confidential business information. EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart b, and will be disclosed only if EPA determines that the information is not entitled to confidential treatment. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203). EPA will store the submitted information in a computerized database designed to track production, import, and export balances and transfer activities. All the information requested from respondents under this ICR is required by statute (CAA Section 603(b)) and to ensure that the U.S. maintains compliance with the Montreal Protocol reporting requirements under Article 7. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement:

For companies affected by the regulation for CBM, the reporting burden, which includes time for preparing and submitting reports, was estimated to be an average of 19.4 hours per respondent per year. This estimate was calculated by dividing the total number of hours spent annually on reporting requirements (2,580) by the total number of respondents (133) (*i.e.*, 2580/133 = 19.4). The recordkeeping burden for these companies, which includes time for gathering information and developing and maintaining records, was estimated to average 13.38 hours per respondent per year. This estimate was calculated by using figures from a previous ICR, entitled ''Recordkeeping and Periodic Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment and Feedstock Use of Ozone-Depleting Substances'' (ICR 1432.21). The labor costs portion of the industry reporting burden is estimated in Table I of ICR 1432.22. The estimate included the time needed to comply with EPA's reporting requirements. The total industry annual labor cost burden was estimated to be $198,350.

It is expected that firms which are subject to the recordkeeping and reporting requirements for CBM are largely a subset of firms which already perform these recordkeeping and reporting requirements for already-regulated ozone-depleting substances. Therefore, any additional O&M costs were expected to be minimal. A value of $3,000 for total industry O&M costs was assumed.

The following is a summary of the estimates taken from ICR 1432.22:

Total number of potential respondents: 133

Frequency of response: Quarterly, annually

Respondent annual burden hours: 2,580

Respondent annual labor costs: $198,350

Respondent capital/start-up costs: $0

Respondent O & M costs: $3,000

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 8, 2005.

Drusilla Hufford,

Director, Stratospheric Protection Division.

[FR Doc. 05–3797 Filed 2–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7878–5]

Science Advisory Board (SAB) Staff Office SAB Ad Hoc All-Ages Lead Model (AALM) Review Panel; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office is announcing the formation of an ad hoc SAB panel to review the Agency's ''All-Ages Lead Model (AALM)'' (hereinafter, the ''Ad Hoc AALM Review Panel'' or ''Panel''), and is hereby soliciting nominations for this Panel.

DATES: Nominations should be submitted by March 21, 2005 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board Staff, at telephone/voice mail: (202) 343–9994; or via e-mail at: *butterfield.fred@epa.gov.* General information concerning the SAB can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: *Background:* The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The Panel will provide advice through the chartered SAB, and will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The SAB Staff Office is forming this SAB panel at the request of EPA's National Center for Environmental Assessment, Research Triangle Park, NC (NCEA-RTP), for the purpose of providing the Agency with advice and recommendations on the recently-developed All-Ages Lead Model. The AALM will predict lead concentration in body tissues and organs for a hypothetical individual, based on a simulated lifetime of lead exposure. Statistical methods will be used to extrapolate to a population of similarly-exposed individuals. The precursor to the AALM was the Integrated Exposure Uptake Biokinetic (IEUBK) Model for Lead in Children. Version 0.99d of the IEUBK was released in March 1994, and has been widely accepted in the risk assessment community as a tool for implementing the site-specific risk assessment process when the issue is childhood lead exposure. The All-Ages Lead Model has been developed to cover older childhood and adult lead exposure. The anticipated outcome will be reduced uncertainty in lead exposure assessments for adults and children.

Technical Contact: Any questions concerning either the AALM or the IEUBK Model for Lead in Children should be directed to Dr. Robert Elias, NCEA-RTP, at phone: (919) 541–4167; or e-mail: *elias.robert@epa.gov.* The draft AALM will be posted on the NCEA Web site at: *http://www.epa.gov/ncea/* for external review no later than June 2005.

Request for Nominations: The SAB Staff Office is soliciting public nominations of national and international experts in one or more of the following areas:

(1) *Lead Exposure Pathway Assessment.* Expertise in the physical and chemical properties of lead and the biogeochemical processes involved in the multimedia pathways leading to human exposure to lead. These pathways should include:

(a) air (both direct inhalation and deposition to surfaces likely to be contacted by humans);

(b) drinking water (from typical sources, including municipal distribution systems, commercially bottled water, public drinking water systems, and private wells);

(c) food (including commercial supermarket sources, home gardens and recreational and subsistence fishing/hunting); and

(d) soil/dust ingestion.

(2) *Lead Uptake/Absorption.* Expertise in the process of the human uptake and/or absorption of lead from oral and/or inhalation intake.

(3) *Internal Biokinetic Distribution of Lead.* Expertise on the human physiological processes concerning the distribution, mechanisms of transport, accumulation, concentrations at the organ/tissue level, residence times (or other measures of potential impact), and elimination of absorbed lead.

(4) *Human Growth and Activity Patterns.* Expertise on growth patterns and typical human activity patterns from prenatal to elderly, including recreational, occupational, leisurely, household activities. This would include knowledge of published studies and other modeling applications.

(5) *Exposure and Risk Assessment Modeling.* Experience in relating a lifetime of human exposure to a potential health outcome, and the quantification of risk related to this health outcome.

(6) *Statistical Treatment of Data Input and Model Output, and Model Code.* Expertise in assessing the quality of data typically used for model input or the quality of probabilistic input data sets generated by models. Expertise in assessing the statistical interpretation and presentation of model outputs. Expertise in computer programming language; specifically, C++ using XML data format.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals to add expertise to the Ad Hoc AALM Review Panel in the areas of expertise described above. Nominations should be submitted in electronic format through the SAB Nomination Form which can be accessed through a link on the blue navigational bar on the SAB Web site, at URL: *http://www.epa.gov/sab.* To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations using this form or has any questions concerning any aspects of the nomination process may contact Mr. Fred Butterfield, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than March 21, 2005.

To be considered, all nominations must include: (a) A current biography, curriculum vitae (C.V.) or resume, which provides the nominee's background, experience and qualifications for the Panel; and (b) a brief biographical sketch (''biosketch''). The biosketch should be no longer than one page and must contain the following information for the nominee:

(i) Current professional affiliations and positions held;

(ii) Area(s) of expertise, and research activities and interests;

(iii) Leadership positions in national associations or professional publications or other significant distinctions;

(iv) Educational background, especially advanced degrees, including when and from which institutions these were granted;

(v) Service on other advisory committees, professional societies, especially those associated with issues under discussion in this review; and

(vi) Sources of recent (*i.e.*, within the preceding two years) grant and/or other contract support, from government, industry, academia, *etc.,* including the topic area of the funded activity.

Please note that even if there is no responsive information (*e.g.*, no recent grant or contract funding), this must be indicated on the biosketch (by ''N/A'' or ''None''). Incomplete biosketches will result in nomination packages not being accepted.

The EPA SAB Staff Office will acknowledge receipt of the nomination. From the nominees identified by respondents to this notice (termed the ''Widecast''), the SAB Staff Office will develop a smaller subset (known as the ''Short List'') for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab,* and will include, for each candidate, the nominee's name and their biosketch. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Panel.

For the EPA SAB Staff Office, a balanced subcommittee or review panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the Panel, along with information provided by candidates and information independently-gathered by the SAB Staff Office on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual Panel member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of, and balance among, scientific expertise, viewpoints, etc. Members of the SAB Ad Hoc AALM Review Panel will likely be asked to attend one public, face-to-face meeting and no more than two public teleconference meetings over the anticipated life of the Panel.

Prospective candidates will also be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/sge_course/pdf_sge/epaform3110_48.pdf.*

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board (EPA–SAB–EC–02–010), which is posted on the SAB Web site at: *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: February 18, 2005.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–3792 Filed 2–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7878–8]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Public Law 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC).

DATES: The meeting will be held on Wednesday, March 23, 2005, from 1 p.m. to 5 p.m.; Thursday March 24, 2005, from 8:30 a.m. to 1:15 p.m.

ADDRESSES: The meeting will be held at the Scruggs Center, 4836 Main Street, Moss Point, MS 39563, (228) 475–4829.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: The proposed agenda includes the following topics: Presentation on Present and Future Perspectives; Field Trip on Pascagoula River; Audubon Society Presentation on Wetland Regulations and Permitting; Roles and Responsibilities of Gulf of Mexico Program Office; Discussion of Citizens Advisory Committee Participation.

The meeting is open to the public.

Dated: February 22, 2005.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 05–3796 Filed 2–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7878–2]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet in March, 2005. This is an open meeting. The meeting will include updates on workgroup activities, and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. The preliminary agenda for the meeting, as well as the minutes from the previous (October, 2004) meeting will be posted on the Subcommittee's Web site: *http://www.epa.gov/air/caaac/mobile_sources.html.* MSTRS listserver subscribers will receive notification when the agenda is available on the Subcommittee Web site. To subscribe to the MSTRS listserver, go to *https://lists.epa.gov/read/all_forums/subscribe?name=mstrs.* The site contains instructions and prompts for subscribing to the listserver service.

DATES: Wednesday, March 9, 2005 from 9 a.m. to 4 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting will be held at the Crowne Plaza Washington National

Airport Hotel, 1489 Jefferson Davis Highway, Arlington, VA. 1–703–416–1600. The hotel is located one block from the Crystal City Metro station, and shuttle buses are available to and from Washington Reagan National Airport.

FOR FURTHER INFORMATION CONTACT: For technical information: Dr. L. Joseph Bachman, Designated Federal Officer, Transportation and Regional Programs Division, Mailcode 6406J, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Ph: 202–343–9373; e-mail, *bachman.joseph@epa.gov*.

For logistical and administrative information: Ms. Angela Young, FACA Management Officer, U.S. EPA, Transportation and Regional Programs Division, Mailcode 6406J, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460;

Background on the work of the Subcommittee is available at *http://transaq.ce.gatech.edu/epatac/*, and more current information is found at: *http://www.epa.gov/air/caaac/mobile_sources.html.*

Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Dr. Bachman at the address above by March, 7, 2005. The Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

Dated: February 22, 2005.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 05–3795 Filed 2–25–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0061; FRL–7702–5]

Azinphos-methyl; Notice of Receipt of Requests to Voluntarily Cancel or to Amend to Terminate Uses of Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by the technical registrants to amend their registrations to terminate uses of certain products containing the pesticide azinphos-methyl. The requests would terminate azinphos-methyl use in or on caneberries, cotton, cranberries, nectarines, peaches, potatoes, and southern pine seed orchards. EPA intends to grant these requests at the close of the comment period for this announcement unless, based on substantive comments received during the comment period or other relevant information, the Agency determines that the requests merit further review. Upon granting these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0061, must be received on or before March 30, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Diane Isbell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8154; fax number: (703) 308–8041; e-mail address: *isbell.diane@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0061. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0061. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0061. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM* . You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0061.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0061. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of requests from registrants Bayer

CropScience, Gowan Company, and Makhteshim Agan of North America, Inc., to amend technical labels to terminate caneberries, cotton, cranberries, nectarines, peaches, potatoes, and southern pine seed orchards uses from EPA Reg. No. 264–722 (Bayer CropScience), 10163–95 (Gowan Company), and 11678–53 (Makhteshim Agan of North America, Inc.) azinphos-methyl registrations. The Interim Reregistration Eligibility Decision (IRED) for azinphos-methyl was issued in October 2001, and included a determination that AZM uses should be canceled, phased out, or, in some instances, allowed to continue under time-limited registrations. Azinphos-methyl is an organophosphate insecticide first registered in 1959, and is widely used in agriculture on orchard fruits, berries, nuts, and other crops. During the development of the IRED, EPA evaluated the risks and benefits associated with azinphos-methyl use, considered all relevant risk mitigation options and implemented a variety of mitigation measures, including reductions in the rate and frequency of applications and precautionary labeling to reduce risks. Despite these mitigation measures, azinphos-methyl use poses residual worker and ecological risks of concern. The technical registrants of azinphos-methyl entered into a Memorandum of Agreement (MOA) signed on May 23, 2002. The MOA divided the crops into three groups: Group 1, Voluntary Use Deletions; Group 2, Phase-out of use on caneberries, cotton, cranberries, nectarines, peaches, potatoes, and southern pine seed orchards for end use products by December 31, 2005; and Group 3, Time-limited Registrations on almonds; apples; crab apples; blueberries, lowbush and highbush; brussel sprouts; sweet and tart cherries; nursery stock; parsley; pears; pistachios; and walnuts. Group 3 uses are scheduled to be re-evaluated by October 31, 2005.

EPA has received comments and requests to extend uses from the U.S. Department of Agriculture, researchers, and commodity groups on the following azinphos-methyl uses that are being proposed for voluntary cancellation: Caneberries, cranberries, peaches, potatoes, and southern pine seed orchards. The Agency intends to evaluate these requests along with other comments that are received from this notice, and publish a response in the **Federal Register** after the close of the 30–day comment period.

In letters dated January 3, 2005, and February 3, 2005, and February 18, 2005, Bayer CropScience, Gowan Company, and Makhteshim Agan of North America, Inc., requested that EPA amend the affected technical registrations to terminate uses of the azinphos-methyl identified in this notice in Tables 1 and 2 of Unit III. In accordance with the MOA and section 6(f) of FIFRA, this notice announces receipt of requests to terminate uses on the crops listed in Group 2. EPA intends to re-evaluate the risks and benefits associated with azinphos-methyl use on the time-limited crops listed in Group 3 by October 31, 2005.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to amend the technical registrations to terminate uses of azinphos-methyl on caneberries, cotton, cranberries, nectarines, peaches, potatoes, and southern pine seed orchards. The affected products and the registrants making the requests are identified in Tables 1 and 2 of of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The azinphos-methyl registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless the Agency determines that there are substantive comments or issues that warrant further review of this request, an order will be issued amending the affected registrations.

TABLE 1.—AZINPHOS-METHYL PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Product name	Company
264–722	Guthion Technical Insecticide	Bayer CropScience
10163–95	Azinphos-methyl Technical	Gowan Company
11678–53	Cotnion-Methyl	Makhteshim Agan of North America, Inc.

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING TERMINATION OF USES AND AMENDMENTS

EPA Company No.	Company name and address
264	Bayer CropScience 2T.W. Alexander Dr. Research Triangle Park, NC 27709
10163	Gowan Company P.O. Box 5569 Yuma, AZ 85366–5569

TABLE 2.—REGISTRANTS REQUESTING TERMINATION OF USES AND AMENDMENTS—Continued

EPA Company No.	Company name and address
11678	Makhteshim Agan of North America, Inc. 551 Fifth Ave., Suite 1100 New York, NY 10176

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

In any order issued in response to these requests for amendments to terminate uses, the Agency proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1 of Unit III. In accordance with the MOA, the sale, distribution, and use of existing stocks of these products in the United States are permitted until August 31, 2005.

If the request for use termination is granted, the Agency intends to publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 22, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–3733 Filed 2–25–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7878–1]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2003 is available for public review. Annual U.S. emissions for the period of time from 1990–2003 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), Hydrofluorocarbons (HFC), perflourocarbons (PFC), and sulfur hexaflouride (SF_6) emissions. The inventory also includes estimates of carbon sequestration in U.S. forests. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC) and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks is the latest in a series of annual U.S. submissions to the Secretariat of the UNFCCC.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments on or before March 30, 2005. However, comments received after that date will still be welcomed and be considered for the next edition of this report.

ADDRESSES: Comments should be submitted to Mr. Leif Hockstad at: Environmental Protection Agency, Clean Air Markets Division (6207J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, Fax: (202) 343–2358. You are welcome and encouraged to send an email with your comments to *hockstad.leif@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Leif Hockstad, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Climate Change Division, (202) 343–9432, *hockstad.leif@epa.gov.*

SUPPLEMENTARY INFORMATION: The draft report can be obtained by visiting the U.S. EPA's global warming site at *http://www.epa.gov/globalwarming/publications/emissions/.*

Dated: February 18, 2005.

Jeff Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 05–3794 Filed 2–25–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 05–422]

Notice of Suspension and of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) gives notice of Mr. Qasim Bokhari (a/k/a Syed Qasim Ali Bokhari, a/k/a Kasim Bokhari) suspension from the schools and libraries universal service support mechanism. In addition, the Bureau gives notice that debarment proceedings are commencing against Mr. Qasim Bokhari.

DATES: Opposition request must be received by March 18, 2005. An opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or by March 18, 2005. The Bureau will decide any opposition request for reversal or modification of suspension within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *Diana.Lee@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment

authority under 47 CFR 54.521 and 47 CFR 0.111(a)(14). Suspension will help ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, *Notice of Suspension and of Proposed Debarment Proceeding,* DA 05–422, which was mailed to Mr. Haider Bokhari and released on February 16, 2005. The letter (1) gives notice of the suspension and proposed debarment; (2) gives the reasons for the proposed debarment; (3) explains the debarment procedure; and (4) describes the potential effect of the debarment. The complete text of the suspension letter is available for public inspections and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

Hillary DeNigro,

Deputy Chief, Investigations and Hearings Division, Enforcement Bureau.

The suspension letter follows:

February 16, 2005

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Qasim Bokhari, (a/k/a Syed Qasim Ali Bokhari, a/k/a Kasim Bokhari), c/o Michael J. Steinle, Esquire, Steinle Law Offices, 2600 N Mayfair Rd-Suite 700, Milwaukee, WI 53226.

Re: Notice of Suspension and of Proposed Debarment, File No. EB–04–IH–0388

Dear Mr. Qasim Bokhari: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your January 28, 2005 conviction for mail fraud in violation of 18 U.S.C. §§ 371 and 1341, and for money laundering in violation of the 18 U.S.C. § 1956(a) and (h).[1] Consequently, pursuant to 47 CFR § 54.521, this letter constitutes official notice of your suspension from the schools and libraries universal service support mechanism (''E-Rate program''). In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

Pursuant to section 54.521(a)(4) of the Commission's rules,[3] Your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[4] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[5]

Suspension is immediate pending the Bureau's final debarment determination. You may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after it receives this letter or after notice is published in the **Federal Register**, whichever comes first.[6] Such requests, however, will not ordinarily be granted.[7] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[8] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[9]

II. Notice of Proposed Debarment

A. Reasons for and Cause of Debarment

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[10] As provided by the October 22, 2004 plea agreement upon which your conviction is based, you pled guilty to mail fraud and money laundering offenses for activities in connection with your participation, through your Virginia-based consulting company, in the E-Rate program with certain schools in Wisconsin and Illinois. In connection with the mail fraud offenses, you admitted to conspiring and carrying out, with other co-conspirators, the following acts: (1) illegally inducing certain Wisconsin and Illinois schools to select your consulting company as the schools' E-Rate service provider by promising school officials that their school would not have to pay their undiscounted share of the cost under the E-Rate program; (2) taking over those schools' role in completing and submitting E-Rate applications, and causing those schools to enter into unnecessarily large contracts for infrastructure enhancements under the E-Rate program; (3) submitting materially false and fraudulent invoices and other documents to the E-Rate program claiming that the schools have been billed for their undiscounted share; (4) submitting materially false and fraudulent invoices and other documents to the E-Rate program claiming that certain work had been performed and goods supplied to the schools; and (5) receiving payment from the E-Rate program for goods and services that you fraudulently claimed your consulting company had provided to the schools.[11] In connection with the money laundering offenses, you admitted to conspiring and carrying out, with other co-conspirators, an unlawful scheme to transfer the fraudulently obtained E-Rate payments from the United States to Pakistan through the unknowing services of other individuals designed, in whole or in part, to conceal and disguise the nature, location, source, ownership, and control of these monies.[12] These actions constitute the conduct or transactions upon which this debarment proceeding is based.[13] Moreover, your conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[14] Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

B. Debarment Procedures

You may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal**

[1] *United States* v. *Bokhari et al,* Case No. 04–CR–0056–RTR, Plea Agreement (E.D.WI filed and entered October 22, 2004) (''*Qasim Bokhari Plea Agreement*''); *United States* v. *Qasim Bokhari,* Case No. 04–CR–0056–RTR, Judgment (E.D.WI filed January 28, 2005 and entered February 3, 2005).

[2] 47 CFR § 54.521; 47 CFR § 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR § 54.521).

[3] 47 CFR § 54.521(a)(4). *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225–9227, ¶¶ 67–74 (2003) (''*Second Report and Order*'').

[4] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. § 254; 47 CFR §§ 54.502–54.503; 47 CFR § 54.521(a)(4).

[5] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 69; 47 CFR § 54.521(e)(1).

[6] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR § 54.521(e)(4).

[7] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70.

[8] 47 CFR § 54.521(e)(5).

[9] *See Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR §§ 54.521(e)(5), 54.521(f).

[10] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 66. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR § 54.521(a)(6).

[11] *See Qasim Bokhari Plea Agreement* at 1–5.

[12] *See Qasim Bokhari Plea Agreement* at 1, 6–9.

[13] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR § 54.521(e)(2)(i).

[14] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 CFR § 54.521(c). Such activities ''include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section ([47 CFR] § 54.500 *et seq.*).'' 47 CFR § 54.521(a)(1).

Register.[15] Absent extraordinary circumstances, the Bureau will debar you.[16] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[17] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[18]

C. Effect of Debarment

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.[19] The Bureau may, if necessary to protect the public interest, extend the debarment period.[20]

Please direct any responses to the following address: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C443, 445 12th Street, SW., Washington, DC 20554.

If you submit your response via hand-delivery or non-United States Postal Service delivery (e.g., Federal Express, DHL, etc.), please send the response to Ms. Lee at the following address: Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, MD 20743.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–0843 or by e-mail at *diana.lee@fcc.gov*.

Sincerely yours,

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Carla Stern, Assistant United States Attorney, DOJ (E-mail), Kristy Carroll, Esq., USAC (E-mail)

[FR Doc. 05–3801 Filed 2–25–05; 8:45 am]

BILLING CODE 6712–01–P

[15] *See Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR §§ 54.521(e)(2)(i), 54.521(e)(3).

[16] *Second Report and Order,* 18 FCC Rcd at 9227, ¶ 74.

[17] *See id.*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR § 54.521(e)(5).

[18] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR § 54.521(f).

[19] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 67; 47 CFR §§ 54.521(d), 54.521(g).

[20] *Id.*

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Flood Insurance.''

DATES: Comments must be submitted on or before April 29, 2005.

ADDRESSES: Interested parties are invited to submit written comments to Gary A. Kuiper, Counsel, (202) 942–3824, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., PA1730–3000, Washington, DC 20429. All comments should refer to ''Flood Insurance.'' Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: *comments@fdic.gov*]. Comments may be inspected and photocopied in the FDIC Public Information Center, 801 17th Street, NW., Room 100, Washington, DC between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

Title: Flood Insurance.

OMB Number: 3064–0120.

Frequency of Response: On occasion.

Affected Public: Any depository institution that makes one or more loans to be secured by a building located on property in a special flood hazard area.

Estimated Number of Respondents/Recordkeepers: 5,272.

Estimated Number of Transactions: 180,000.

Estimated Reporting Hours: .05 hours × 180,000 = 9,000.

Estimated Recordkeeping Hours: 5,272 hours.

Estimated Total Annual Reporting and Recordkeeping Burden Hours: 5,272 + 9,000 = 14,272 hours.

General Description of Collection: Each supervised lending institution is currently required to provide a notice of special flood hazards to each borrower with a loan secured by a building or mobile home located or to be located in an area identified by the Director of the Federal Emergency Management Administration as being subject to special flood hazards. The Riegle Community Development Act requires that each institution must also provide a copy of the notice to the servicer of the loan (if different from the originating lender).

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 22nd day of February, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–3770 Filed 2–25–05; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–

approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or email to mmenchik@omb.eop.gov.

Final approval under OMB delegated authority of the extension for three years, without revision of the following report:

Report title: Intermittent Survey of Businesses

Agency form number: FR 1374

OMB control number: 7100–0302

Frequency: Biweekly and semiannually

Reporters: Purchasing managers, economists, or other knowledgeable individuals at business firms

Annual reporting hours: 125 hours

Estimated average hours per response: 15 minutes

Number of respondents: biweekly, 10; semiannually, 120

General description of report: This information collection is voluntary (12 U.S.C. §§ 225a and 263) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: The survey data are used by the Federal Reserve to gather information specifically tailored to the Federal Reserve's policy and operational responsibilities. It is necessary to conduct the survey biweekly to keep up with the rapidly changing developments in the economy and to provide timely information to staff and Board members. Usually, the surveys are conducted by staff economists telephoning purchasing managers, economists, or other knowledgeable individuals at selected, relevant businesses. The frequency and content of the questions, and the businesses contacted would vary depending on changing developments in the economy.

Board of Governors of the Federal Reserve System, February 23, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–3756 Filed 2–25–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 14, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. William B. Jones, Martha S. Jones Trust FBO Bryan Jones, Martha S. Jones Trustee, Christopher Bryan Jones, Jones Family Fund Foundation, and Jones Petroleum Company, Inc., all of Jackson, Georgia, to retain voting shares of First Georgia Community Corp., and thereby indirectly retain voting shares of First Georgia Community Bank, both of Jackson, Georgia.

Board of Governors of the Federal Reserve System, February 22, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–3730 Filed 2–25–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 2005.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Independent Alliance Banks, Inc., Fort Wayne, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Grabill Bancorp, Grabill, Indiana, and thereby indirectly acquire Grabill Bank, Grabill, Indiana, and Marbanc Financial Corporation, Markle, Indiana, and thereby indirectly acquire voting shares of MarkleBank, Markle, Indiana.

Board of Governors of the Federal Reserve System, February 22, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–3731 Filed 2–25–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Consumer Advisory Council

ACTION: Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 17, 2005. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on

the Terrace level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, March 15, by completing the form found on–line at:

https://www.federalreserve.gov/secure/forms/cacregistration.cfm

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9:00 a.m. and is expected to conclude at 1:00 p.m. The Martin Building is located on C Street, NW, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Home Mortgage Disclosure Act Data: Discussion of guidance for lenders and consumers about the release of the new data.

Truth in Lending Act: Discussion of the Advance Notice of Proposed Rulemaking to revise Regulation Z, which implements the Truth in Lending Act.

Community Reinvestment Act (CRA) and Community Development: Discussion of CRA evaluations of intermediate–size community banks and of encouraging community development in rural areas.

Electronic Fund Transfer Act: Discussion of specific issues on proposed changes to Regulation E, which implements the Electronic Fund Transfer Act.

Committee Reports: Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470.

Board of Governors of the Federal Reserve System, February 22, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–3732 Filed 2–25–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—01/24/2005			
20050469	Owens Minor, Inc	Access Diabetic Supply, LLC	Access Diabetic Supply, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—01/26/2005			
20050465	Great Hill Equity Partners II, L.P	Stolberg, Meehan & Scano II, L.P	Central Security Group, Inc.
20050473	Rayovac Corporation	Thomas H. Lee Equity Fund IV, L.P	United Industries Corporation.
20050474	Thomas H. Lee Equity Fund IV, L.P	Rayovac Corporation	Rayovac Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—01/27/2005			
20050466	Eli Lilly and Company	AstraZeneca Plc	IPR Pharmaceuticals, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—01/28/2005			
20050480	TPG Partners III, L.P	Fidelity National Financial, Inc	Fidelity National Information Services, Inc.
20050481	TPG Partners IV, L.P	Fidelity National Financial, Inc	Fidelity National Information Services, Inc.
20050482	Thomas H. Lee Equity Fund V, L.P	Fidelity National Financial, Inc	Fidelity National Information Services, Inc.
20050490	Gartner, Inc	META Group, Inc	META Group, Inc.
20050492	Industrial Growth Partners II, L.P	Global Power Systems, L.L.C	Global Power Systems, L.L.C.
20050495	A. Jerrold Perenchio	Raycom Media, Inc.	WLII/WSUR, Inc.
20050496	Wind Point Partners V, L.P	Waterbury Companies Acquisition Corp.	Waterbury Companies Acquisition Corp.
20050498	Navarre Corporation	FUNimation General Partnership	FUNimation Productions, Ltd.
20050501	PacifiCare Health System, Inc	Pacific Mutual Holding Company	Pacific Life and Annuity Company. Pacific Life Insurance Company.
20050502	The AES Corporation	Charles N. Daveport III	SeaWest Holdings, Inc.
20050505	GTCR Fund VIII, L.P	Prestige Brands Holdings, Inc	Prestige Brands Holdings, Inc.
20050506	GTCR Fund VII/B, L.P	Prestige Brands Holdings, Inc	Prestige Brands Holdings, Inc.
20050507	Cooper Tire & Rubber Company	The Military Mutual Aid Association	Kumho Tire Co., Inc.
20050509	Citigroup Inc	Beddor Enterprises, A Limited Partnership.	Instant Web, Inc.
20050510	Cooper Tire and Rubber Company	Kumho Industrial Co., Ltd	Kumho Tire Co., Inc.
20050511	Warburg Pincus Private Equity VIII, LP	WP CAMP Holding Company	WP CAMP Holding Company.

Trans No.	Acquiring	Acquired	Entities
20050512	SI International Inc	Walter M. Curt	Shenandoah Electronic Intelligence, Inc.
20050514	TCV V, L.P	Kristen Talley	Webroot Software, Inc.
20050515	TCV V, L.P	Steve Thomas	Webroot Software, Inc.
20050517	Fuji Photo Film Co., Ltd	Saratoga Partners IV, L.P	Sericol Group LImited.
20050523	Verizon Communications Inc	Urban Communicators PCS Limited Partnership.	Urban Comm-North Carolina, Inc.
20050529	Concord Communications, Inc	Alec E. Gores	Aprisma Holdings, Inc.
20050531	Mr. Remi Marcoux	Vincent F. Carosella	JDM, Inc.
20050532	Dr. Rajendra Singh	Motient Corporation	Motient Corporation.
20050534	Thomas J. Petters	J.P. Morgan Chase & Co	Polaroid Holding Company.
20050535	CIT Group Inc	Education Lending Group, Inc.	Education Lending Group, Inc.
20050546	Yell Group PLC	Richard Postma	U.S. Xchange Directors, L.L.C.
TRANSACTIONS GRANTED EARLY TERMINATION—02/01/2005			
20050363	Laboratory Corporation of America Holdings.	U.S. Pathology Labs, Inc.	U.S. Pathology Labs, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/02/2005			
20050508	Harbour Group Investments IV, L.P	LN Holdings Corporation	LN Holdings Corporation.
20050513	PNM Resources, Inc	SW Acquisition, L.P	TNP Enterprises, Inc.
20050519	GTCR Fund VII–A, L.P	GTCR Fund VII, L.P	Syniverse Holdings, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/03/2005			
20050438	Hejoassu Adminstracao S.A.	Cemex, S.A. de C.V.	Cemex, S.A. de C.V.
TRANSACTIONS GRANTED EARLY TERMINATION—02/04/2005			
20050327	Transpro, Inc	Modine Manufacturing Company	Modine Aftermarket Holdings, Inc.
20050522	VeriSign, Inc	LightSurf Technologies, Inc	LightSurf Technologies, Inc.
20050528	Cerberus-Plasma Holdings, Inc	NPS Bio Therapeutics, Inc	NPS Bio Therapeutics, Inc.
20050537	Noble Energy, Inc	Patina Oil & Gas Corporation	Patina Oil & Gas Corporation.
20050539	JPMorgan Chase & Co	Vastera, Inc	Vastera, Inc.
20050540	Caesars Entertainment, Inc	Caesars Entertainment, Inc	RDI/Caesars Riverboat Casino, LLC.
20050551	Orkla ASA	Elkem ASA	Elkem ASA.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Hallman, Case Management Assistant. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580. (202) 326–33100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–3780 Filed 2–25–05; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

RIN [3084–AA94]

Public Comment on Data, Studies, or Other Evidence Related to the Effects of Credit Scores and Credit-Based Insurance Scores on the Availability and Affordability of Financial Products

AGENCY: Federal Trade Commission.

ACTION: Notice and request for public comment.

SUMMARY: The Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'') or ''Act'') requires the Federal Trade Commission (''FTC'' or ''Commission'') and the Federal Reserve Board (''Board'') to conduct a study on the effects of credit scores and credit-based insurance scores on the availability and affordability of financial products. These products include credit cards, mortgages, auto loans, and property and casualty insurance. As part of its efforts to fulfill its obligations under the Act, the FTC seeks public comment on any evidence the FTC and the Board should consider in conducting the study.

DATES: Comments must be received by April 25, 2005.

ADDRESSES: Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should refer to ''FACT Act Scores Study'' both in the text and on the envelope, to facilitate their organization, and should be mailed or delivered to: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex Z), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC requests that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments may be filed in electronic form by clicking on the following: *https://score.commentworks.com/FTCCreditScoreStudy/* and following the instructions on the web-based form. If a comment contains confidential information, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1]

To ensure that the Commission considers an electronic comment, you must file it on web-based form at *https://secure.commentworks.com/FTTCreditScoreStudy/*. You also may visit *http://www.regulations.gov* to read this Notice, and may file an electronic comment through that website. The

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must also 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).

Commission will consider all comments that regulations.gov forwards to it.

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, 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 *http://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.*

FOR FURTHER INFORMATION CONTACT: Jesse Leary, Deputy Assistant Director, (202) 326–326–3480, Division of Consumer Protection, Bureau of Economics, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Background

The FACT Act was signed into law on December 4, 2005. Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108–159 (2003). In general, the Act amends the Fair Credit Reporting Act (''FCRA'') to enhance the accuracy of consumer reports and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. The Act contains a number of provisions intended to combat consumer fraud and related crimes, including identity theft, and to assist its victims. Finally, the Act requires that a number of studies be conducted on credit reporting and related issues.

Section 215 of the FACT Act requires the FTC and the Board, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, to conduct a study on the effects of credit scores and credit-based insurance scores on the availability and affordability of financial products. These products include mortgages, auto loans, credit cards, and property and casualty insurance. Section 215 further requires the FTC and the Board to study: (1) ''the statistical relationship, utilizing a multivariate analysis that controls for prohibited factors under the Equal Credit Opportunity Act and other known risk factors, between credit scores and credit-based insurance scores and the quantifiable risks and actual losses;'' and (2) ''the extent to which, if any, the use of credit scoring models, credit scores, and credit-based insurance scores impact on the availability and affordability of credit to the extent information is currently available or is available through proxies, by geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, and creed, including the extent to which the consideration or lack of consideration of certain factors by credit scoring systems could result in negative or differential treatment of the protected classes, under the Equal Credit Opportunity Act, and the extent to which, if any, the use of underwriting systems relying on these models could achieve comparable results through the use of factors with less negative impact.''

The study is due on December 4, 2005.

II. Request for Comments

The Act requires the FTC to seek public input about ''the prescribed methodology and research design of the study.'' As part of its efforts to fulfill its obligations under the Act, the FTC, (in a **Federal Register** notice dated June 18, 2004, *see* 69 FR 34167) sought public comment on methodological aspects of the study. The FTC received comments in response to that notice, and the FTC and the Board are considering them as they conduct the study. In the present request, the FTC seeks comment on specific studies, data, or other evidence that might be useful for the study. Although we enumerate a set of questions below, we encourage commenters to provide information on any aspects of credit scores, credit-based insurance scores, and the effects of scores on the relevant markets that would be useful to the study. In particular, the FTC seeks information that bears on the following questions:

A. Credit Scores and Credit:

1. Specifically, how are credit scoring models developed? Who develops credit scoring models? What data and methodologies are used to develop credit scoring models? What factors are used in credit scoring models? Why are those factors used? What other factors have been considered for use in credit scoring models, but are not used? Why are those other factors not used? Are there benefits or disadvantages, either to creditors or consumers, from the use of particular factors by credit scoring models?

2. How many different credit scoring models are in use today? What different types of general purpose or specialized credit scoring models are available? Who offers credit scores?

3. How are credit scores used? Who uses credit scores, and how widely are they used? How do they fit into the underwriting process for mortgages, auto loans, credit cares, and other credit products? For what purposes are credit scores used, other than the initial underwriting or pricing decision?

4. How has the use of credit scores changed over time? When were the first used for each type of financial product (credit cards, mortgages, auto loans, etc.)? How has their use expanded to encompass different groups of borrowers (e.g., lower income borrowers, urban/rural borrowers, borrowers with poor credit histories, borrowers with non-traditional credit histories)? If the use of credit scores has expanded to encompass different groups of borrowers, how has this affected the price or availability of credit to those borrowers?

5. Has the use of credit scores affected the price and availability of mortgages, auto loans, credit cards, or other credit products? If so, are there estimates of the type and size of such changes? Have some groups of consumers experienced cost reduction while others have experienced cost increases? Have some groups of consumers experienced greater access to credit while others have experienced reduced access?

6. Has the use of credit scores affected the amount of credit made available to consumers? Has it affected initial loans-to-value ratios at which auto loans or mortgages (first- or second-lien) are originated to different groups of borrowers? Has it affected credit limits on credit cards and home equity lines of credit for different groups of borrowers?

7. How has the use of credit scores affected the costs of underwriting and/or the time needed to underwrite?

8. What impact has the use of credit scores had on the accuracy of underwriting decisions? What impact has the use of credit scores had on the share of applicants that are approved for mortgages, auto loans, credit cards, or other credit products? What impact has the use of credit scores had on the default rates of mortgages, auto loans, credit cards, or other credit products? Have the sizes of such changes or effects been estimated and reported?

9. Has the use of credit scores affected the cost and availability of credit to consumers with poor credit histories? If so, how? What effect has it had on the use of credit by consumers with poor credit histories?

10. How has the use of credit scores affected the cost and availability of credit to consumers with no credit

history? What effect has it had on the use of credit by consumers with no credit history?

11. How has the use of credit scores affected refinancing behavior for mortgage, auto, or student loans? How has it affected the average life of revolving lines of credit (including credit cards)?

12. Has the use of credit scores and credit scoring models impacted the availability or cost of credit to consumers by geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, or creed? If so, how has it impacted each such category? What are the estimated sizes of any such changes for each of the above categories?

13. To what extent does consideration or lack of consideration of certain factors by credit scoring systems result in negative or differential treatment of those categories of consumers who are protected under the Equal Credit Opportunity Act (''ECOA'') (e.g., race, color, religion, national origin, sex, age, and marital status)?

14. To what extent, if any, could the use of underwriting systems that rely on scoring models achieve comparable results through the use of factors with less negative impact on those categories of consumers who are protected under ECOA?

15. What steps, if any, do score developers, lenders, or other users of credit scores take to ensure that the use of credit scores does not result in negative or differential treatment of protected categories of consumers under the ECOA? Have score developers, lenders, or other users of credit scores changed the way credit scores are developed or used in order to avoid negative of differential treatment of protected categories of consumers under the ECOA? Are any particular credit history factors not used because of actual or potential negative or differential treatment of protected categories of consumers under the ECOA? If so, what are they?

16. Has the use of credit scores caused a change in the rate of home ownership? What is the estimated size of such a change?

17. Has the use of credit scores caused a change in the method and amount of pre-screening consumers for credit offers? What effects has this had on the terms offered to consumers?

18. What specific role do credit scores play in granting ''instant credit?'' What impact have credit scores had on the availability and use of instant credit?

19. How has the use of credit scores affected companies' ability to enter new lines of business or expand activities in the various credit industries?

20. What role does credit scoring play in secondary market activities? In what ways has the availability of credit scores affected the development of the secondary market for credit products? Has the use of credit scoring increased or decreased creditors' access to capital? In what ways?

21. How are credit scores used to manage existing credit accounts, such as credit card accounts? How has the use of credit scores affected the way credit accounts are managed? How are credit scores used in the servicing of mortgages, and how has the use of credit scores affected the way mortgages are serviced?

22. How are records of inquiries used by credit scoring systems? Does concern about the possible effects on their credit scores affect consumers' credit-shopping behavior? If so, what impact does this have on the consumers or on competition in the various credit markets?

23. How does the use of credit scores affect consumers with inaccurate information on their credit reports? How does the use of credit scores affect consumers who have been the victims of identity theft?

24. Are there particular forms of inaccuracy or incompleteness in the credit reporting system, such as incomplete reporting by creditors, that affect either the usefulness of credit scores to lenders or the benefits or disadvantages of scoring to consumers? What are those types of inaccuracies or incompleteness? How do they affect the usefulness of credit scores to lenders or the benefits or disadvantages of scoring to consumers?

B. Credit-Based Insurance and Property and Casualty Insurance

1. Specifically, how are credit-based insurance scoring models developed? Who develops credit-based insurance scoring models? What data and methodologies are used to develop credit-based insurance scoring models? What factors are used in credit-based insurance scoring models? Why are those factors used? What other factors have been considered for use in credit-based insurance scoring models, but are not used? Why are those other factors not used? Are there benefits or disadvantages, either to insurers or consumers, from the use of particular factors by credit-based insurance scoring models?

2. How many different credit-based insurance scoring models are in use today? Who offers credit-based insurance scores?

3. How are credit-based insurance scores used? Who uses credit-based insurance scores, and how widely are they used? How do they fit into the underwriting and rating process for automobile and homeowners insurance?

4. Has the use of credit-based insurance scores affected the price and availability of automobile and homeowners insurance? We are especially interested in evidence containing estimates of the size of such changes. Have some groups of consumers experienced cost reductions while others have experienced cost increases? If so, which consumers have experienced reductions and which have experienced increases, and what are the magnitudes of those changes? Have some consumers experienced dramatic increases in their insurance premiums, solely as the result of the introduction of credit-based insurance scoring? If so, what has been the impact of this rise in premiums on these consumers?

5. How has the use of credit-based insurance scores affected the costs of underwriting and rating and/or the time needed to underwrite and rate?

6. How has the use of credit-based insurance scores affected the accuracy of underwriting and rating decisions? Have the sizes of such changes been estimated and reported?

7. Has the use of credit-based insurance scores affected the amount of automobile or homeowners insurance purchased by consumers? Has it affected the limits or deductibles that consumers select when purchasing automobile or homeowners insurance? Has it affected the number of drivers who drive without insurance? Has it affected the number of homeowners that have no homeowners insurance? What are the estimated sizes of such changes?

8. How has the use of credit-based insurance scores affected the cost and availability of automobile or homeowners insurance to consumers with poor credit histories? What effect has it had on the purchasing of automobile or homeowners insurance by consumers with poor credit histories?

9. Has the use of credit-based insurance scores affected the cost and availability of automobile or homeowners insurance to consumers with no credit history? If so, how? What effect has it had on the purchasing of automobile or homeowners insurance by consumers with no credit histories?

10. How has the use of credit-based insurance scores impacted the availability of cost of insurance to consumers by geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, or creed?

What are the estimated sizes of such changes for each of the above categories?

11. To what extent does consideration or lack of consideration of certain factors by credit-based insurance scoring systems result in negative or differential treatment of protected classes of consumers, that is, the same categories of consumers against whom discrimination is prohibited under the ECOA (e.g. race, color, religion, national origin, sex, age, and marital status)?

12. To what extent, if any, could the use of underwriting systems relying on credit-based insurance scoring models achieve comparable results through the use of factors with less negative impact on consumer sin the ECOA protected categories?

13. What steps, if any, do score developers or insurance companies take to ensure that the use of credit-based insurance scores does not result in negative or differential treatment of protected categories of consumers listed in the ECOA? Are any particular credit history factors not used because of actual or potential negative or differential treatment of protected categories of consumers listed in the ECOA? If so, what are they?

14. Has the use of credit-based insurance scores caused a change in the method and amount of pre-screening consumers for insurance offers? What effects has this had on the terms offered to consumers?

15. How has the use of credit-based insurance scores affected companies' ability to enter new lines of the automobile or homeowners insurance business?

16. If the use of credit-based insurance scores has affected the costs individual consumers pay for insurance, has it (i) caused a change in the overall average cost of insurance for consumers?; (ii) changed the distribution of individual costs?; or (iii) caused any other change in the costs to consumers? What are the magnitudes of any such changes?

17. Would an analysis of the share or number of consumers that purchase automobile or homeowners insurance from ''involuntary,'' ''pooled risk,'' ''assigned risk,'' or other types of insurance other than insurance offered on a voluntary basis by private insurers, be informative about the price and/or availability of automobile or homeowners insurance? Would an analysis of the share of drivers that drive without automobile insurance be informative about the price and/or availability of automobile insurance?

18. What impact, if any, does banning or limiting the use of particular underwriting or rating factors, such as gender, territory, or credit-based insurance score, have on the price or availability of automobile or homeowners insurance? Has the prohibition on the use of credit-based scores for insurance in particular states had any impact on the price or availability of automobile or homeowners insurance for consumers in those states? If so, what has that impact been? If the use of credit-based insurance scores was not allowed in additional states, what impact would this have on the price or availability of automotive or homeowners insurance? Are there, or would there be, any specific effects on those insurance consumers who are within protected categories listed in the ECOA?

19. How are records of inquiries used by credit-based insurance scoring systems? Does concern about the possible effects on their credit-based insurance scores affect consumers' insurance-shopping behavior? If so, what impact does this have on competition in the insurance markets?

20. How does the use of credit-based insurance scores affect consumers with inaccurate information on their credit reports? How does the use of credit-based insurance scores affect consumers who have been the victims of identity theft?

21. Are there particular forms of inaccuracy or incompleteness in the credit reporting system, such as incomplete reporting by creditors, that affect either the usefulness of credit-based insurance scores to insurers or the benefits or disadvantages of scoring to consumers? What are those types of inaccuracies or incompleteness? How do they affect the usefulness of credit-based insurance scores to insurers or the benefits or disadvantages of scoring to consumers?

Authority: Sec. 112(b), Pub. L. 108–159, 117 Stat. 1956 (15 U.S.C. 1681c–1).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–3781 Filed 2–25–05; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Federal Travel Regulation (FTR)

[FTR 2005-N1]

eTravel Initiative

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

ACTION: Notice.

SUMMARY: This notice provides information to Federal agencies subject to the Federal Travel Regulation (FTR) that did not award a task order to an eTravel Service (eTS) vendor by December 31, 2004. This notice provides guidance to assist those agencies with this FTR requirement.

DATES: This change is effective February 28, 2005 and expires when all agencies have fully migrated to the new eTravel service.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Burke, Office of Governmentwide Policy (MTT), General Services Administration, 1800 F Street, NW, Washington, DC 20405, by phone at 703-872-8611, or by e-mail at *timothy.burke@gsa.gov*.

SUPPLEMENTARY INFORMATION: Federal Travel Regulation sections 301–73.2 and 301–73.100 require that all agencies subject to the FTR (with the exception of the Department of Defense (DoD) for its civilian employees and the Government of the District of Columbia) award a task order to an eTravel Service (eTS) vendor no later than December 31, 2004, and fully migrate to eTS agency-wide no later than September 30, 2006.

The General Services Administration (GSA) extends its appreciation to all agencies that successfully met the December 31st eTS vendor award requirement. We are reaching out through this notice, however, specifically to those agencies that for a variety of reasons were unable to meet the requirement and offering our assistance to bring you into compliance with the FTR.

Each agency that encountered a delay with its eTS acquisition and has not yet implemented eTS as required under the FTR must submit a request for an exception to the Administrator of General Services, 1800 F Street, NW, Washington, DC 20405, for consideration of approval. The request must include a complete justification outlining why you need an extension and the date when your agency will award a task order or will agree to be cross–serviced by a franchise organization. Please submit your request and supporting information no later than March 30, 2005.

To ensure compliance with the requirement to completely migrate to eTS by September 30, 2006, all agencies subject to the FTR (with the exception of DoD for its civilian employees and the Government of the District of Columbia as referenced above) should target full migration to eTS no later than June 30, 2006. GSA is committed to

helping agencies achieve a smooth and successful transition to eTS by assisting you in effectively determining your eTS strategy, selecting an eTS vendor and awarding a task order, and executing your agency-wide migration to eTS. Working together in a collaborative partnership, we can ensure timely success of this very important Presidential initiative.

Dated: February 17, 2005.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

[FR Doc. 05–3722 Filed 2–25–05; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–4040–0002]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, Grants.gov Program Management Office.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Regular;

Title of Information Collection: SF–424 Mandatory (M);

Form/OMB No.: OS–4040–0002.

Use: The SF–424(M) will become the government-wide data set for applications, plans, and related submissions under mandatory grant programs. Federal agencies and applicants/recipients under mandatory grant programs will use the standard data set and definitions for paper and electronic applications/plans/related submissions. At this time, the Federal agencies are proposing a set of data elements to be used as cover information. Additional standard data elements for other components of an application/plan, *e.g.*, a standard budget, may be proposed at a later date.

The proposed standard data set will replace numerous agency data sets and reduce the administrative burden placed on the grants community. Federal agencies will not be required to collect all of the information included in the proposed data set. The agency will identify the data that must be provided by applicants through instructions that will accompany the application package.

Frequency: Recordkeeping, Application, and on occasion;

Affected Public: Federal, State, local, or tribal governments, farms, and not for profit institutions;

Annual Number of Respondents: 1,161;

Total Annual Responses: 21,900;

Average Burden Per Response: 1 hour;

Total Annual Hours: 21,900.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: Naomi Cook (4040–0002), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: February 22, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–3711 Filed 2–25–05; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

State Health Fraud Task Force Grants; Availability of Funds; Request for Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

The Food and Drug Administration (FDA) is correcting notice document 04–14593 beginning on page 36091 in the issue of Monday, June 28, 2004, by making the following corrections:

On page 36091, in the first column, the second sentence under **SUMMARY** is corrected to read: ''Grant funds will be used to assist agencies in identifying and prosecuting perpetrators of health fraud and AIDS Health Fraud; obtain and disseminate information on the use of fraudulent drugs and therapies; disseminate information on approved drugs and therapies; and provide health fraud information obtained by the State Health Fraud Task Force to State health agencies, community based organizations, and FDA staff.''

On page 36091, in the first column, the **DATES** section is corrected to read: ''**DATES**: The application receipt date for new applications is April 30, 2005. The application receipt date for new applications for each subsequent year that this program is in effect will be April 30.''

On page 36091, in the first column, the **ADDRESSES** section is corrected to read:

''**ADDRESSES:** FDA is accepting new applications for this program electronically via Grants.gov. Applicants are strongly encouraged to apply electronically by visiting the Web site *http://www.grants.gov* and following instructions under 'APPLY.' The applicant must register in the Central Contractor Registration (CCR) database in order to be able to submit the application. Information about CCR is available at *http://www.grants.gov/CCRRegister*. The applicant must register with the Credential Provider for Grants.gov. Information about this requirement is available at *http://www.grants.gov/CredentialProvider*.

If applicants cannot submit applications through the electronic process, application forms are available from, and completed applications should be submitted to, Djuana Gibson, Division of Contracts and Grants Management (HFA–500), Food and Drug Administration, 5600 Fishers Lane, rm. 2131, Rockville, MD 20857, 301–827–

7177, e-mail: *dgibson@oc.fda.gov*. Application forms PHS 5161–1 are available via the Internet at: *http://www.hhs.gov/forms* (revised 7/00). Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane (HFA–500), rm. 2131, Rockville, MD 20852. An application not received in time for orderly processing will be returned to the applicant without consideration.''

On page 36091, in the second column, **FOR FURTHER INFORMATION CONTACT** is corrected to read:

''**FOR FURTHER INFORMATION CONTACT**:

Regarding the administrative and financial management aspects of this notice: Djuana Gibson (see **ADDRESSES**).

Regarding the programmatic aspects of this notice: Stephen Toigo, Division of Federal-State Relations (DFSR), Office of Regulatory Affairs, Food and Drug Administration (HFC–150), 5600 Fishers Lane, rm. 12–07, Rockville, MD 20857, 301–827–6906, or access the Internet at: *http://www.fda.gov/ora/fed_state/default.htm*. For general ORA program information contact your Public Affairs Specialists at *http://www.fda.gov/ora/fed_state/DFSR_Activities/*.''

On page 36091, in the second column, under section I, the first paragraph is corrected to read: ''FDA will support projects covered by this notice under title XVII of the Public Health Service Act (42 U.S.C. 1702). FDA's project program is described in the Catalog of Federal Domestic Assistance, No. 93.245, and applicants are limited to States that have an existing AIDS Health Fraud Task Force or States that are in the process of developing a Health Fraud Task Force.''

On page 30692, in the first column, under section V.A, a sentence is added at the end of the paragraph that reads: ''A Current Listing of SPOCs can be found at *http://www.whitehouse.gov/omb/grants/spoc.html*.''

On page 36092, in the third column, under section VII, the paragraph is corrected to read: ''Applicants are encouraged to apply electronically (see **ADDRESSES**). If not, the original and two copies of the completed grant application Form PHS–5161–1 (revised 7/00) for State and local governments should be delivered to the Grants Management Office. The receipt date is April 30, 2005. No supplemental material or addenda will be accepted after the receipt date.''

On page 36092, in the third column, under section VIII.A, the section is corrected to read:

''*A. Submission Instructions*

Applications will be accepted during working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

Do not send applications to the Center for Scientific Research, NIH. Any application sent to NIH that is then forwarded to FDA and not received in time for orderly processing will be deemed unresponsive and returned to the applicant. FDA is able to receive applications via the Internet.

The outside of the mailing package and item 2 of the application face page should be labeled 'Response to FDA–ORA–04–2.' You must submit only one application, an original and two copies, per package.''

Please note that the only change to section VIII.A is that FDA is now accepting applications via the Internet.

Dated: February 18, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–3710 Filed 2–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 11, 2005, from 8 a.m. to 5:30 p.m., on April 12, 2005, from 8 a.m. to 6 p.m., and on April 13, 2005, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512519. Please call the Information Line or access the Internet address of *http://www.fda.gov/cdrh/panelmtg.html* for up-to-date information on this meeting.

Agenda: On April 11, 2005, the committee will hear oral presentations from the public. On April 12 and 13, 2005, the committee will discuss, make recommendations, and vote on two premarket approval applications for Silicone Gel-Filled Breast Prostheses. Background information, including the agenda and questions for the committee, will be available to the public on April 8, 2005, on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 28, 2005. Oral presentations from the public will be scheduled on April 11, 2005, between approximately 8 a.m. and 5:30 p.m., and on April 12 and 13, 2005, between approximately 2:45 p.m. and 3:45 p.m. Time allotted for each presentation is limited. Those desiring to make formal oral presentations should notify the contact person before March 28, 2005, and submit a brief statement of the general nature of the comments they wish to present, and the names and addresses of proposed participants.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 240–276–0450, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 17, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–3741 Filed 2–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 17, 2005, from 8 a.m. to 4 p.m.

Location: Hilton Washington DC North/Gaithersburg, Crystals Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 143, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512625. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations regarding a premarket notification submission for use in the induction, maintenance, and reversal of mild hypothermia in the treatment of unconscious adult patients with spontaneous circulation after out-of-hospital cardiac arrest when the initial rhythm was ventricular fibrillation.

Background information for the topic, including the agenda and questions for the committee, will be available to the public one business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 5, 2005. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 5, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks at 240–276–0450, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 17, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–3742 Filed 2–25–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the Implementation and Outcomes of the Maternal and Child Health Bureau's National Healthy Start Program—Phase II (NEW)

The Health Resources and Service Administration's Maternal and Child Health Bureau (MCHB) initiated the Healthy Start Program in 1991 in response to concerns about high infant mortality rates. The Phase II evaluation includes a survey of Healthy Start Program participants designed to collect information that is important to understanding the implementation of Healthy Start and the program effects from a client perspective. Specifically, the goals of the survey are to: describe the participant population, assess the services they received during the prenatal and early postpartum periods, describe their experiences and satisfaction with the health system and services, and examine their health behaviors.

The survey will be administered to participants at eight grantee sites. The survey will use a mixed-mode approach: it will be conducted primarily by telephone using computer-assisted telephone interviewing (CATI) with in-person field follow up if the telephone attempts are unsuccessful.

Data gathered from the survey will be used to provide HRSA the information necessary to assess the grantees' achievement of MCHB's goal to improve perinatal outcomes among racial and ethnic minorities.

The estimated burden on respondents is as follows:

Respondents	Number of respondents	Responses per respondent	Total responses	Minutes per response	Total burden (hours)
Participants	1000	1	1000	30	500

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of notice.

Dated: February 17, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–3712 Filed 2–25–05; 8:45 am]

BILLING CODE 4165–15–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.

Compositions and Methods for the Treatment of Immune-Related Disease

F. Xavier Valencia and Peter E. Lipsky (NIAMS), U.S. Provisional Application filed 07 Jan 2005 (DHHS Reference No. E–355–2004/0–US–01).

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov.*

The ability of the immune system to discriminate between self and non-self is controlled by central and peripheral tolerance mechanisms. One of the most important ways the immune system controls the outcome of such a response is through naturally occurring CD4+CD25+ regulatory T cells.

The present invention relates to compositions and methods for treating immune related disease, a method for determining the presence of or predisposition to an immune related disease, and a pharmaceutical composition for treating an immune related disease in a mammal.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Expression Tags for High Yield Soluble Expression of Recombinant Proteins

Deb K. Chatterjee and Dominic Esposito (NCI), U.S. Provisional Application No. 60/564,982 filed 26 Apr 2004 (DHHS Reference No. E–103–2004/0–US–01).

Licensing Contact: Susan Carson, 301–435–5020; *carsonsu@mail.nih.gov.*

Production of large quantities of soluble and correctly folded proteins is essential for a variety of applications ranging from functional analysis and structure determination to clinical trials. *E. coli* is a widely used expression system that offers the advantages of ease of handling, cost-effectiveness and the ability to produce proteins in high yield. However, the enhanced production obtainable with *E. coli* expression systems is frequently accompanied by problems of protein insolubility, production host non-viability and aberrant protein folding. Many strategies have been proposed to address these problems, in particular the use of fusion vectors that mediate the expression of a target gene linked to a peptide signal sequence or to a ''chaperone'' or ''carrier'' protein that is capable of ''escorting'' the fusion protein out of the cytoplasm and into the periplasmic space. However, there remains a need for methods that provide soluble proteins that are correctly folded and in functional form without unacceptably diminishing the yield of recovered protein or requiring complex host strains.

NIH researchers have developed a fusion polynucleotide in which a polynucleotide encoding a desired target protein is linked to one or more chaperone protein domains (Skp and DsbC) with or without the signal sequence. This permits the expressed proteins to be transported to the periplasm or to be retained in the cytoplasm respectively and these vectors were used to successfully express significant amounts of such difficult to express proteins as Hif1a, Folliculin (fol), a Folliculin domain (FD), Wnt5a, Endostatin, YopD, IL13 and IFN-Hybrid3. These fusion vectors are available for licensing and are useful tools for the expression of commercially viable amounts of functional proteins of therapeutic and scientific interest.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

Novel Potent Monoamine Oxidase Inhibitors

Kenneth L. Kirk *et al.* (NIDDK), U.S. Provisional Application No. 60/484,710 filed 03 Jul 2003 (DHHS Reference No. E–226–2003/0–US–01); PCT Application No. PCT/US04/21505 filed 01 Jul 2004 (DHHS Reference No. E–226–2003/0–PCT–02).

Licensing Contact: Norbert Pontzer; 301/435–5502; *pontzern@mail.nih.gov.*

Copper- (EC, 1.4.3.6) and flavin-containing amine oxidases (EC, 1.4.3.4) make up two general classes of the widely distributed monoamine oxidases. Reversible and irreversible inhibitors of the flavin monoamine oxidases have been developed and investigated for treatment of diseases of the CNS such as depression, Parkinson's disease and Alzheimer's disease. These researchers have developed several new arylethyl and benzyl amine derivatives that incorporate both the key cyclopropane ring and fluorine substitution at strategic positions. The combined effects of this substitution pattern have led to new inhibitors of greatly increased potency and selectivity for all classes of monoamine oxidases. Their potent copper amine oxidase inhibitors are the best reversible inhibitors known and could provide vascular protection in advanced diabetics. Further information on these compounds can be found in Yoshida *et al.*, J. Med. Chem. (25 Mar 2004) 47 (7): 1796–1806, 2004, and Yoshida *et al.*,

Bioorg. Med. Chem. (15 May 2004) 12 (10): 2645–2652.

Dated: February 17, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–3830 Filed 2–25–05; 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.

Mouse Lactoferrin Antibody

Christina T. Teng (NIEHS), DHHS Reference No. E–158–2004/0—Research Tool. *Licensing Contact:* Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov.*

Lactoferrin, an iron-binding glycoprotein, kills bacteria and modulates inflammatory and immune responses. It is expressed in mucosa membrane and is present in saliva, tears, vaginal secretion and neutrophils. It modulates immune and inflammatory response by down-regulating several cytokines. Therefore, lactoferrin is an important protein in first line of defense and protecting health. Changes in lactoferrin expression could also be used as a marker of gene activation, especially estrogen-induced gene activity in the uterus.

The inventors have uniquely purified a novel 70 kDa estrogen-stimulated glycoprotein, lactoferrin, from mouse uterine luminal fluid. CM-Affi-Gel Blue column chromatography provided a simple one step separation of lactoferrin from the other luminal and serum proteins. Furthermore, a polyclonal antibody was created in rabbit, which has been utilized for immunostaining, Western blot, and elisa assays on human, mouse, rat, and hamster tissues. The cDNA to both human and mouse were cloned. Probes designed to detect the methylation status or polymorphisms of the human lactoferrin gene are available and can be used as diagnostic tool in cancer study.

The inventor has available polyclonal antibodies for both human and mouse, as well as purified mouse lactoferrin protein.

References: (1) Teng, CT *et al.* 1986. Purification and properties of an oestrogen-stimulated mouse uterine glycoprotein (approx. 70 kDa). Biochemical Journal. 240:413–422. (2) Teng, *et al.* 2002. Differential expression and estrogen response of lactoferrin gene in the female reproductive tract of mouse, rat, and hamster. Biology of Reproduction. 67:1439–1449.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Antibody to Estrogen Related Receptor Alpha

Christina T. Teng (NIEHS), DHHS Reference No. E–157–2004/0—Research Tool.

Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov.*

Estrogen related receptor alpha (ERRalpha) is a family member of the steroid/thyroid nuclear receptor superfamily. Estrogen related receptors are thought to regulate similar target genes in the absence of known ligands. For example, the inventors previously cloned the human estrogen receptor-related orphan receptor alpha1 cDNA and demonstrated that it enhances estrogen responsiveness of the lactoferrin gene promoter in transfected human endometrial carcinoma cells.

The inventors have produced a peptide and fusion protein rabbit polyclonal antibody against ERRalpha1-C terminal (anti-ERRalpha-CT), which has been utilized for immunostaining, Chromatin immunoprecipitation (ChIP), immunoprecipitation/immunoblottin (IP/IB) and Western blot. This antibody targets the C-terminus of the protein which is a conserved region in human and mouse. The antibody will be a valuable tool to study the expression and function of the protein in rodent models, whereas the human antibody is already commercially available. The inventors also have available mouse cDNA for ERRalpha1 which can be used to detect mRNA.

Reference: Shigeta, H, *et al.* 1997. The mouse estrogen receptor-related orphan receptor alpha1: molecular cloning and estrogen responsiveness. Journal of Molecular Endocrinology. 19:299–309.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

A Novel, Preservative-Free Steroid Formulation for Use as an Anti-Inflammatory

Michael R. Robinson (NEI), George Grimes (CC), Luisa Gravlin (CC), Gopal Potti (CC), Peng Yuan (CC) and Karl Csaky (NEI), U.S. Provisional Patent Application No. 60/628,741 filed 17 Nov 2004 (DHHS Reference No. E–094–2003/0–US–01).

Licensing Contact: Susan Carson; 301/435–5020; *carsonsu@mail.nih.gov.*

Corticosteroids, such as dexamethasone, methylprednisolone and triamcinolone acetonide (TAC), have been used for many years in the treatment of inflammation and in relieving pain caused by inflammation (for example chronic back and joint pain). Intraocular inflammation is also treated with steroids; however, there are no commercial corticosteroid preparations approved by the FDA for use in the eye and off-label use of current commercial formulations can be accompanied by toxic side effects, which can lead to vision loss. Inflammation is present in eye diseases including uveitis, diabetic retinopathy, venous occlusive disease and age-related macular degeneration, which are estimated to affect more than 200,000 patients in the U.S. alone. This number is likely to increase as the population ages, and there remains a need for a cost-effective, safe, efficient steroid formulation for treating these conditions.

NIH researchers at the National Eye Institute and the Clinical Center have devised a novel preservative-free formulation of the generic steroid TAC with an improved safety profile that permits intravitreal injection. The invention is a pharmaceutical composition free of preservatives and dispersion agents (TAC–PF) that are thought to be responsible for certain toxic side effects. Pre-clinical ocular toxicology and pharmacokinetic studies

have been performed using a commercial formulation (Kenalog™) as a comparator with the invention. No ocular toxicity was seen with TAC–PF. The inventors have an IND in place and have positive results in the treatment of diabetic macular edema with a single dose of TAC–PF. The targeted indications for the present novel TAC formulation include diabetic retinopathy and macular edema, uveitis and age-related macular degeneration. Additionally, this formulation, which benefits from an improved safety profile, could possibly be used in other indications where steroid injections are used to control inflammation.

This formulation is available for licensing and claims are directed to a pharmaceutical composition free of classical preservatives and comprising a glucocorticoid or angiostatic steroid. Claims are also directed to methods of making and treating a variety of ocular conditions and other inflammatory conditions including pain by a variety of routes of administration, including intravitreally, intrathecally, etc.

In addition to licensing, this technology is available for further development through collaborative research with the inventors.

Dated: February 17, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–3832 Filed 2–25–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, January 25, 2005, 1 p.m. to January 25, 2005, 4 p.m. National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on January 12, 2005, 70 FR 2178.

The meeting will be held on March 8, 2005, at the Neuroscience Center, Rockville, MD, from 1 p.m. to 5 p.m. as a telephone conference call. The meeting is closed to the public.

Dated: February 22, 2005.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–3881 Filed 2–28–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Second Request for Data on Chemicals Evaluated by In Vitro or In Vivo Ocular Irritancy Test Methods

Summary

The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and NICEATM are collaborating with the European Center for the Validation of Alternative Methods (ECVAM) to evaluate the validation status of in vitro methods for assessing ocular irritation/corrosion. Data was previously requested (**Federal Register**, Vol. 69, No. 57, pp. 13859–13861, March 24, 2004, available at *http://iccvam.niehs.nih.gov/*) and used to prepare draft Background Review Documents (BRD) for four methods [(1) The Bovine Corneal Opacity and Permeability (BCOP) test; (2) the Isolated Rabbit Eye (IRE) test or the Rabbit Enucleated Eye Test (REET); (3) the Isolated Chicken Eye (ICE) test or the Chicken Enucleated Eye Test (CEET); and (4) the Hen's Egg Test—Chorion Allantoic Membrane (HET–CAM)], and to compile a database of *in vivo* data. ICCVAM and NICEATM are now finalizing these BRDs and want to ensure the inclusion of all available data. NICEATM is therefore issuing this second request for data generated using standardized *in vitro* and *in vivo* test methods used to identify severe, moderate, mild, or non-irritating substances. Test methods for identifying severe (irreversible) ocular irritation/corrosion for which data are sought include, but are not limited to: (1) The BCOP test; (2) the IRE test; (3) the ICE test; and (4) the HET–CAM. In addition, high quality data from standardized ocular irritancy test methods using rabbits (*e.g.*, EPA 1998; UN 2003) and *in vivo* data generated from procedures/protocols that might alleviate or reduce pain and suffering (*e.g.*, topical and systemic analgesic) in test animals are requested. These data will be used to evaluate the validation status of existing in vitro test methods for ocular irritancy/corrosion and to develop a list of substances with high quality *in vivo* data that can be considered as reference chemicals for future validation studies. Data from other *in vitro* methods used to assess reversible ocular irritation effects or non-irritation are also requested.

Submission of Chemical and Protocol Information and Test Data

Data and other information submitted in response to this notice should be sent to NICEATM [Dr. William S. Stokes, Director, NICEATM, NIEHS, 79 T. W. Alexander Drive, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, (phone) 919–541–2384, (fax) 919–541–0947, *iccvam@niehs.nih.gov*] and received by March 30, 2005. Data and other information received by this date will be compiled and added to the database maintained by NICEATM and utilized where appropriate for the final BRDs on the four methods listed above. Data received after this date will also be considered and used where applicable for future evaluation activities. All information submitted in response to this notice will be made publicly available upon request to NICEATM.

When submitting data or information on protocols, please reference this **Federal Register** notice and provide appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, as applicable). NICEATM prefers data to be submitted as copies of pages from study notebooks and/or study reports, if available. Each submission for a chemical should preferably include the following information, as appropriate:

- Common and trade name
- Chemical Abstracts Service Registry Number (CASRN)
- Chemical and/or product class
- Commercial source
- *In vitro* test protocol used
- Rabbit eye test protocol used
- Human eye test protocol used
- Individual animal/human or *in vitro* responses at each observation time (*i.e.*, raw data).
- The extent to which the study complies with national/international Good Laboratory Practice (GLP) guidelines
- Date and testing organization

Those persons submitting data on chemicals tested for ocular irritancy in rabbits are referred to the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov/methods/eyeirrit.htm*) for an example of the type of experimental animal study information and data requested in this notice.

In Vitro Ocular Irritancy Chemical Tests: BCOP, HET–CAM, ICE, and IRE

NICEATM is especially interested in data from four *in vitro* test methods used to identify severe (irreversible) ocular irritation/corrosion: BCOP, HET–CAM, ICE, and IRE. Because test methods for identifying severe eye irritants/corrosives are of high priority, NICEATM especially requests data on chemicals identified by these four methods as severe irritants, although data on mildly irritating and non-irritating substances are also welcome.

Other *In Vitro* Ocular Irritancy Methods

NICEATM also requests the submission of data and information for standardized *in vitro* ocular irritancy methods, other than the four identified above, and methods that might be used to identify non-irritating and mild to moderate irritants. Detailed test method protocols and other related information for these potential test methods should be submitted along with the data.

In Vivo Test Methods for Ocular Irritancy

NICEATM requests the submission of high quality *in vivo* data that might be used to identify appropriate reference chemicals for future validation studies of *in vitro* ocular irritancy test methods. Data are sought from studies conducted to comply with federal or other national/international testing requirements, but may not be publicly available because: (1) The data were submitted to regulatory authorities, but are proprietary and cannot be released to the public by regulatory authorities, or (2) there is no requirement to submit the data to regulatory authorities. In addition to data from studies in animals, NICEATM also welcomes the submission of data from human studies including any human post-marketing or occupational exposure/surveillance data that might be available.

Procedures for Reducing or Eliminating Pain and Suffering during *In Vivo* Ocular Irritancy Testing

NICEATM requests the submission of information and data from *in vivo* methods, procedures, and/or strategies that may reduce or eliminate the pain and suffering associated with current *in vivo* eye irritation methods, such as those using topical or systemic analgesics.

Background Information

In August 2003, the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) unanimously recommended that NICEATM focus efforts on test methods for ocular irritancy and possibly hold a workshop and/or develop a background document on available methods. In October 2003, the U.S. Environmental Protection Agency nominated the following activities to ICCVAM: (1) Evaluate the validation status of the four *in vitro* ocular toxicity test methods (BCOP, IRE, ICE, and HET–CAM), (2) identify and develop *in vivo* ocular toxicity reference data to support the validation of *in vitro* test methods, (3) explore ways of alleviating pain and suffering from current *in vivo* ocular toxicity testing, and (4) review the state of the science and the availability of *in vitro* test methods for assessing mild or moderate ocular irritants. ICCVAM endorsed the review of these methods as a high priority and recommended that NICEATM develop Background Review Documents for BCOP, IRE, ICE, and HET–CAM. NICEATM convened an independent expert panel on January 11–12, 2005, to review the validation status of these four methods and develop conclusions and recommendations on standardized protocols and reference chemicals for future testing and validation studies. Availability of the expert panel's report will be announced in a future **Federal Register** notice.

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from fifteen federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability, and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 (P.L. 106–545, available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) establishes ICCVAM as a permanent interagency committee of the NIEHS under the NICEATM. NICEATM administers and provides scientific support for the ICCVAM. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://www.iccvam.niehs.nih.gov.*

References

EPA 1998. Health Effects Test Guidelines, OPPTS 870.2400, Acute Eye Irritation, EPA 712–C–98–195. Available: *http://www.epa.gov/opptsfrs/OPPTS_Harmonized/870_Health_Effects_Test_Guidelines/Series/870-2400.pdf.*

UN 2003. Globally Harmonized System of Classification and Labelling of Chemicals (GHS). [ST/SG/AC.10/30]. United Nations, New York and Geneva. Available: *http://www.unece.org/trans/danger/publi/ghs/officialtext.html.*

Dated: February 17, 2005.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 05–3831 Filed 2–25–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) Drug Testing Advisory Board to be held in March 2005.

The Drug Testing Advisory Board meeting will be open and will include a Department of Health and Human Services drug testing program update, a Department of Transportation drug testing program update, and a Nuclear Regulatory Commission drug testing program update. Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to arrange special accommodations for persons with disabilities.

The Board will also meet to develop the analytical and administrative policies for the final Revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Program that were published as proposed revisions in the **Federal Register** on April 13, 2004 (69 FR 19673). The submissions from 285 commentors have been made available to the public on the Web site *http://workplace.samhsa.gov*. This meeting will be conducted in closed session since discussing such public comments in open session and then developing the policies will significantly frustrate the Department's ability to develop the Final Notice of Revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. The HHS Office of General

Counsel made the determination that such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C. and therefore may be closed to the public.

To facilitate entering the building for the open session, public attendees are required to contact Mrs. Giselle Hersh, Division of Workplace Programs, 1 Choke Cherry Road, Room 2–1042, Rockville, MD 20857, 240–276–2605 (telephone), or write to *Giselle.Hersh@samhsa.hhs.gov*. A roster of the Board members, the transcript of the open session, and the minutes of the meeting will be available on the following Web site: *http://workplace.samhsa.gov* as soon as possible after the meeting. Additional information for this meeting may be obtained by contacting the individual listed below.

Committee Name: Substance Abuse and Mental Health Services, Administration Drug Testing Advisory Board.

Meeting Date: March 9, 2005; 8:30 a.m.–4:30 p.m.; March 10, 2005; 8:30 a.m.–4:30 p.m.

Place: SAMHSA Building, 1 Choke Cherry Road, Sugarloaf Room, Rockville, Maryland 20850.

Type: Open: March 9, 2005; 8:30 a.m.–9:30 a.m.

Closed: March 9, 2005; 9:30 a.m.–4:30 p.m.

Closed: March 10, 2005; 8:30 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Donna M. Bush, Ph.D., Executive Secretary 1 Choke Cherry Road, Room 2–1035, Rockville, Maryland 20857, E-mail: *Donna.Bush@samhsa.hhs.gov*, 240–276–2600 (telephone) or 240–276–2610 (fax).

Dated: February 22, 2005.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 05–3748 Filed 2–25–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1573–DR]

Indiana; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1573–DR), dated January 21, 2005, and related determinations.

EFFECTIVE DATE: February 16, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 21, 2005:

Jefferson County for Public Assistance. Daviess, Franklin, Gibson, Greene, Huntington, Lawrence, Martin, Pike, and Posey Counties for Public Assistance (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. 05–3777 Filed 2–25–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1580–DR]

Ohio; 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 Ohio (FEMA–1580–DR), dated February 15, 2005, and related determinations.

DATES: *Effective Date:* February 15, 2005.

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 February 15, 2005, 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 Ohio, resulting from severe winter storms, flooding, and mudslides on December 22, 2004, through February 1, 2005, 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 Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas; and Hazard Mitigation throughout the State. 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.

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, Lee Champagne, 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 Ohio to have been affected adversely by this declared major disaster:

Athens, Belmont, Clark, Coshocton, Crawford, Delaware, Franklin, Henry,

Jefferson, Logan, Morgan, Muskingum, Pickaway, Pike, Ross, Scioto, Warren, and Washington Counties for Individual Assistance.

Adams, Allen, Ashland, Athens, Auglaize, Belmont, Brown, Carroll, Champaign, Clermont, Columbiana, Coshocton, Crawford, Darke, Delaware, Fairfield, Fayette, Franklin, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jefferson, Knox, Licking, Logan, Lorain, Marion, Medina, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Paulding, Perry, Pickaway, Pike, Richland, Ross, Scioto, Seneca, Shelby, Stark, Tuscarawas, Union, Van Wert, Washington, Wayne, and Wyandot Counties for Public Assistance.

All counties within the State of Ohio 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. 05–3779 Filed 2–25–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

National Communications System

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of closed meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet via conference call on Thursday, March 10, 2005, from 2 p.m. until 3 p.m. The conference call will be closed to the public. The NSTAC advises the President of the United States on issues and problems related to implementing national security and emergency preparedness (NS/EP) communications policy.

Summary of Agenda

At this meeting, the NSTAC will receive briefings and consider proposed recommendations from (1) the NSTAC's Next Generation Network Task Force (NGNTF) concerning near-term issues emerging from the convergence of telecommunications and information technology, and (2) the NSTAC's Legislative and Regulatory Task Force (LRTF) concerning issues associated with the availability of critical telecommunications infrastructure information over the Internet. These discussions are expected to include discussion of sensitive, commercially confidential and proprietary vulnerability and infrastructure protection information. Last-minute changes relative to the subjects to be discussed on the agenda, and the logistical issues associated with those changes, have necessitated the publication of this Notice fewer than 15 days in advance of the scheduled meeting. Because the meeting will be closed, the adverse impact to the members of the public is reduced. Nevertheless, every effort has been made to ensure publication as close to the 15 day threshold as possible.

Basis for Closure: In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), the Department has determined that the aforementioned briefings and the associated discussion will concern matters sensitive to homeland security within the meaning of 5 U.S.C. 552b(c)(4) and (c)(9)(B) and that, accordingly, this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Call Ms. Kiesha Gebreyes, Chief, Industry Operations Branch at (703) 607–6134, or write the Manager, National Communications System, P.O. Box 4502, Arlington, Virginia 22204–4502.

Peter M. Fonash,

Acting Deputy Manager, National Communications System.

[FR Doc. 05–3771 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection, Comment Request

ACTION: 60-day notice of information collection under review; Refugee/Asylee Relative Petition, Form I–730.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 29, 2005.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–730. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form will be used by an asylee or refugee to file on behalf of his or her spouse and/or children provided that the relationship to the refugee/asylee existed prior to their admission to the United States. The information collected on this form will be used by the Service to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 86,400 responses at 35 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,371 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: February 22, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3848 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review; notice of Immigration Pilot Program, File No. OMB–01.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 29, 2005.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Immigration Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number (File No. OMB–01). U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by the USCIS to determine participants in the Pilot Immigration program provided for by section 610 of the Appropriations Act. The USCIS will select regional center(s) that are responsible for promoting economic growth in a geographical area.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 30 responses at 40 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,200 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: February 23, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3849 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection, Comment Request

ACTION: 60-day notice of information collection under review; Employment Authorization Document, Form I–765.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request (ICR) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 29, 2005.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved information collection.*

(2) *Title of the Form/collection:* Employment Authorization Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–765. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on this form is used by the USCIS to determine eligibility for the issuance of the employment document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,873,296 responses at 3.42 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,406,672 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory

Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: February 23, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3850 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day Notice of Information Collection Under Review; Medical Examination of Aliens Seeking Adjustment of Status, Form I–693.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 29, 2005.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Medical Examination of Aliens Seeking Adjustment of Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–693. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information collection will be used by the Service in considering eligibility for adjustment of status under sections 209, 210, 245 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 800,000 respondents at 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,200,000 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: February 22, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3851 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Petition for Nonimmigrant Worker; Form I–129.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 29, 2004 at 69 FR 58178, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This form is used to petition for temporary workers and for the admission of treaty traders and investors. It is also used in the process of an extension of stay or for a change of nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 2 hour 45 minutes (2.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,014,607 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: February 22, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3852 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Request for Premium Processing Service; Form I–907.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 28, 2004 at 69 FR 77765, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–907. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The data collected on this form is used by the USCIS to process requests for premium processing of certain employment-based petitions or applications in accordance with Section 286(u) of the District of Columbia Appropriations Act of 2002.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 80,000 responses at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: February 8, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3853 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Request for Cancellation of Public Charge Bond, Form I–356.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 28, 2004 at 69 FR 77767, allowed for a 60-day public comment period. The USCIS did not receive any public comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Cancellation of Public Charge Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–356. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form is used by the USCIS to determine if the bond posted on behalf of an alien in the United States should be canceled.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 15 minutes (0.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 500 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, 111 Massachusetts Avenue, NW., Washington, DC, 20529; 202–372–8377.

Dated: February 8, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3854 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Petitioning Requirements for H–1C Nonimmigrant Classification; File No. OMB–26.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 28, 2004 at 69 FR 77764, allowed a 60-day public comment period. The USCIS did not receive any public comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petitioning Requirements for H–1C Nonimmigrant Classification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* File No. OMB–26 (there is no agency form number), U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Public Law 106–95, Section 101(a)(15)(H)(i)(c) of the Immigration and Nationality Act allows petitioning hospitals to import registered nurses to work at those hospitals as nonimmigrant. The information collection is necessary for the CIS to make a determination that the eligibility requirements and conditions are met regarding the nurse/beneficiary.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,000 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection, please contact Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–372–8377.

Dated: February 10, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3855 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Application for Advance Permission to Enter as Nonimmigrant (Pursuant to 212(d)(3) of the Immigration and Nationality Act; Form I–192.

The Department of Homeland Security, U.S. Citizenship and Immigration Service (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 28, 2004 at 69 FR 77766, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Enter as Nonimmigrant (Pursuant to 212(d)(3) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–192. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information provided on this form allows the Service to determine if the applicant is eligible to enter the U.S. temporarily under the provision of section 212(d)(3) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,000 responses at 15 minutes (0.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,000 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC, 20529; 202–372–8377.

Dated: February 8, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3856 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Petition to Remove Conditions on Residence; Form I–751.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 28, 2004 at 69 FR 777766, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Petition to Remove Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–751. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Persons granted conditional residence through marriage to a United States citizen or permanent resident use this form to petition for the removal of those conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 118,008 responses at 80 minutes (1.33 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 156,951 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: February 8, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3857 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Biographic Information; Form G–325.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 28, 2004 at 69 FR 77764, allowed for a 60-day public

comment period. The USCIS did not receive any comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Biographic Information.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–325. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to check other agency records on applications or petitions submitted for benefits under the Immigration and Nationality Act. Additionally, this form is required for applicants for adjustment to permanent resident status and specific applicants for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,144,994 responses at 15 minutes (.025 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 286,249 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC, 20529; 202–372–8377.

Dated: February 8, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3858 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Immigrant Petition by Alien Entrepreneur, Form I–526.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 6, 2005 at 70 FR 1260, allowed for a 60-day public comment period. The USCIS did not receive any public comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Information Collection.

(2) *Title of the Form/Collection:* Immigrant Petition by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–526. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by qualified immigrants seeking to enter the United States under section 203(b)(5) of the Immigration and Nationality Act for the purpose of engaging in a commercial enterprise, must petition the U.S. Citizenship and Immigration Services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,368 responses at 1 hour and 15 minutes (1.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,710 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: February 9, 2005.

Richard A. Sloan,

Director , Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3860 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: application for removal, Form I–243.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 6, 2005, at 70 FR 1259, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–243. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information provided on this form allows the Service to determine eligibility for the alien's request for removal from the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 41 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 7 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: February 9, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3861 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Petition for Amerasian, Widow(er), or Special Immigrant, form I–360.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 6, 2005 at 70 FR 1257, allowed for a 60-day public comment period. The USCIS did not receive any public comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow(er), or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–360. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to determine eligibility or to classify an alien as an Amerasian, widow or widower, battered or abused spouse or child and special immigrant, including religious worker, juvenile court dependent and armed forces member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,397 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,794 annual burden hours.

If you have comments, suggestions, or need a copy of the proposed information

collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: February 15, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3862 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Application for Stay of Deportation or Removal, form I–246.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 6, 2004 at 70 FR 1259, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–246. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by the U.S. Citizenship and Immigration Services to determine the eligibility of an applicant for stay of deportation or removal.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 responses at 30 minutes (0.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection, please contact Richard A. Sloan, Director, Regulatory, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529.

Dated: February 16, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3863 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review; Document Verification Request and Document Verification Request Supplement, form G–845.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 29, 2005.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection(s).

(2) *Title of the Form/Collection:* Document Verification Request and Document Verification Request Supplement.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms G–845 and G–845 Supplement. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. The information collections allow for the verification of immigration status of certain persons applying for benefits under certain entitlement programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 500,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 41,500 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue NW., Washington, DC 20529.

Dated: February 24, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–3898 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–09]

Notice of Submission of Proposed Information Collection to OMB; American Housing Survey (AHS)—2005 National Samples

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a revision to the currently approved American Housing Survey (AHS). The AHS is a longitudinal study that provides a periodic measure on the quality, availability, and cost of housing for the nation. The study also provides information on demographic and other characteristics of the occupants.

DATES: *Comments Due Date:* March 30, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0017) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer and at HUD's Web site at *http://www.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: American Housing Survey (AHS)—2005 National Samples.

OMB Approval Number: 2528–0017.

Description of the Need for the Information and its Proposed Use: This is a revision to the currently approved American Housing Survey (AHS). The AHS is a longitudinal study that provides a periodic measure on the quality, availability, and cost of housing for the national. The study also provides information on demographic and other characteristics of the occupants.

Frequency of Submission: Biennually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	55,000	0.86		0.645		30,517

Total Estimated Burden Hours: 30,517.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 22, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–794 Filed 2–25–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–10]

Notice of Proposed Information Collection: Comment Request Third-Party Documentation Facsimile Transmittal Form

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 29, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2535–0118) and should be sent to: or Wayne Eddins, AYO, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 800a, Washington, DC 20410; fax: 202–708–3135; e-mail *Wayne_Eddins@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affect agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Third-Party Documentation Facsimile Transmittal Form.

OMB Control Number, if Applicable: 2535–0118.

Description of the Need for the Information and Proposed Use: The Third-Party Documentation Facsimile Transmittal form will be used for third party certification, and other attached documents normally attached to paper submissions of applications. This is intended as an interim solution until an alternative solution is devised for submission of these types of documents.

Agency Form Numbers, if Applicable: HUD–96011.

Estimation of the Total Number of Hours Needed To Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: An estimation of the total amount of time needed to prepare the information collection is six minutes per applicant. The potential number of respondents is 33,000. The frequency of response is once per annum. The total public burden is estimated to be 3,300 hours.

Status of the Proposed Information Collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: February 22, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–795 Filed 2–25–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–07]

Notice of Submission of Proposed Information Collection to OMB; HOPE VI Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The requested information is required to allow HUD to obligate grant funds in accordance with the HOPE VI program-authorizing statute, and to manage the grants that are awarded. This submission is a revision of the currently approved collection. The HOPE VI Neighborhood Networks NOFA Application has been discontinued and a new collection, HOPE VI Main Street NOFA Application has been added.

DATES: *Comments Due Date:* March 30, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2577–0208) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HOPE VI Application.

OMB Approval Number: 2577–0208.

Form Numbers: HUD–52825–A, HUD–52860–A, HUD–52774, HUD–52780, HUD–52785, HUD–52787, HUD–52861, HUD–52790, HUD–52797, HUD–52798, HUD–52799, HUD–52800, HUD–53001–A, HUD–2993–A, Grant Forms SF–424, SF–LLL, HUD–27061, HUD–27300, HUD–2880, HUD–96010.

Description of the Need for the Information and Its Proposed Use: The requested information is required to allow HUD to obligate grant funds in accordance with the HOPE VI program-authorizing statute, and to manage the grants that are awarded. This submission is a revision of the currently approved collection. The HOPE VI Neighborhood Networks NOFA Application has been discontinued and a new collection, HOPE VI Main Street NOFA Application has been added.

Frequency of Submission: On occasion, quarterly, semi-annually, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	354	0.254		0.0384		36,226

Total Estimated Burden Hours: 36,226.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 18, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–796 Filed 2–25–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–08]

Notice of Submission of Proposed Information Collection to OMB; Indian Housing Block Grants Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting approval to continue to collect the information provided by recipients of Indian Housing Block Grant (IHBG) funds. Recipients are to provide plans for low-income housing programs in their communities and submit quarterly reports on funds drawn. Recipients may submit information to correct and/or challenge data used in annual housing assistance formula allocations.

DATES: *Comments Due Date:* March 30, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2577–0218) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Indian Housing Block Grants Program.

OMB Approval Number: 2577–0218.

Form Numbers: HUD–52735, HUD–52735–AS, HUD–272–I, HUD–4117, HUD–4119.

Description of the Need for the Information and Its Proposed Use: Recipients of Indian Housing Block Grant (IHBG) funds provide plans for low-income housing programs in their communities and submit quarterly reports on funds drawn. Recipients may submit information to correct and/or challenge data used in annual housing assistance formula allocations.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	579	4		60		139,664

Total Estimated Burden Hours: 139,664.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 18, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5–797 Filed 2–25–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Committee.

DATES: March 18, 2005, at 10 a.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created

by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The meeting agenda will feature discussions on selected proposed projects for fiscal year 2005.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 05–3724 Filed 2–25–05; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Tribal Consultation on Proposed Self-Determination and Self-Governance Funding Agreement Language on Fiduciary Trust Records Management

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of tribal consultation meeting.

SUMMARY: This notice announces a change of meeting dates reported in the **Federal Register** announcement of February 2, 2005 (70 FR 5457) and a new deadline for submitting written comments. The three consultation meetings are intended to obtain oral and written comments concerning: (1) A proposed policy on fiduciary trust records management for Self-Determination (Title I) and Self-Governance (Title IV) Tribes/Consortia; and (2) proposed language to be negotiated as part of the 2006 Title I and Title IV funding agreements regarding fiduciary trust records management.

This change is in response to requests from a number of Indian Tribes because two of the original dates conflicted with the National Congress of American Indians' meeting in Washington, DC which is scheduled from February 28, 2005 to March 2, 2005.

DATES: The new dates for the three consultation meetings are:

1. March 9, 2005, 8:30 a.m. to 3:30 p.m., Nashville, Tennessee (No date change but new times)
2. March 29, 2005, 8:30 a.m. to 3:30 p.m., Portland, Oregon (New date/times)
3. March 31, 2005, 8:30 a.m. to 3:30 p.m., Phoenix, Arizona (New date/times)

ADDRESSES: The meeting locations are:

1. Nashville—DoubleTree Hotel Nashville—Downtown, 315 4th Avenue North, Nashville, Tennessee; Telephone: (615) 244–8200.
2. Portland—Red Lion Portland Convention Center, 1021 N.E. Grand Avenue, Portland, Oregon; Telephone: (503) 235-2100.
3. Phoenix—Hilton Phoenix Airport, 2435 South 47th Street, Phoenix, Arizona; Telephone: (480) 894–1600.

Written comments may be mailed to William A. Sinclair, Director, Office of Self-Governance and Self-Determination, Mail Stop 4618–MIB, 1849 C Street NW., U.S. Department of the Interior, Washington, DC 20240. Postmark must be no later than April 1, 2005. Comments may also be faxed to William A. Sinclair at (202) 219–1404 no later than April 1, 2005.

FOR FURTHER INFORMATION CONTACT: William A. Sinclair, Director, Office of Self-Governance and Self-Determination, Mail Stop 4618–MIB, 1849 C Street, NW., U.S. Department of the Interior, Washington, DC 20240; Telephone: (202) 219–0244.

SUPPLEMENTARY INFORMATION: Please see the **Federal Register** notice dated February 2, 2005 (70 FR 5457).

Abraham E. Haspel,

Assistant Deputy Secretary—Office of the Secretary.

[FR Doc. 05–3721 Filed 2–25–05; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Low-Effect Habitat Conservation Plan for the Monument Creek Interceptor Tie-In Along Jackson Creek, El Paso County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application; correction.

SUMMARY: The Fish and Wildlife Service published a document in the **Federal Register** of February 15, 2005, concerning request for comments on an incidental take permit application by Triview Metropolitan District and Forest Lakes Metropolitan District, which includes a Low-Effect Habitat Conservation Plan for the Preble's meadow jumping mouse, *Zapus hudsonius preblei,* federally-listed as threatened, through loss and modification of its habitat associated with construction of a new sanitary sewer line extension connecting to an existing sewer line, a non-potable water reuse line, a secondary sewer line, and a new dirt access road into the Upper Monument Creek Wastewater Treatment Facility on Jackson Creek, El Paso County, Colorado. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Spagnuolo, (303) 275–2370.

Correction

In the **Federal Register** of February 15, 2005, in FR Doc. 05–2850, on page 7754, in the second column, correct the ''Dates'' caption to read:

DATES: Written comments should be received on or before March 17, 2005.

Dated: February 18, 2005.

Richard A. Coleman,

Acting Regional Director, Denver, Colorado.

[FR Doc. 05–3749 Filed 2–25–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Yakima River Basin Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Cancellation of meeting due to a lack of a quorum.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Yakima River Basin Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior, cancelled a public meeting. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary of the Interior and Washington State on the structure, implementation, and oversight of the Yakima River Basin Water conservation Program.

DATES: Wednesday, February 23, 2005, 9 a.m.–4 p.m.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. James Esget, Manager, Yakima River Basin Water Enhancement Project, 1917 Marsh Road, Yakima, Washington 98901; 509–575–5848, extension 267.

SUPPLEMENTARY INFORMATION: The purpose of the meeting would have been to review the staff reports requested at the last meeting and provide program oversite.

Dated: February 15, 2005.

James A. Esget,

Program Manager.

[FR Doc. 05–3751 Filed 2–25–05; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 13, 2005, Boehringer Ingelheim Chemical Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The company plans to manufacture the listed controlled substance in bulk for use in analysis and drug test standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than [60 days from publication].

Dated: February 17, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–3798 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 28, 2004, Green Acres Farms, Inc., Rebecca Marie Yale, 5532 Frances Avenue, Tacoma, Washington 98422, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed in Schedule I:

Drug	Schedule
Marijuana (7360)	I
Tetrahydrocannabinols (7370)	I

The applicant plans to manufacture (cultivate) Marijuana and Tetrahydrocannabinols in bulk for distribution. As documented in the applicant's response to the bulk manufacturer questionnaire submitted to the Drug Enforcement Administration (DEA), Green Acres Farms, Inc. stated its plans ''to support the medical marijuana market. It is our intention to manufacture, package and sell to the various authorized outlets within each state that has passed a law by its citizens to allow the medicinal use of marijuana.''

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than (60 days from publication).

Dated: February 17, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–3799 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(1), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952 (a)(2)(b) authorizing the importation of such substances, provide manufacturers holding registrations for the bulk manufacture of the substances an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on November 11, 2004, JFC Technologies, LLC, 100 West Main Street, PO Box 669, Bound Brook, New Jersey 08805, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Meperidine-Intermediate B (9233), a basic class of controlled substance listed in Schedule II.

The company plans to import the listed controlled substance for the manufacture of controlled substances in bulk for distribution to its customers.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file written comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than March 30, 2005.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: February 17, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–3800 Filed 2–25–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Nos. NRTL2–98, NRTL1–89]

NSF International, Expansion of Recognition; Application for Renewal of Recognition; Intertek Testing Services, NA, Interim Approval Subject to Review

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of NSF International (NSF) for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7. This notice also announces NSF's Application for renewal of its recognition and presents the Agency's preliminary finding on the renewal. This preliminary finding does not constitute an interim or temporary approval of the renewal application.

In an unrelated matter, we are adding one test standard, NFPA 72, Installation, Maintenance, and Use of Protective Signaling Systems, to the scope of recognition of Intertek Testing Services, NA (ITSNA), on an interim basis, subject to review.

DATES: *Recognition:* The expansion of recognition becomes effective on February 28, 2005 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while NSF remains recognized by OSHA as an NRTL. *Renewal:* Comments on the renewal of recognition must be received no later than March 15, 2005. *Comments on Interim Approval:* Comments on the interim approval for test standard NFPA 72 must be received no later than March 15, 2005.

You may submit comments in response to the renewal application and the interim approval portions of this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

Regular mail and express delivery service: Your comments must be postmarked by March 15, 2005.

Hand delivery and messenger service: Your comments must be received in the OSHA Docket Office by March 15, 2005. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Facsimile and electronic transmission: Your comments must be sent by March 15, 2005.

ADDRESSES: Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. NRTL2–98 or Docket No. NRTL1–89 (as applicable), Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket No. NRTL2–98 or Docket No. NRTL1–89 (as applicable), in your comments.

Internet access to comments and submissions: OSHA will place comments and submissions in response to this notice on the OSHA Web page *http://www.osha.gov*. Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.*, social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Webpage. Please contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision on the Expansion of Recognition

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of NSF International (NSF) as a Nationally Recognized Testing Laboratory (NRTL). NSF's expansion covers the use of an additional test standard and two supplemental programs. OSHA's current scope of recognition for NSF may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/nsf.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

NSF submitted an application, dated October 8, 2003 (*see* Exhibit 14), to expand its recognition to include one additional test standard. Prior to submitting this application, NSF submitted another application, dated July 31, 2003 (*see* exhibit 15) to include several additional programs within its current scope of recognition. The NRTL Program staff performed an on-site review (assessment) of NSF's NRTL facilities and in the on-site review

report, dated November 21, 2003 (*see* Exhibit 16), the program staff recommended a ''positive finding,'' which means a positive recommendation on the recognition to the Assistant Secretary.

OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on May 5, 2004 (69 FR 25144). The notice requested submission of any public comments by May 20, 2004. OSHA did not receive any comments pertaining to the application. However, the Agency deferred processing of the final notice for the expansion due to certain findings from a recent OSHA audit of the NRTL. These findings have been satisfactorily resolved permitting this notice to be processed.

The previous notice published by OSHA for NSF's recognition covered an expansion of recognition, which became effective on April 3, 2003 (68 FR 16311).

The current address of the NSF facility already recognized by OSHA is: NSF International, 789 Dixboro, Ann Arbor, Michigan 48105.

Final Decision and Order on the Expansion

The NRTL Program staff has examined the applications, the assessor's reports, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that NSF International has met the requirements of 29 CFR 1910.7 for expansion of its recognition. The expansion covers the test standard listed below and the use of the additional supplementary Programs 2 and 5, subject to the limitations and conditions, also listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of NSF, subject to these limitations and conditions.

Limitation

OSHA limits the expansion of recognition of NSF to testing and certification of products for demonstration of conformance to the following test standard. OSHA has determined that the standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

The designation and title of the above test standard was current at the time of the preparation of the notice of the preliminary finding.

Additional Programs

NSF has applied to use supplemental programs 2 and 5, based upon the criteria detailed in OSHA's March 9, 1995 **Federal Register** notice on the NRTL programs (60 FR 12980). This notice lists nine (9) programs, eight of which (programs 2 through 9—called the supplemental programs) an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. NSF's current scope already includes Programs 4, 8, and 9. OSHA's on-site review report on NSF's application for expansion indicates that NSF appears to meet the criteria for use of the following additional supplemental programs:

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 5: Acceptance of testing data from non-independent organizations.

Conditions

NSF must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to NSF's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If NSF has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

NSF must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, NSF agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

NSF must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

NSF will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

NSF will continue to meet the requirements for recognition in all areas where it has been recognized.

Notice of Renewal Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that NSF International (NSF) has applied for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL). NSF's renewal requests covers its existing scope of recognition. OSHA's current scope of recognition for NSF, but not yet including the expansion in this current notice, may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/nsf.html*.

Application for Renewal of Recognition

NSF International (NSF) initially received OSHA recognition as a Nationally Recognized Testing Laboratory on December 10, 1998 (63 FR 68309) for a five-year period ending on December 10, 2003. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. NRTLs submitting requests within this allotted time period retain their recognition during OSHA's renewal process. NSF has submitted a request, dated February 21, 2003 (see exhibit 14–1), to renew its recognition, within the allotted time period, and retains its recognition pending OSHA's final decision in this renewal process. NSF's existing scope of recognition consists of the facility listed above, and the test standards and supplemental programs listed below under *Renewal of Recognition*.

NSF seeks renewal of its recognition for the one site that OSHA currently includes within the NRTL's scope. NSF also seeks renewal of its recognition for testing and certification of products for demonstration of conformance to the following test standards, which OSHA has recognized for NSF and includes the expansion in this current notice.

UL 73 Motor-Operated Appliances
UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
UL 197 Commercial Electric Cooking Appliance
UL 399 Drinking-Water Coolers
UL 466 Electric Scales
UL 471 Commercial Refrigerators and Freezers
UL 514B Fittings for Cable and Conduit

UL 514C Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
UL 514D Cover Plates for Flush-Mounted Wiring Devices
UL 541 Refrigerated Vending Machines
UL 563 Ice Makers
UL 621 Ice Cream Makers
UL 651 Schedule 40 and 80 PVC Conduit
UL 651A Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 651B Continuous Length HDPE Conduit
UL 749 Household [Electric] Dishwashers
UL 751 Vending Machines
UL 763 Motor-Operated Commercial Food Preparing Machines
UL 921 Commercial Electric Dishwashers
UL 982 Motor-Operated Household Food Preparing Machines
UL 1081 Swimming Pool Pumps, Filters, and Chlorinators
UL 1453 Electric Booster and Commercial Storage Tank Water Heaters
UL 1563 Electric Spas, Equipment Assemblies, and Associated Equipment
UL 1795 Hydromassage Bathtubs
UL 1821 Thermoplastic Sprinkler Pipe and Fittings for Fire Protection
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

OSHA's recognition of NSF, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many UL test standards also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Programs and Procedures

The renewal would include NSF's continued use of supplemental programs 2, 4, 5, 8, and 9, two of which are being added to NSF's scope in this current notice.

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrical Commission Certification Body (IEC–CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Preliminary Finding on the Renewal

NSF has submitted an acceptable request for renewal of its recognition as an NRTL. Our review of the application file, the on-site review reports, and other pertinent documents, indicates that NSF can meet the requirements, as prescribed by 29 CFR 1910.7, for the renewal of the one site and the test standards and programs listed above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether NSF has met the requirements of 29 CFR 1910.7 for the renewal of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. To consider a comment, OSHA must receive it at the address provided above (*see* **ADDRESSES**), no later than the last date for comments (*see* **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above no later than the last date for comments. You must include your reason(s) for any request for extension. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of NSF's requests, the on-site review report, other exhibits, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL2–98, the permanent record of public information on NSF's recognition.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant NSF's renewal request. The Assistant Secretary will make the final decision on granting the renewal and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Interim Approval Subject to Review

Intertek Testing Services NA, Inc. (ITSNA), applied for expansion of its recognition, which OSHA approved on November 4, 2003 (68 FR 62479). One of the test standards (*See* Exhibit 43 in Docket No. NRTL1–89) that NSF requested was NFPA 72, Installation, Maintenance, and Use of Protective Signaling Systems. ITSNA has the necessary testing capability, but the standard was inadvertently excluded from the expansion. Therefore, OSHA is expanding the recognition of ITSNA to include this standard, but the Agency will provide interested parties an opportunity to comment since this standard was excluded in the notices that we published for the expansion. Comments submitted by interested parties must be received no later than March 15, 2005 at the address listed above. If we receive comments, OSHA will determine whether additional procedures are necessary.

Signed at Washington, DC this 18th day of February, 2005.

Jonathan L. Snare,

Acting Assistant Secretary.

[FR Doc. 05–3772 Filed 2–25–05; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 030–19478]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Maxim Technologies, Inc., St. Louis, MO

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle, Illinois 60532–4352; telephone (630) 829–9870; or by e-mail at *pjl2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to terminate Material License No. 24–17152–02 issued to Maxim Technologies, Inc. (the licensee). The license amendment will approve the licensee's St. Louis, Missouri facility for unrestricted use.

The NRC staff prepared an Environmental Assessment in support of this license action in accordance with the requirements of Title 10, Code of Federal Regulations Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Based on the Environmental Assessment, the NRC concluded that a Finding of No Significant Impact is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed amendment is to terminate the licensee's byproduct material license and release its St. Louis, Missouri facility for unrestricted use. On October 14, 1983, the NRC authorized the licensee to conduct radiochemical analysis of environmental samples at the facility located at 12161 Lackland Road, St. Louis, Missouri. On April 17, 1989, the NRC authorized the unrestricted release of the 12161 Lackland Road, St. Louis, Missouri facility for unrestricted use and approved the licensee's current facility located at 1908 Innerbelt Business Center Drive, St. Louis, Missouri. On November 17, 2004, Maxim Technologies, Inc. submitted a license amendment requesting termination of its license and requesting release of its facility for unrestricted use. The licensee conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in 10 CFR part 20, subpart E, ''Radiological Criteria for License Termination,'' for unrestricted release. The NRC staff examined the licensee's request and the information provided in support of its request, including the surveys performed to demonstrate compliance with 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use,'' to ensure that the NRC's decision is protective of the public health and safety and the environment.

III. Finding of No Significant Impact

On the basis of the Environmental Assessment, NRC concluded that there are no significant environmental impacts from the proposed amendment and determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: ML043240226 for the November 17, 2004, amendment request, and ML050460378 for the Environmental Assessment summarized above. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 15th day of February 2005.

For the Nuclear Regulatory Commission.

Jamnes L. Cameron,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. 05–3735 Filed 2–25–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on April 20 and 21, 2005. A sample of agenda items to be discussed during the public sessions includes: (1) Status of Rulemaking: Pt. 35 Training and Experience; (2) Status and Update: Redefining Medical Events; (3) Case Experience in Using I–125 Seeds as Markers; (4) FDA Radiation Dose Limits for Human Research Subjects Using Certain Radiolabeled Drugs, and (5) Establishing Guidance on Exceeding Dose Limits for Members of the Public who would serve as Caregivers to Persons undergoing Radiopharmaceutical Therapy. To review the agenda, see *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda/* or contact *arm@nrc.gov.* Furthermore, the ACMUI will brief the Commission regarding its activities, on April 20, 2005.

Purpose: Discuss issues related to 10 CFR 35, Medical Use of Byproduct Material.

Dates and Times for Public Meetings: April 20, 2005, from 8 a.m. to 5 p.m.; and April 21, 2005, from 10 a.m. to 5 p.m.

Address for Public Meetings: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852. The precise room number where the meeting will be held will be announced in reader boards located throughout the hotel.

Date and Time for Closed Session Meeting: April 21, 2005, from 8 a.m. to 10 a.m. This session will be closed so that NRC staff can brief the ACMUI on sensitive information regarding protective security measures, and so that the ACMUI can discuss internal personnel matters.

Address for Closed Session Meeting: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852. The precise room number where the meeting will be held will be announced in reader boards located throughout the hotel.

Date and Time for Commission Briefing: April 20, 2005, from 9:30 a.m. to 11:30 a.m.

Address for Commission Briefing: U.S. Nuclear Regulatory Commission, One White Flint North Building, Commissioners' Hearing Room 1G16, 11555 Rockville Pike, Rockville, MD, 20852–2738.

FOR FURTHER INFORMATION CONTACT: Angela R. McIntosh, telephone (301) 415–5030; e-mail *arm@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the

meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Angela R. McIntosh, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, 11545 Rockville Pike, Rockville, MD 20852–2738. Submittals must be postmarked by April 1, 2005, and must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*http://www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about July 20, 2005. This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations,* part 7.

4. Attendees are requested to notify Angela R. McIntosh at (301) 415–5030 of their planned attendance if special services, such as for the hearing impaired, are necessary.

Dated at Rockville, Maryland, this 22nd day of February, 2005.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 05–3734 Filed 2–25–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Availability of the Office of Nuclear Regulatory Research Draft Report Entitled, ''Station Blackout Risk Evaluation for Nuclear Power Plants,'' for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of the Office of Nuclear Regulatory Research draft report entitled, ''Station Blackout Risk Evaluation for Nuclear Power Plants,'' and request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the Office of Nuclear Regulatory Research draft report entitled, ''Station Blackout Risk Evaluation for Nuclear Power Plants.''

DATES: Comments on this document should be submitted by April 15, 2005. Comments received after that date will be considered to the extent practicable. To ensure efficient and complete comment resolution, comments should include references to the section, page, and line numbers of the document to which the comment applies, if possible.

ADDRESSES: Members of the public are invited and encouraged to submit written comments to Michael Lesar, Chief Rules and Directives Branch, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments attention to Michael Lesar, 11545 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Comments may also be sent electronically to: *NRCREP@nrc.gov.*

This document is available at the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* under Accession No. ML050140399, and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. The PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; e-mail *PDR@NRC.GOV.*

FOR FURTHER INFORMATION CONTACT: Dale M. Rasmuson, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–7571, e-mail: *dmr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Draft Report Entitled, ''Station Blackout Risk Evaluation for Nuclear Power Plants''

This report is an update of several previous reports analyzing the risk from loss of offsite power and subsequent station blackout events at U.S. commercial nuclear power plants. The risk measure used is core damage frequency. Standardized plant analysis risk (SPAR) models developed by the U.S. Nuclear Regulatory Commission, covering the 103 operating commercial nuclear power plants, were used to evaluate the risk. Core damage frequency results indicating contributions from station blackout scenarios and other loss of offsite power scenarios are presented for each of the 103 plants, along with plant class and industry averages. In addition, a comprehensive review of emergency diesel generator performance was performed to obtain current estimates for input to the SPAR models. Overall results indicate that core damage frequencies for loss of offsite power and station blackout are lower than previous estimates. Contributing to this risk reduction is an improvement in emergency diesel generator performance.

The NRC is seeking public comment in order to receive feedback from the widest range of parties and to ensure that all information relevant to developing this document is available to the NRC staff. This document is issued for comment only and is not intended for interim use. The NRC will review public comments received on the document, incorporate suggested changes as necessary, and issue the final report for use. The NRC will review public comments received on the document, incorporate suggested changes as necessary, and issue the final report for use.

Dated at Rockville, Maryland, this 16th day of February, 2005.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 05–3736 Filed 2–25–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. IA–2360; File No. S7–30–04]

RIN 3235–AJ25

Registration Under the Advisers Act of Certain Hedge Fund Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Notice of OMB approval of collections of information.

FOR FURTHER INFORMATION CONTACT: Vivien Liu, Senior Counsel, Office of Investment Adviser Regulation, Division of Investment Management, (202) 551–6787, at the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget has approved the changes to collection of information requirements described in Registration Under the Advisers Act of Certain Hedge Fund Advisers.[1] These collections are titled ''Form ADV'' (OMB Control No. 3235–0049); ''Form

[1] Investment Advisers Act Rel. No. 2333 (Dec. 2, 2004) [69 FR 72054 (Dec. 10, 2004)].

ADV-NR'' (OMB Control No. 3235–0240); ''Form ADV-W and Rule 203–2'' (OMB Control No. 3235–0313); ''Rule 203–3 and Form ADV-H'' (OMB Control No. 3235–0538); ''Rule 204–2'' (OMB Control No. 3235–0278); ''Rule 204–3'' (OMB Control No. 3235–0047); ''Rule 204A–1'' (OMB Control No. 3235–0596); ''Rule 206(4)–2'' (OMB Control No. 3235–0241); ''Rule 206(4)–3'' (OMB Control No. 3235–0242); ''Rule 206(4)–4'' (OMB Control No. 3235–0345); ''Rule 206(4)–6'' (OMB Control No. 3235–0571); and ''Rule 206(4)–7'' (OMB Control No. 3235–0585).

Dated: February 22, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–3725 Filed 2–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26763; 812–13037]

Emerging Markets Growth Fund, Inc., et al.; Notice of Application

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(3)(A) and (D) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

DATES: February 22, 2005.

Summary of Application: The order would permit Emerging Markets Growth Fund, Inc. (the ''Fund'') to invest in an affiliated investment vehicle, Capital International Private Equity Fund IV, L.P. (the ''Partnership'').

Applicants: The Fund, the Partnership, Capital International Investments IV, L.P. (the ''General Partner''), Capital International Investments IV, LLC (''CII LLC''), Capital International, Inc. (the ''Manager''), Capital Group International, Inc. (''CGII''), and CGPE IV, L.P. (''CGPE'').

Filing Dates: The application was filed on November 10, 2003 and amended on January 21, 2005. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 22, 2005, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth, NW., Washington, DC 20549–0609. Applicants, c/o Capital International, Inc., 11100 Santa Monica Boulevard, Los Angeles, CA 90025.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870 or Todd F. Kuehl, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund, a Maryland corporation, is an open-end management investment company registered under the Act. The Fund's shares are registered under the Securities Act of 1933. The Fund's investment objective is to seek long-term capital growth by investing in equity securities of issuers in developing countries. The Fund may invest up to 10% of its assets in developing country securities that are not readily marketable. The Fund currently invests in nine private equity funds that invest in various regions globally and that are sponsored and advised by entities unaffiliated with the Manager.[1]

2. The Fund operates as an open-end interval fund under an exemptive order received from the Commission.[2] Since January 1, 1999, the Fund has limited new investors in the Fund to those who are ''qualified purchasers,'' within the meaning of section 2(a)(51) of the Act.

3. The Partnership is organized as a limited partnership under the laws of Delaware. The Partnership relies on the exception from the definition of investment company in section 3(c)(7) of the Act. The investment objective of the Partnership is to seek long-term capital appreciation through privately negotiated and equity-related investments (''Equity Investments'') primarily in emerging market companies.[3] The General Partner of the Partnership is a Delaware limited partnership, wholly-owned by CGII and the Manager.[4] CGII is a wholly-owned subsidiary of The Capital Group Companies, Inc. (''Capital Group''). The General Partner will make a capital commitment to the Partnership equal to at least the lesser of 5% of the aggregate commitments of the Partnership or U.S. $50 million.[5]

4. The Fund proposes to invest in the Partnership an amount not exceeding the lesser of $75 million (less than 1% of the Fund's total net assets as of June 30, 2004) or 10% of all the Partnership's interests (''Proposed Investment''). Applicants state that investing through the Partnership in Equity Investments would enable the Fund to achieve greater diversification by participating in many more investments than would be the case if the Fund invested directly in Equity Investments. In addition, applicants state that, given the Fund's current fee and expense structure, and the resource-intensive nature of the investment process for Equity Investments, it is not cost-effective for the Fund to invest directly in Equity Investments on a diversified basis. The Fund's board of directors (the ''Board''), including a majority of the directors who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Directors''), has authorized the Proposed Investment. Of the Fund's thirteen member Board, nine are Independent Directors.[6] Of the nine Independent Directors, none is or will be a direct investor in CGPE, and eight

[1] None of the Fund's current commitments to any single private equity fund exceeds 1% of the Fund's net assets.

[2] *Emerging Markets Growth Fund, Inc., et al.,* Investment Company Release Nos. 23433 (Sept. 11, 1998) (notice) and 23481 (Oct. 6, 1998) (order).

[3] The Partnership may also invest up to 20% of its aggregate capital commitments in companies that have their primary business activities in developed markets outside the United States.

[4] The general partner of the General Partner is CII LLC and the limited partners consist of certain employees (the ''Private Equity Investment Officers'') of the Manager or one of its affiliated companies.

[5] CGPE, a fund established by an affiliate of the General Partner for the benefit of its employees, will co-invest with the Partnership on a pro rata basis in accordance with their respective capital commitments. CGPE's general partner is CII LLC and its limited partners are the ''Associates''.

[6] The Fund must satisfy the fund governance standards as defined in Rule 0–1(a)(7) under the Act by January 15, 2006 as a condition to the order. The Fund is currently considering approaches to increase the percentage of independent directors to meet the requirements of Rule 0–1(a)(7) and is in the process of defining the role of independent chairman and identifying potential candidates to serve as chairman of the Board.

are neither directors nor officers of any investor in the Partnership.

5. The Partnership has an advisory board comprised exclusively of representatives of current limited partners (together with future limited partners, ''Limited Partners'') that have a capital commitment of at least $40 million to the Partnership and other Limited Partners that are selected by the General Partner (''Advisory Committee''). A representative of the Fund, who is an Independent Director of the Fund and is not otherwise affiliated with the Partnership or any of the Limited Partners, will become a member of the Advisory Committee if the requested relief is granted. The Advisory Committee is responsible for, among other things: (a) Providing advice and counsel to the Partnership and the General Partner in connection with potential conflicts of interest and other matters relating to the Partnership as may be requested by the General Partner or as provided in the partnership agreement, as modified by side letters (''Partnership Agreement''); and (b) approving certain valuation determinations of the Partnership's assets or interests.

6. The Manager, a wholly-owned subsidiary of CGII, serves as investment adviser to the Fund and the Partnership and is registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Manager will waive its management fee, including administrative fees, with respect to the Fund's net assets represented by the investment in the Partnership. Specifically, the Fund's aggregate net assets will be adjusted downward by the amount invested in the Partnership prior to determining the Manager's fee.

7. The Manager is responsible for all overhead expenses and other direct and indirect routine administrative expenses incurred by the Manager in connection with identifying investments for the Partnership and all direct and indirect routine administrative expenses of the Partnership incurred in connection with managing the Partnership following the initial closing, which occurred on October 7, 2003. For its services, the Manager receives a management fee throughout the term of the Partnership. In addition, the Manager, as the managing member of the general partner of the General Partner, will be entitled to receive certain fees that may be characterized as a ''performance fee.'' The Partnership is responsible for all expenses except routine administrative expenses incurred in connection with the operation of the Partnership.

8. Each Limited Partner must execute a subscription agreement (''Subscription Agreement'') to invest in the Partnership. The term of the Partnership is ten years from the final closing, which occurred on June 25, 2004, but the General Partner may extend the term for a one-year period at its discretion and for up to two additional years with the consent of the Advisory Committee. Limited Partners generally may not withdraw from the Partnership nor transfer any of their interests, rights, or obligations under the Partnership, except with the express written consent of the General Partner.[7]

9. All Limited Partners that enter into the Partnership Agreement after the first closing date will make a capital contribution to the Partnership within five business days of the date of their admission so that the percentage of their capital commitment that is contributed to the Partnership is equal to the percentage of the other Limited Partners' and General Partner's (together, the ''Partners'') capital commitments (a ''Catch-up Contribution''). Any Limited Partner, other than the Fund, that is admitted to the Partnership after the fifteenth business day following the first closing date will be required to pay to all previously admitted Partners (in accordance with their respective percentage interests) an additional amount equal to a 1% monthly rate on the Catch-up Contribution from the date capital contributions were made by the previously admitted Partners to the date of its admission (the ''Additional Amount''). The Additional Amount which the Fund will be required to pay on its admission will be an additional amount on its Catch-up Contribution at a rate equal to the then prime rate plus 2% per year (or a pro rata portion thereof) from the date capital contributions were made by the previously admitted Partners to the date of the Fund's admission. In addition, all new Limited Partners (including the Fund) will be required to pay to the Manager their share of current management fees as well as management fees from the first closing date, or from such later date as the Manager may designate to the extent it waives its management fee for a certain period. With respect to management fees allocable to the period prior to its admission, each new Limited Partner will pay an additional amount on the allocable amount of management fees at the rate of the then prime rate plus 2% per year (or a pro rata portion thereof) from the date the management fees were made by the previously admitted Partners to the date of its admission. Any such retroactive management fee allocated to the Fund will be credited against the management fees it pays to the Manager.

10. Applicants request relief to permit: (a) The Proposed Investment; (b) the General Partner to invest as a general partner in the Partnership under the terms and conditions of the Partnership Agreement; (c) any investor in the Fund who in the future may become an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Fund by virtue of the investor's ownership of 5% or more of the Fund's outstanding securities (''Future Affiliates'') and any affiliated person of a Future Affiliate (also, ''Future Affiliates''), to invest as a Limited Partner in the Partnership under the terms and conditions of the Partnership Agreement and the Subscription Agreement; (d) the Manager, as investment adviser to the Fund and the Partnership, to effect the transactions described above in (a); (e) CII LLC and the certain employees of the Manager or one of its affiliated companies (''Private Equity Investment Officers'') to exercise ownership rights in the General Partner and to invest in the Partnership indirectly through their ownership of the General Partner; (f) the Manager and CGII to exercise ownership rights in CII LLC and to invest in the Partnership indirectly through their ownership in CII LLC; (g) CII LLC and the Associates to invest and exercise ownership rights in CGPE; (h) each of the applicants, current and future Limited Partners, and the Future Affiliates to exercise its rights and fulfill its obligations under the Partnership Agreement and Subscription Agreement; and (i) any officer, director, or employee of the Fund or of any affiliated person of the Fund to participate as a member of the Advisory Committee of the Partnership and to exercise their rights and fulfill their obligations with respect to the Advisory Committee in accordance with the terms and conditions of the Partnership Agreement.

11. Applicants also request relief to allow the Limited Partners and any Future Affiliates not to be considered affiliated persons, or affiliated persons of affiliated persons, of the Fund, either because: (a) the Limited Partners (including Future Affiliates) are ''partners'' or ''copartners'' of the Fund in the Partnership; or (b) they own (or

[7] Notwithstanding the foregoing, for regulatory compliance reasons, Limited Partners that are subject to fiduciary obligations under the Employee Retirement Security Act of 1974, as amended (''ERISA'') (the ''ERISA Limited Partners''), may withdraw from the Partnership in the event it becomes reasonably likely that the assets of the Partnership are deemed to be ''plan assets'' under ERISA rules and regulations.

are deemed to own) 5% or more of the Partnership's outstanding voting securities.

Applicants' Legal Analysis

A. Section 2(a)(3)

1. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person holding 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are held by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person; (d) any officer, director, partner, copartner, or employee of the other person; and (e) any investment adviser to an investment company or member of an advisory board to an investment company (collectively, the ''first-tier affiliates'').

2. The Manager, as the investment adviser to the Fund and the Partnership and as the manager of the General Partner, is a first-tier affiliate of each. The General Partner would be a first-tier affiliate of the Fund. The Manager and CGII are members of CII LLC, and the Private Equity Investment Officers and CII LLC are the partners of the General Partner. Applicants state that the General Partner may arguably be controlled by each of these entities, and the Partnership is likely controlled by the General Partner, perhaps making the Manager, CGII, CII LLC and the Private Equity Investment Officers first-tier affiliates of the Partnership and, hence, second-tier affiliates of the Fund. Applicants also state that because the Manager is the managing member of the general partner of CGPE, the Partnership and CGPE are arguably under common control, making CGPE a first-tier affiliate of the Partnership and a second-tier affiliate of the Fund.

3. Applicants state that each Limited Partner who owns 5% or more of the interests in the Partnership, to the extent that the interests are deemed voting securities, may be a first-tier affiliate of the Partnership. Further, applicants state that because the Fund also will own more than 5% of the interests in the Partnership if the requested relief is granted, it also may be a first-tier affiliate of the Partnership. Therefore, each other Limited Partner could be a second-tier affiliate of the Fund. Applicants also state that each Limited Partner would, absent exemptive relief, be a first-tier affiliate of every other Partner in the Partnership, including the Fund, making the affiliated persons of each Limited Partner second-tier affiliates of the Fund. In addition, applicants state that some Associates may be directors, officers, or employees of the Manager or the Fund, arguably making them first- or second-tier affiliates of the Fund.

4. The Fund requests an exemption under section 6(c) from sections 2(a)(3)(A) and (D) so that Limited Partners in the Partnership who are not otherwise first- or second-tier affiliates of the Fund would not, solely by reason of their status as Limited Partners or 5% holders of the Partnership's interests, be deemed to be first- or second-tier affiliates of the Fund. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. Applicants state that the requested relief meets the standards of section 6(c) and would relieve certain Limited Partners and their affiliated persons (and the Fund) of the burden of monitoring for compliance with the Act in connection with their independent and legitimate business and investment activities.

B. Section 17(a)

1. Section 17(a) of the Act makes it unlawful for any first- or second-tier affiliate of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. As noted above, applicants state that because the Partnership may be deemed to be a first- or second-tier affiliate of the Fund, section 17(a) may prohibit the Partnership from selling a limited partnership interest in the Partnership to the Fund. In addition, applicants state that because the Limited Partners and the Future Affiliates may be deemed to be first- or second-tier affiliates of the Fund, section 17(a) may prohibit the Limited Partners and the Future Affiliates from acting in accordance with the terms of the Partnership Agreement and the Subscription Agreement.

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Applicants request relief under sections 6(c) and 17(b) to permit the Fund to participate in the Partnership, and to permit the Limited Partners and the Future Affiliates to act in accordance with the terms of the Partnership Agreement and the Subscription Agreement.

3. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that each Limited Partner will participate in the Partnership in proportion to each Limited Partner's commitment, and each Limited Partner will share pro rata in the costs, risks, and any profits earned in proportion to its investment, except as noted above. In addition, applicants state that the proposed investment by the Fund in the Partnership is consistent with the Fund's investment objective and policies as recited in the Fund's registration statement. Further, applicants state that the proposed investment is consistent with the general purposes of the Act.

4. Applicants state that investing in the Partnership will enable the Fund to further diversify its portfolio and to obtain exposure to Equity Investments while reducing investment transaction costs. Applicants state that Equity Investments are typically direct investments in closely-held enterprises that have either limited or no securities publicly outstanding and about which there exists little or no publicly available information. Accordingly, the process of investing in Equity Investments requires detailed on-site investigation of the enterprise and complex negotiations regarding the terms of the potential investment.

5. As noted above, all Limited Partners other than the Fund that are admitted after the fifteenth business day following the first closing date will be required to pay an Additional Amount equal to a 1% monthly rate on their Catch-up Contribution. The Fund will be required to pay an Additional Amount on its Catch-up Contribution at a rate equal to the then-prime rate, plus 2% per year. If the prime rate were to exceed 10% prior to the time the Fund is admitted into the Partnership, the Fund would pay an Additional Amount calculated at a higher rate than that rate used to calculate the Additional Amounts for the other Limited Partners. The Fund will be the only investor that will be allowed to enter into the Partnership after the final closing date. Notwithstanding that the Fund may have to pay a higher Additional Amount than that applicable to other Limited Partners, applicants believe that the consideration to be paid by the Fund is reasonable and fair and does not involve

overreaching. In exchange for the ability to gain admission to the Partnership after the final closing date (which occurred on June 25, 2004), to which all other Limited Partners are subject, applicants believe that it is reasonable and fair for the Fund to bear the risk of fluctuations in the prime rate between the final closing date and the date the Fund is admitted into the Partnership.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any first- or second-tier affiliate of a registered investment company, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates. As noted above, the Partnership, the General Partner, the Limited Partners, the Future Affiliates, the Manager, CII LLC, the Private Equity Investment Officers, CGPE, the Associates, CGII, and Capital Group may be first- or second-tier affiliates of the Fund. Accordingly, an investment in the Partnership by the Fund may represent a joint arrangement among these entities for the purposes of section 17(d).

2. Rule 17d–1 under the Act permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment company is on a basis different from or less advantageous than that of the other participants.

3. Applicants believe that the proposed investment by the Fund in the Partnership satisfies the standards of rule 17d–1. Applicants state that the Fund will participate in the Partnership on terms that are comparable to the terms applicable to the other Limited Partners. Furthermore, both the profits to be earned and the risks to be incurred will be allocated among each of the Limited Partners pro rata, in direct proportion to each Limited Partner's investment. With regard to the payment by the Fund of an Additional Amount that could be at a rate higher than that for the other Limited Partners, applicants state that the fund would receive a corresponding benefit not offered to other Limited Partners, namely the ability to participate in the Partnership after the final closing date.

Applicants' Conditions

Applicants agree that any Commission order granting the requested relief will be subject to the following conditions:

1. The Manager will waive its management fee (which includes administrative fees) payable by the Fund with respect to the Fund's net assets represented by the Fund's Proposed Investment in the Partnership. To effectuate this waiver, Fund assets represented by the Partnership interests purchased by the Fund under the Proposed Investment will be excluded from the net assets of the Fund in the calculation of the management fee. As such waiver relates to the Manager's fee schedule, any Fund assets invested in the Partnership will be excluded from the Fund's assets before any fee calculation is made; thus, the Fund's aggregate net assets will be adjusted by the amount invested in the Partnership prior to determining the fee based on the Manager's fee schedule (the amount waived pursuant to this procedure shall be defined as the ''Reduction Amount'' for purposes of Condition No. 4, below). In addition, the Manager will credit against any future management fees payable to it in conjunction with the management of the Fund's assets, the amount of management fees paid previously by the fund with respect to the assets representing the Fund's Proposed Investment for the period between January 1, 2004 (the date management fees commenced with respect to the Partnership) and the date that the Fund is admitted to the Partnership, plus such Additional Amounts on such assets calculated as set forth in the Application. Such credit shall be applied to the management fee paid by the Fund for management of its assets after exclusion of the Fund's assets represented by such Partnership interests.

2. Any fees payable by the Fund to the Manager so excluded in connection with the Proposed Investment, as described herein, will be excluded for all time, and will not be subject to recoupment by the Manager or by any other investment adviser at any other time.

3. The Fund's Proposed Investment in the Partnership will be no more than U.S. $75 million.

4. If the Manager waives any portion of its fees or bears any portion of its expenses in respect of the Fund (an ''Expense Waiver''), the adjusted fees for the Fund (gross fees minus Expense Waiver) will be calculated without reference to the Reduction Amount. Adjusted fees then will be reduced by the Reduction Amount. If the Reduction Amount exceeds adjusted fees, the Manager will reimburse the Fund in an amount equal to such excess.

5. The Fund's Proposed Investment in the Partnership will not be subject to a sales load, redemption fee, distribution fee analogous to those adopted in accordance with Rule 12b–1 under the Act by an investment company registered under the Act, or service fee (analogous to those defined in Rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.).

6. The Fund's Proposed Investment in the Partnership will be in accordance with the Fund's investment restrictions and will be consistent with its policies as recited in its registration statement.

7. The Fund's Board will satisfy the fund governance standards as defined in rule 0–1(a)(7) under the Act by the rule's compliance date.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–791 Filed 2–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Maximum Dynamics, Inc.; Order of Suspension of Trading

February 24, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Maximum Dynamics, Inc. (''Maximum'') because of questions regarding the accuracy of assertions to investors by Maximum in its most recent periodic filing (Form 10–QSB, filed on December 3, 2004), and a press release dated January 10, 2005, concerning, among other things: (1) The reason why Maximum has experienced delays in fulfilling orders of its Tagnet product offering; and (2) that Maximum has signed an agreement that will enable it to offer its point-of-sale solutions to the prepaid market in Mexico and the United States.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in securities related to the above company.

Therefore, *it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST on February 24, 2005 through 11:59 p.m. EST on March 9, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–3901 Filed 2–25–05; 11:36 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51235; File No. SR–CBOE–2004–73]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Restrict a Designated Primary Market-Maker's Ability To Charge a Brokerage Commission

February 22, 2005.

I. Introduction

On November 12, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to amend its rules relating to a designated primary market maker's (''DPMs'') ability to charge a brokerage commission. The proposed rule change was published for comment in the **Federal Register** on December 15, 2004.[3] The Commission received two comments on the proposal.[4] This order approves the proposed rule change.

II. Description

The CBOE proposes to clarify that DPMs cannot charge a brokerage commissions on orders for which they do not perform an agency function, by amending the CBOE's rules to specifically prohibit DPMs from charging a brokerage commission for an order, or the portion of an order, (1) for which the DPM was not the executing broker, which includes any portion of the order that is automatically executed through an Exchange system; (2) that is automatically cancelled; or (3) that is not executed, and not cancelled.

The CBOE also proposes to make a technical clarification to current CBOE Rule 8.85(b)(iv), which currently prohibits a DPM from charging a brokerage commission for an order in which the DPM acts as both principal and agent. The proposed change would clarify that a DPM can charge a brokerage commission for the part of any order for which it acts as the executing broker but not as the executing principal.

III. Summary of Comments

The Commission received two comment letters from DPMs on the Exchange regarding the proposal. One commenter, Susquehanna,[5] stated that it does not object to the proposed rule change and that it ''conceptually agree[s]'' that DPMs cannot charge a brokerage commission on orders for which they do not perform an agency function. However, Susquehanna argued that Section 6(e) of the Act [6] prohibits the CBOE from requiring a DPM to charge zero commissions on orders for which the DPM has agency or order handling responsibilities. Accordingly, in Susquehanna's view, the CBOE should be required to expressly provide that DPMs never have any agency or order handling responsibilities towards the orders for which they are prohibited from charging a commission.

The second commenter, Citadel,[7] supported the proposed rule change, stating that ''DPMs should not be free unilaterally to impose charges for their regulatorily-mandated functions'' and that ''the ability to impose non-uniform charges not reflected in market maker quotes would be destructive to best execution and the Intermarket Linkage system because quotes that appear to be the NBBO [National Best Bid or Offer] may not really be the best if one must pay an extra charge to access them.'' Citadel also suggested that the CBOE further clarify in the rule text that DPMs may not charge a brokerage commission for ''any portion of an order for which the DPM acted in its capacity as a DPM.''

In response to Citadel's comments, the CBOE noted that a DPM is a ''member organization that is approved by the Exchange to function in allocated securities as a Market-Maker * * * as a Floor Broker (as defined in Rule 6.70), and as an Order Book Official. * * *'' [8] In addition, since DPMs also may be Floor Brokers, the CBOE noted that most DPMs maintain brokerage staff who perform agency functions with respect to certain orders and thus such DPMs should be allowed to charge brokerage commissions on those orders, which they represent in an agency capacity. Further, the CBOE noted that the proposal clarifies that a DPM may not charge a commission for orders when it does not act as agent.

IV. Discussion

The Commission has carefully reviewed the proposed rule change, the comment letters received, and the CBOE's response, and finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [9] and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) and 6(e)(1) of the Act,[11] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers, or to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members. The Commission also believes that the proposed rule change is consistent with Section 11(A)(a)(1)(C) of the Act [12] which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50821 (December 8, 2004), 69 FR 75092 (''Notice'').

[4] *See* letter from Todd Silverberg, General Counsel, Susquehanna Investment Group (''Susquehanna''), to Jonathan G. Katz, Secretary, Commission, dated January 5, 2005 (''Susquehanna Letter''); and letter from Matthew Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC (''Citadel''), to Jonathan G. Katz, Secretary, Commission, dated January 8, 2005 (''Citadel Letter'').

[5] *See* Susquehanna Letter, *supra* note 4.

[6] 15 U.S.C. 78f(e). Susquehanna noted that Section 6(e) of the Act requires the Commission to follow special procedures when reviewing proposals from exchanges to fix commissions. *See* Susquehanna Letter, *supra* note 4.

[7] *See* Citadel Letter, *supra* note 4.

[8] *See* letter from James M. Flynn, Attorney II, CBOE, to Jonathan G. Katz, Secretary, Commission, dated February 3, 2005 (citing CBOE Rule 8.80).

[9] 15 U.S.C. 78f.

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The Commission notes that it previously approved a similar proposed rule change, filed by the New York Stock Exchange, Inc. (''NYSE'') to prohibit a specialist on the NYSE from charging ''floor brokerage'' (*i.e.,* a commission imposed on exchange floor brokers) for the execution of an order received by the specialist via the NYSE's automated order routing system, known as SuperDot. *See* Securities Exchange Act Release No. 42727 (April 27, 2000), 65 FR 26258 (May 5, 2000) (Approval of amendments to NYSE Rule 123B); 42694 (April 17, 2000), 65 FR 24245 (April 25, 2000) (Approval of extension of pilot program relating to NYSE Rule 123B); and 42184 (November 30, 1999), 64 FR 68710 (December 8, 1999) (Approval of pilot program relating to amendments to NYSE Rule 123B).

[11] 15 U.S.C. 78f(b)(5) and 78f(e)(1).

[12] 15 U.S.C. 78k–1(a)(1)(C).

to assure, among other things, economically efficient execution of securities transactions, and fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

The Commission believes that CBOE's proposal is reasonable because it prohibits a DPM from charging a customer a commission for an order executed without assistance or handling by the DPM or that is not executed at all. The Commission notes that Susquehanna suggested that Section 6(e)(1) of the Act [13] prohibits the Commission from approving a rule that limits the fees charged by DPMs with respect to orders for which DPMs have agency or order handling responsibilities. The Commission disagrees with this commenter and notes that the Commission has not viewed an SRO's limits on fees that its members may charge, even when the member is acting as agent, as inconsistent with Section 6(e) of the Act.[14]

Section 6(e) of the Act [15] was adopted by Congress in 1975 to statutorily prohibit the fixed minimum commission rate system. As noted in a report of the House of Representatives, one of the purposes of the legislation was to ''reverse the industry practice of charging fixed rates of commissions for transactions on the securities exchanges.'' [16] The fixed minimum commission rate system allowed exchanges to set minimum commission rates that their members had to charge their customers, but allowed members to charge more. CBOE's proposal, by contrast, does not establish a minimum commission rate, but instead prohibits commissions in circumstances in which the DPM is not handling the order or in which the order is not executed. Accordingly, the Commission does not believe that the CBOE's proposal to limit the fees charged by DPMs constitutes fixing commissions, allowances, discounts, or other fees for purposes of Section 6(e)(1) of the Act.[17]

In addition, CBOE's limits on fees that DPMs may charge applies only to members who choose to be DPMs on CBOE. Therefore, CBOE is not fixing fees generally; it is merely imposing a condition, which is consistent with the Act, on a member's appointment as a DPM. Finally, the Commission does not agree with Susquehanna that the CBOE must expressly provide that DPMs never have any agency obligations towards orders for which they are prohibited from charging a commission.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(5) and 6(e)(1) of the Act.[18]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–2004–73) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–786 Filed 2–25–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(e)(1).

[14] *See* Securities Exchange Act Release No. 49220 (February 11, 2004), 69 FR 7836 (February 19, 2004) (Order approving File No. SR–NASD–2003–128).

[15] 15 U.S.C. 78f(e).

[16] H.R. Rep. No. 94–123, 94th Cong., 1st Sess. 42 (1975).

[17] 15 U.S.C. 78f(e)(1).

[18] 15 U.S.C. 78f(b)(5) and 78f(e)(1).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51217; File No. SR–NYSE–2004–54]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the NYSE Constitution and the Adoption of an Independence Policy of the NYSE Board of Directors

February 16, 2005.

I. Introduction

On September 17, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement certain amendments to its Constitution. The proposed rule was published for comment in the **Federal Register** on January 14, 2005.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange has proposed amendments to its Constitution with respect to the new governance architecture that was approved by the Commission and implemented by the Exchange in December 2003.[4] The Exchange also has proposed an Independence Policy for its Board of Directors (''Board''), which contains standards that NYSE directors must meet to be considered independent.

The proposed changes to the NYSE Constitution are summarized below:

- The Board would have the flexibility to move up its annual meeting of members to make it closer to the end of the Exchange's fiscal year, which coincides with the calendar year, and also to give the Board more flexibility with respect to the timing necessary to report its director nominations to the Exchange's membership, but without reducing the current time period for members to propose nominations by petition.
- The Chief Executive Officer (''CEO'') would be recused from participating in any Board review of decisions made by Exchange staff, officers or committees.
- The CEO would be prohibited from requiring reviews of disciplinary decisions and would be recused from participating in Board reviews of any disciplinary decisions.
- In the event the Chairman of the Board is also not the CEO, the CEO would be permitted to serve as Chairman of the Board of Executives, to call meetings of the Board of Executives, and to determine when circumstances require shorter notice of meetings of the Board of Executives than otherwise provided for that group.
- Members of the Board of Executives would be barred from serving on the Hearing Board in light of their participation on the Regulation, Enforcement & Listing Standards Committee.
- The qualifications of the floor member representatives on the Board of Executives would be revised to include any individual, other than a specialist, who spends a substantial amount of time on the Exchange floor, in order to reflect the Exchange's entire non-specialist floor member constituency as it currently exists.
- The current requirement that the Board and the Board of Executives have

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51015 (January 11, 2005), 70 FR 2688.

[4] *See* Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003).

two plenary sessions a year would be replaced by a requirement that each member of the Board attend at least three Board of Executives meetings annually and the Chairman would make an Annual Report on the Exchange's activities solely to the Board of Executives.

- A reference to ''Nominating Committee'' would be revised to reflect the change in name to ''Nominating & Governance Committee.''
- The Nominating & Governance Committee no longer would be required to conduct succession planning with respect to the Exchange's Chairman, because the Board now decides whether to separate the offices of Chairman and CEO and then selects the Chairman, if it determines to separate those offices.
- An erroneous reference to ''Article VII, Section I'' is corrected to refer to ''Article VIII, Section 1.''

In addition to the changes to the NYSE Constitution, the Exchange also has proposed an Independence Policy for the Board. The Independence Policy would apply to all members of the Board and would require the Board to make an independence determination with respect to each director upon his or her nomination or appointment to the Board and thereafter as the Board considers advisable, but no less frequently than annually. A director would be independent only if the Board determined that the director has no material relationship with the Exchange. In making a determination of independence, the Board would have to consider the special responsibilities of a director in light of the status of the NYSE as a New York non-profit corporation, as a self-regulatory organization, and as a national securities exchange subject to the Commission's supervision, as well as the specific independence qualification standards set forth in the proposed policy. The Independence Policy sets forth standards when a director would not be independent as a result of a relationship with the Exchange, Exchange members, member organizations, non-member broker-dealers, or listed companies. Each director would be responsible for informing the Exchange promptly of any relationships that might bear on the determination of his or her independence. Any director who is no longer independent as a result of the existence of a relationship that violates the independence standards in the NYSE Constitution, or whom the Board determines is no longer independence under the Independence Policy, would be deemed to have tendered his or her resignation. Under Article IV, Section 2 of the NYSE Constitution, the Board is required to adopt specific standards relating to the independence determination, which are to be comparable to standards required of issuers listed on the Exchange, by effecting a rule change within the meaning of Section 19(b)(1) of the Act.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that, the proposed rule change is consistent with Section 6(b)(1) of the Act[6] which requires that the exchange be ''so organized and [have] the capacity to carry out the purposes of [the Act]'' and to ''enforce compliance by its members and persons associated with its members with the provisions of [the Act].'' The Commission also finds that, the proposed rule change is consistent with Section 6(b)(3) of the Act,[7] which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that it is designed, among other things, to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(7) of the Act,[9] which, among other things, requires that the rules of a national securities exchange provide a fair procedure for the disciplining of members and persons associated with members.

The Commission notes that the proposed changes to the NYSE Constitution would prohibit the CEO from participating in any Board review of decisions by Exchange staff, officers or committees; from requiring reviews of disciplinary decisions; and from participating in reviews by the Board of disciplinary decisions. The Commission also notes that the proposed NYSE Constitution changes would allow the CEO to preside over meetings of the Board of Executives; to call meetings of the Board of Executives; and to determine when circumstances require shorter notice of meetings of the Board of Executives than otherwise provided. The Commission believes that these changes are designed, in a manner consistent with the Exchange's governance architecture, to clarify the role of the CEO and to bolster the separation of the business and regulatory functions of the Exchange. The Commission finds that these NYSE Constitution revisions are consistent with the Act. Further, the proposed rule change would eliminate the Chairman as a subject of mandated succession planning for the Nominating & Governance Committee. In the Commission's view, this change is appropriate in light of the Board's authority to decide whether the offices of Chairman and CEO should be separated.

The Commission also notes that the proposed rule change would prohibit members of the Board of Executives from serving on the Exchange's Hearing Board in light of the fact that members of the Board of Executives currently serve on the Regulation, Enforcement & Listing Standards Committee, which has been delegated by the Board the responsibility to hear appeals of disciplinary matters considered by a Hearing Panel. The Commission notes that the Hearing Board would still consist of members and allied members of the Exchange who are not members of the Board or Board of Executives and registered employees and non-registered employees of members and member organizations. The Commission believes that prohibiting members of the Board of Executives from serving on the Hearing Board is consistent with the Act's requirements.

The Commission notes that the proposed rule change seeks to make several changes to the NYSE Constitution that would affect the administration of the Exchange. These changes include allowing the Board to schedule the annual meeting of members closer to the end of the Exchange's fiscal year; giving the Board more flexibility on the timing of

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(1).

[7] 15 U.S.C. 78f(b)(3).

[8] 15 U.S.C. 78s(b)(5).

[9] 15 U.S.C. 78s(b)(7).

submission of director nominations to the membership; and requiring Board members to attend at least three meetings of the Board of Executives annually instead of requiring two plenary sessions between the Board and the Board of Executives. While these changes are designed to provide the Board with greater flexibility in administering the affairs of the Exchange, particularly with respect to the annual meeting process, they require that the Board provide sufficient advance notice to members of the annual meeting to take into account the number of days for the filing of nomination petitions, the determination by the Board of petition candidates' eligibility, and notice to members of the annual meeting. In the Commission's view, these proposed changes are consistent with the Act. In addition, the Commission notes that the proposed rule change would allow the Board to appoint to the Board of Executives as a floor member representative any member, other than a specialist, who spends a substantial amount of time on the floor. Because this change is intended to reflect more accurately the entire constituency of floor members, other than specialists, who are eligible to serve on the Board of Executives, the Commission believes that this proposal is consistent with the Act.

Finally, the Commission notes that the NYSE has submitted an Independence Policy pursuant to the requirement of Article IV, Section 2 of the NYSE Constitution. This provision of the NYSE Constitution requires the Exchange to adopt standards for determining the independence of its directors, which are to be comparable to the standards required of the Exchange's listed issuers, and to file such standards with the Commission as a proposed rule change under Section 19(b)(1) of the Act.[10] The Commission believes that generally the NYSE's Independence Policy comports with the independence standards required of the Exchange's listed issuers, but the Exchange has tailored its policy to address its role as a self-regulatory organization and as a listed market.[11] The Commission recently proposed governance standards for national securities exchanges and registered securities associations, which, among other things, would require that a majority of the directors of an exchange or association be independent.[12] The SRO Governance Proposal also would set forth specific criteria for determining the independence of an exchange's or association's directors that are similar, but not identical, to the Exchange's Independence Policy. The Commission believes that, in the current context, the Exchange's proposed Independence Policy is consistent with the Act. The Commission notes, however, that the Exchange would have to conform its Independence Policy, as well as its Constitution and rules, to any rules the Commission may adopt with respect to the governance of exchanges and associations and the independence of their directors.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–2004–54) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–785 Filed 2–25–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(1).

[11] The independence standards for NYSE listed issuers are found in Section 303A.00 of the NYSE Listed Company Manual.

[12] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (''SRO Governance Proposal'').

[13] Id.

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10027 and # 10028]

California Disaster # CA–00003

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of an Administrative declaration of a disaster for the State of California, dated February 18, 2005.

Incident: Severe Storms, Flooding, Debris Flows, and Mudslides.

Incident Period: December 27, 2004, through January 11, 2005.

EFFECTIVE DATE: February 18, 2005.

Physical Loan Application Deadline Date: April 19, 2005.

EIDL Loan Application Deadline Date: November 18, 2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties

San Bernardino.

Contiguous Counties

California

Inyo, Kern, Los Angeles, Orange, and Riverside.

Arizona

La Paz and Mohave.

Nevada

Clark.

The Interest Rates are:

	Percent
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	5.800
Businesses and Small Agricultural Cooperatives without credit available elsewhere	4.000
Other (Including Non-Profit Organizations) with credit available elsewhere	4.750
Businesses and Non-Profit Organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 10027B and for economic injury is 100280.

The States which received EIDL Decl# are California, Arizona and Nevada.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: February 18, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–3819 Filed 2–25–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10032]

Kansas Disaster # KS–00001 Disaster Declaration

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance only for the State of Kansas (FEMA–1579–DR), dated February 8, 2005.

Incident: Severe Winter Storms, Heavy Rains, and Flooding.

Incident Period: January 4, 2005, through January 6, 2005.

DATES: *Effective Date:* February 8, 2005.

Physical Loan Application Deadline Date: April 11, 2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on February 8, 2005, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties

Anderson, Atchison, Barber, Butler, Chase, Chautauqua, Clark, Coffey, Comanche, Cowley, Crawford, Douglas, Elk, Franklin, Greenwood, Harper, Harvey, Jefferson, Kingman, Lyon, Marion, Morris, Osage, Pratt, Reno, Rice, Sedgwick, Shawnee, Sumner, Wabaunsee, Woodson, and Wyandotte.

The Interest Rates are:

	Percent
Other (including non-profit organizations) with credit available elsewhere	4.750
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 10032B.

(Catalog of Federal Domestic Assistance Number 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 05–3815 Filed 2–25–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10031]

Kentucky Disaster # KY–00001 Disaster Declaration

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kentucky (FEMA—1578—DR), dated February 8, 2005.

Incident: Severe Winter Storm and Record Snow.

Incident Period: December 21, 2004, through December 23, 2004.

DATES: *Effective Date:* February 8, 2005.

Physical Loan Application Deadline Date: April 11, 2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on February 8, 2005, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties

Ballard, Bracken, Breckinridge, Caldwell, Carlisle, Crittenden, Franklin, Fulton, Grant, Grayson, Hancock, Harrison, Hart, Hickman, Hopkins, LaRue, Livingston, Lyon, McLean, Muhlenberg, Nelson, Owen, Pendleton, Robertson, Shelby, Union, and Webster.

The Interest Rates are:

	Percent
Other (including non-profit organizations) with credit available elsewhere	4.750
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 10031B.

(Catalog of Federal Domestic Assistance Number 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 05–3816 Filed 2–25–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10025 and # 10026]

Michigan Disaster # MI–00001

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of an Administrative declaration of a disaster for the State of Michigan, dated February 18, 2005.

Incident: Flooding and Ice Jams.

Incident Period: January 17, 2005 and continuing.

DATES: *Effective Date:* February 18, 2005.

Physical Loan Application Deadline Date: April 20, 2005.

EIDL Loan Application Deadline Date: November 16, 2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties

Ottawa.

Contiguous Counties

Michigan

Allegan, Kent, and Muskegon.

The Interest Rates are:

	Percent
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.000
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

	Percent
Other (including non-profit organizations) with credit available elsewhere	4.750
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 100256 and for economic injury is 100260.

The States which received EIDL Decl # are Michigan.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: February 18, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–3818 Filed 2–25–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10029 and # 10030]

Ohio Disaster # OH–00002 Disaster Declaration

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–1580–DR), dated February 15, 2005.

Incident: Severe Winter Storms, Flooding, and Mudslides.

Incident Period: December 22, 2004 through February 1, 2005.

DATES: *Effective Date:* February 15, 2005.

Physical Loan Application Deadline Date: April 18, 2005.

EIDL Loan Application Deadline Date: November 15, 2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on February 15, 2005, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties

Athens, Belmont, Clark, Coshocton, Crawford, Delaware, Franklin, Henry Jefferson, Logan, Morgan, Muskingum, Pickaway, Pike, Ross, Scioto, Warren and Washington

Contiguous Counties

Ohio

Adams, Auglaize, Butler, Carroll, Champaign, Clermont, Clinton, Columbiana, Defiance, Fairfield, Fayette, Fulton, Greene, Guernsey, Hamilton, Hancock, Hardin, Harrison, Highland, Hocking, Holmes, Huron, Jackson, Knox, Lawrence, Licking, Lucas, Madison, Marion, Meigs, Miami, Monroe, Montgomery, Morrow, Noble, Perry, Putnam, Richland, Seneca, Shelby, Tuscarawas, Union, Vinton, Williams, Wood, and Wyandot.

Kentucky

Greenup and Lewis.

West Virginia

Brooke, Hancock, Marshall, Ohio, Pleasants, Tyler, and Wood.

The Interest Rates are:

	Percent
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	5.800
Businesses and small agricultural cooperatives without credit available elsewhere	4.000
Other (Including Non-Profit Organizations) with credit available elsewhere	4.750
Businesses and Non-Profit Organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 100296 and for economic injury is 100300.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 05–3817 Filed 2–25–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board Public Meeting

The U.S. Small Business Administration (SBA), Office of Small Business Development Center (SBDC), National Advisory Board will be hosting their Spring Board meeting in conjunction with the Association of Small Business Development Centers. The Spring Board meeting will be held on Tuesday, March 1, 2005, until Thursday, March 3, 2005, in Washington, DC. The National Advisory Board meeting will be held on Thursday, March 3, 2005, from 11:30 am to 3:30 pm. The meeting will take place at the U.S. Small Business Administration, 409 3rd Street SW., Administrator Conference Room, 7th Floor, Washington, DC 20416. The topics of discussion will include SBDC assistance to small manufacturers, online counseling pilot and program marketing.

Anyone wishing to attend must contact Dionna Martin in writing or by fax. Dionna Martin, Senior Program Manager, U.S. Small Business Administration, Office of Small Business Development Center, 409 3rd Street, SW., Washington, DC 20416, telephone: (202) 205–7042, fax: (202) 481–1671.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–3820 Filed 2–25–05; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling, SSR 05–02; Titles II and XVI: Determination of Substantial Gainful Activity if Substantial Work Activity Is Discontinued or Reduced—Unsuccessful Work Attempt

AGENCY: Social Security Administration.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice that Social Security Ruling (SSR) 84–25 is being superseded by this Ruling. This Ruling states the policy for determining whether substantial work activity that is discontinued or reduced below a specified level may be considered an unsuccessful work attempt (UWA) under the disability provisions of the law.

EFFECTIVE DATE: February 28, 2005.

FOR FURTHER INFORMATION CONTACT: John Nelson, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–5114.

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this Social Security Ruling, we are doing so in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later suspended, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.006 Supplemental Security Income)

Dated: February 22, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Policy Interpretation Ruling

Purpose: To clarify the policy stated in Social Security Ruling (SSR) 84–25 for determining whether substantial work activity that is discontinued or reduced below a specified level may be considered an unsuccessful work attempt (UWA) under the disability provisions of the law.

Citations (Authority): Sections 216(i), 223(d), and 1614(a) of the Social Security Act, as amended; Regulations No. 4, subpart P, sections 404.1571–404.1576; Regulations No. 16, subpart I, sections 416.971–416.976.

Pertinent History: Under the disability provisions of the law, except within the trial work period (TWP) provisions and section 1619 of the Social Security Act, if you are engaging in substantial gainful activity (SGA) you are not eligible for payment of disability benefits. (See Social Security Ruling *(SSR) 83–33,* Program Policy Statement (PPS)–107, Determining Whether Work Is Substantial Gainful Activity—Employees, regarding evaluation of work activity of employees. See *SSR 83–34,* PPS–108, Determining Whether Work Is Substantial Gainful Activity—Self-Employed Persons, regarding evaluation of work activity of self-employed persons.) The UWA concept was designed to provide us an equitable means, in making SGA determinations, to disregard relatively brief work attempts that do not demonstrate sustained SGA. We will not consider work we determine to be an UWA as substantial gainful activity when we determine if you are under a disability or when we determine if your disability has ceased.

The UWA concept is contained in our regulations. If you are an employee, sections 404.1574(a)(1) and 416.974(a)(1) of the regulations state: ''We generally consider work that you are forced to stop or to reduce below the substantial gainful activity level after a short time because of your impairment to be an unsuccessful work attempt. Your earnings from an unsuccessful work attempt will not show that you are able to do substantial gainful activity.'' See also 404.1574(c) and 416.974(c). If you are self-employed, sections 404.1575(a) and 416.975(a) state: ''We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt.'' See also 404.1575(d) and 416.975(d).

SSR 84–25 indicated that the UWA concept is applicable to both your initial disability case and when we determine whether, because of work activity, your disability continues or ceases. Both SSR 84–25 and the regulations state that there must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. However, SSR 84–25 and the regulations do not address how the UWA significant break concept should be applied in your initial disability case when your prior work activity stopped before onset of your impairment or where you had no prior work activity. This revised Ruling addresses these issues under the section ''*Event That Must Precede a UWA*'' and removes outdated material from the ''PERTINENT HISTORY'' section of SSR 84–25.

Policy Statement: For SGA determination purposes, your substantial work may, under certain conditions, be disregarded if it is discontinued or reduced to the non-SGA level after a short time because of your impairment, or the removal of special conditions related to your impairment that were essential to your further performance of the work. The UWA criteria differ depending on whether your work effort was for ''3 months or less'' or for ''between 3 and 6 months.'' If your work attempt was ''unsuccessful,'' we will not be precluded from finding that you are under a disability during the time that you performed that work.

When the UWA is Applicable: The UWA policy explained in this SSR is to be used in initial disability cases. It is also to be used in continuing disability cases in determining whether, because of work activity, your disability continues or ceases. However, the UWA criteria do not apply in determining whether payments should be made to you for a particular month during the reentitlement period after disability has been ceased because you did SGA, or during the initial reinstatement period after you have been reinstated through the expedited reinstatement provision.

Event That Must Precede a UWA: There must be a significant break in the continuity of your work before you can be considered to have begun a work attempt that later proved unsuccessful. Such an interruption would occur when, because of your impairment or the removal of special conditions related to your impairment that are essential to your further performance of the work, the work was discontinued or reduced (or limited) to the non-SGA level. Such an interruption could also occur when, before the onset of your impairment, you discontinued (or limited) your work for other reasons, such as retirement, or never engaged in work activity. We will consider your work to be ''discontinued'' if you (1) were out of work for at least 30 consecutive days or (2) were forced to change to another type of work or another employer. (On rare occasions a break lasting a few days less than 30 may satisfy this requirement if your subsequent work episode was brief and clearly not successful because of your impairment.)

Event That Must Follow a UWA: After the first significant break in continuity of your work, your next period of work is regarded as continuous until another significant break occurs; that is, until your impairment, or the removal of special conditions related to your impairment that are essential to your further performance of work, causes your work to be ''discontinued'', as defined above, or to be reduced to the non-SGA level. Each continuous period, separated by significant breaks as described, may be a UWA so long as criteria as to duration and conditions of work are met, as set out below.

Duration and Conditions of Work

1. Work Effort of 3 Months or Less: Your work must have ended or have been reduced to the non-SGA level within 3 months due to your impairment or to the removal of special conditions related to your impairment

that are essential to your further performance of work. (Examples of ''special conditions'' are given below.)

2. Work Effort of Between 3 and 6 Months: If your work lasted more than 3 months, it must have ended or have been reduced to the non-SGA level within 6 months due to your impairment or to the removal of special conditions (see below) related to your impairment that are essential to your further performance of work and:

a. You must have had frequent absences from your work due to your impairment; or

b. Your work must have been unsatisfactory due to your impairment; or

c. Your work must have been done during a period of temporary remission of your impairment; or

d. Your work must have been done under special conditions.

(To illustrate how UWA time periods are figured, work from November 5, 2003, through a date no later than February 4, 2004, is for ''3 months or less.'' Work from November 5, 2003, through at least February 5, 2004, but through a date no later than May 4, 2004, is for ''between 3 and 6 months.'')

3. Work Effort of Over 6 Months: Your SGA-level work lasting more than 6 months cannot be an UWA regardless of why it ended or was reduced to the non-SGA level.

4. Performance of Work Under Special Conditions: One situation under which your SGA-level work may have ended, or may have been reduced to the non-SGA level, as set out above, is ''the removal of special conditions related to your impairment that are essential to your further performance of work.'' That is, you may have worked under conditions especially arranged to accommodate your impairment or you may have worked through an unusual job opportunity, such as in a sheltered workshop. Special or unusual conditions may be evidenced in many ways. For example, you:

a. May have required and received special assistance from other employees in performing the job; or

b. Were allowed to work irregular hours or take frequent rest periods; or

c. Were provided special equipment or were assigned work especially suited to your impairment; or

d. Were able to work only within a framework of especially arranged circumstances, such as where other persons helped you prepare for or get to and from work; or

e. Were permitted to perform at a lower standard of productivity or efficiency than other employees; or

f. Were granted the opportunity to work, despite your medical condition, because of family relationship, past association with the firm, or other altruistic reason.

5. Development of Reasons for Work Discontinuance or Reduction: When we consider why your work effort ended or was reduced to the non-SGA level, we do not rely solely on information from you. Therefore, if we do not already have impartial supporting evidence, we will seek confirmation from your employer. If the information from your employer is inconclusive or is not available, we may seek confirmation of the reason you discontinued or reduced your work with a physician or other medical source. After being apprised of the circumstances, the physician or other medical source could state whether, in his or her opinion or according to the records, your work discontinuance or reduction was due to your impairment.

Answers to questions such as the following will help to verify the nature and duration of your work and the reason it ended or was reduced:

a. When and why was the SGA-level work interrupted, reduced or stopped?

b. If special working conditions (as described in the preceding section) were removed, what were those conditions or concessions? When, how and why were they changed?

c. Were there frequent absences from work? Were days and hours of work irregular and, if so, why?

d. Was job performance unsatisfactory because of the impairment?

e. Did the employer reduce your duties, responsibilities or earnings because of your impairment?

f. When your work effort ended, was the continuity of employment broken? Did the employer grant sick leave or hold the position open for your return?

g. If you were self-employed, what has happened to the business since the discontinuance or reduction of your work? If the business continued in operation, who managed and worked in it and what income will you receive from it?

Effective Date: The policy explained herein is effective as of the date of publication of this SSR.

Cross-References: Program Operations Manual System, Part 4, sections DI 11010.210–11010.220 and DI 24005.001. Social Security Rulings 83–33 and 83–34.

[FR Doc. 05–3828 Filed 2–25–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5005]

Culturally Significant Objects Imported for Exhibition Determinations: ''Sneaky Sea Predator: New Fossil Find From China''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition, ''Sneaky Sea Predator: New Fossil Find from China,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at the Field Museum, Chicago, Illinois, from on or about March 18, 2005, to on or about May 30, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 453–8052, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: February 18, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–3802 Filed 2–25–05; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: TVA will convene a meeting of the Regional Resource Stewardship Council (Regional Council) to obtain views and advice on the topic of improving review of requests for changes in land plans. Under the TVA Act, TVA is charged with the proper use and conservation of natural resources for the purpose of fostering the orderly and proper physical, economic and social development of the Tennessee Valley region. The Regional Council was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

(1) Update discussion of second-term Council advice implementation.

(2) Agency presentations and discussion on land planning.

(3) Public comments on the topic of review of land planning.

(4) Council discussion and advice on land planning issues.

The Regional Council will hear opinions and views of citizens by providing a public comment session. The public comment session will be held from 9:30 a.m. to 10:30 a.m. EST on Thursday, March 17, 2005. Citizens who wish to express views and opinions on the topic of TVA lands planning may do so during the Public Comment portion of the agenda. Public Comments participation is available on a first-come, first-served basis. Speakers addressing the Regional Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak are requested to register at the door and are then called on by the Regional Council Chair during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Wednesday, March 16, 2005, from 8 a.m. to 5 p.m. and on Thursday, March 17, 2005, from 8 a.m. to 1 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in the auditorium at the Tennessee Valley Authority headquarters, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.

Dated: February 9, 2005.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment Tennessee Valley Authority.

[FR Doc. 05–3719 Filed 2–25–05; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending February 11, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–20362.

Date Filed: February 8, 2005.

Parties: Members of the International Air Transport Association

Subject: Mail Vote 434—Memorandum PTC1 0317 dated 8 February 2005 Resolution 010i—TC1 Special Passenger Amending Resolution—Within South America r1–r7. Intended effective date: 21 February 2005.

Docket Number: OST–2005–20382.

Date Filed: February 10, 2005.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 435—PTC3 0824 dated 11 February 2005—Resolution 010j—Special Passenger Amending Resolution between Japan and Russia (in Asia)—r1–r6. Intended effective date: 1 March 2005.

Renee V. Wright,

Acting Program Manager, Alternate Federal Register Liaison.

[FR Doc. 05–3760 Filed 2–25–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending February 11, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2005–20363.

Date Filed: February 8, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 1, 2005.

Description: Application of PM Air, LLC, requesting a certificate of public convenience and necessity to transport passengers, property, and mail in interstate air transportation.

Docket Number: OST–2005–20395.

Date Filed: February 10, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 3, 2005.

Description: Application of Flyjet Limited, requesting a foreign air carrier permit to conduct charter foreign air transportation of persons, property, and mail between a point or points in the United Kingdom, on the one hand, and a point or points in the United States, on the other, via intermediate points, and other charter flights.

Docket Number: OST–2005–20402.

Date Filed: February 11, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 4, 2005.

Description: Application of Hong Kong Dragon Airlines Limited d/b/a Dragonair, requesting an amended foreign air carrier permit authorizing it to engage in foreign air transportation of property and mail between Hong Kong and the United States.

Renee V. Wright,

Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 05–3758 Filed 2–25–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 23–24, Airworthiness Compliance Checklists for Common Part 23 Supplemental Type Certificate (STC) Projects

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and requests comments on the proposed advisory circular, AC 23–24. This guidance sets forth one method that may be used to generate compliance checklists for some 14 CFR, part 23 Supplemental Type Certificate (STC) airplane projects. Guidance is provided for changes to the airplane autopilot, engine, propeller, auxiliary fuel tank, and gross weight. These compliance checklists may be used to fulfill some of the requirements for a Certification Plan as part of an STC project.

DATES: Comments must be received on or before April 29, 2005.

ADDRESSES: Send all comments on the proposed AC to: Mr. Mark Orr, Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Mark S. Orr, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone: (816) 329–4151; facsimile: (816) 329–4090; e-mail: *mark.orr@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The checklists generated using the information in the proposed AC are meant to complement the guidance in the Guides for Certification of Part 23 Airplanes (ACs 23–8B, 23–16A, 23–17A, and 23–19) and other more project-specific guidance. The material in the proposed AC describes an acceptable means, but not the only means, of compliance with 14 CFR part 23. The material in the proposed AC is not mandatory or regulatory in nature and does not constitute a regulation. Owners/operators of part 23 airplanes applying for an STC change covered in this proposed AC may use this material as a reference to create a project-specific compliance checklist. This material is also intended to be a reference for Federal Aviation Administration (FAA) engineers working on STC projects for these common changes.

Comments Invited

You may obtain a copy of this proposed AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** A copy of this proposed AC will also be available on the Internet at *http://www.airweb.faa.gov/AC.*

We invite you to submit any written relevant data, views, or arguments regarding the proposed AC. Send your comments to the address listed under **ADDRESSES.** Include ''Comments to proposed AC 23–24'' at the beginning of your comments. Comments sent by facsimile must also contain ''Comments to proposed AC 23–24'' in the subject line. You may send comments electronically to: *mark.orr@faa.gov.* Comments sent electronically must contain ''Comments to proposed AC 23–24'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text. Your comments must contain what specific change you are seeking to the proposed AC and include justification (for example, reasons or data) for each request.

We will consider all communications received on or before the closing date for comments before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), 901 Locust, Room 301, Kansas City, Missouri, between the hours of 8:30 a.m. and 4 p.m. weekdays, except Federal holidays by making an appointment in advance with the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Kansas City, Missouri on February 17, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–3766 Filed 2–25–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Southwest Florida International Airport, Fort Myers, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Lee County Port Authority for Southwest Florida International Airport under the provisions of 49 U.S.C. 47501 *et seq* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is February 11, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando Florida 32822, (407) 812–8331, Extension 130.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Southwest Florida International Airport are in compliance with applicable requirements of part 150, effective February 11, 2005.

Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by Lee County Port Authority. The documentation that constitutes the ''noise exposure maps'' as defined in section 150.7 of Part 150 includes: Table 7–1, ''2003, 2008 and 2020 Annual operations''; Table 8–3, ''2008 Domestic Air Carrier Operations and Fleet Mix''; Table 8–3, ''2008 Domestic Air Carrier operations and Fleet Mix''; Table 8–3, ''2008 Domestic Air Carrier Operations and Fleet Mix''; Table 8–21, ''2003 and 2008 Departure Corridor Percentages''; Table 8–22, ''2003 and 2008 Arrival Corridor Percentages''; Table 8–23, ''2003 and 2008 Local Pattern Percentages''; Table 9–4, ''Estimated Population Within 2003 and 2008 DNL Contours''; Exhibit 8–1, ''Aircraft Flight Tracks-Northeast Flow''; Exhibit 8–2, ''Aircraft Flight Tracks-Southwest Flow''; Exhibit 8–3, ''Local

Flight Tracks''; Exhibit 9–1, ''2003 DNL Noise Contours with Existing Land Use''; and Exhibit 9–3, ''2008 DNL Noise Contours With Existing Land Use''. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on February 11, 2005.

FAA's determination on the airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutoril6y required consultation has been accomplished.

Copies of the full noise exposure maps documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida, February 11, 2005.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 05–3765 Filed 2–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–06–C–00–EUG To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Mahlon Sweet Field—Eugene Airport, Submitted by the City of Eugene, Mahlon Sweet Field—Eugene Airport, Eugene, OR

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, PFC revenue at Mahlon Sweet Field—Eugene Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before March 30, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Noble, Airport Manager, at the following address: 2885 Lockheed Drive, Eugene, OR 97402.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Mahlon Sweet Field—Eugene Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang (425) 227–2654, 1601 Lind Avenue, SW., Renton, WA 98055. 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 05–06–C–00–EUG to impose and use, PFC revenue at Mahlon Sweet Airport—Eugene Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 18, 2005, the FAA determined that the application to impose and use, the revenue from a PFC submitted by City of Eugene, Mahlon Sweet Field—Eugene Airport, Eugene, Oregon, was substantially complete within the requirements to section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 9, 2005.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: July 1, 2005.

Proposed charge expiration date: September 1, 2007.

Total requested for use approval: $2,400,000.

Brief description of proposed project: Terminal Rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Operations by Air Taxi/Commercial Operators utilizing aircraft having a maximum seating capacity of less than twenty passengers when enplaning revenue passengers in a limited, irregular/non-scheduled, or special service manner. Also exempted are operations by Air Taxi/Commercial Operators, without regard to seating capacity, for revenue passengers transported for student instruction, non-stop sightseeing flights that begin and end at Eugene Airport and are conducted within a 25 mile radius of the same airport, fire fighting charters, ferry or training flights, air ambulance/medivac flights, and aerial photography or survey flights.

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, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Mahlon Sweet Field—Eugene Airport.

Issued in Renton, Washington on February 18, 2005.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 05–3764 Filed 2–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Battery-Based Emergency Power Unit

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of, and requests comment on, a proposed Technical Standard Order (TSO) on battery-based emergency power units (BEPU). The TSO prescribes minimum performance standards that BEPU must meet to be identified with the marketing ''TSO–C174.''

DATES: Comments must be received on or before March 28, 2005.

ADDRESSES: Send all comments on this proposed TSO to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Attn: File No. TAO–C174, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

You may deliver comments to: Federal Aviation Administration, Room 804, 800 Independence Avenue SW., Washington DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Nguyen, AIR–120, Room 804, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591. Telephone (202) 267–9937.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed TSO by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date, in room 804 at the above address, weekdays except federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before date before issuing the final TSO

Background

Proposed TSO–C174 prescribes the minimum performance standards for BEPU. The TSO references the standard set forth in the manufacturer's part drawing(s) and applicable part specification(s) submitted with a BEPU manufacturer's application for TSO authorization.

How To Obtain Copies

You can view or download the proposed TSO from its online location at: *http://www.airweb.faa.gov/rgl*. At this Web page, select ''Technical Standard Orders.'' At the TSO page, select ''Proposed Orders.''

For a paper copy, contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington DC, on February 18, 2005.

Susan J.M. Cabler,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 05–3763 Filed 2–25–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before April 29, 2005.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 × 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of any information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or phone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the public and other Federal agencies to comment on the proposed or continuing information collections listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms and recordkeeping requirements:

Title: Applications—Volatile Fruit-Flavor Concentrate Plants.

OMB Number: 1513–0006.

TTB Form Number: 5520.3.

TTB Recordkeeping Requirement Number: 5520/2.

Abstract: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application to do so using TTB F 5520.3. TTB uses the application information to identify persons responsible for such manufacture since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement. The record retention requirement for this information collection is 98 years.

Current Actions: There are no changes to this information collection and it is

being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: 30.

Title: Application for Basic Permit under the Federal Alcohol Administration Act.

OMB Number: 1513–0018.

TTB Form Number: 5100.24.

Abstract: TTB F 5100.24 is completed by persons intending to engage in a business involving beverage alcohol operations at a distilled spirits plant or bonded winery, or to wholesale or import beverage alcohol. The information allows TTB to identify the application and the location of the business and to determine whether the applicant qualifies for a basic permit under the Federal Alcohol Administration Act.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,600.

Estimated Total Annual Burden Hours: 2,800.

Title: Application for Amended Basic Permit under the Federal Alcohol Administration Act.

OMB Number: 1513–0019.

TTB Form Number: 5100.18.

Abstract: TTB F 5100.18 is completed by permittees who have changes in their operations that require a new permit to be issued or notice to be received by TTB. The permittees are businesses involved with beverage alcohol operations as distilled spirits plants, bonded wineries, wholesalers, or importers. The information allows TTB to identify the permittee, the changes to the permit or business operations, and to determine whether the applicant qualifies for an amended basic permit under the Federal Alcohol Administration Act.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,200.

Estimated Total Annual Burden Hours: 600.

Title: Formula and Process for Nonbeverage Product.

OMB Number: 1513–0021.

TTB Form Number: 5154.1.

Abstract: Businesses that use taxpaid alcohol to manufacture nonbeverage products may file a claim for drawback (refund or remittance) if they can substantiate, by using TTB F 5154.1, that the spirits were used in the manufacture of products unfit for beverage use. This determination is based on the formula for the product.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 611.

Estimated Total Annual Burden Hours: 2,500.

Title: Annual Report of Concentrate Manufacturers and Usual and Customary Business Records—Volatile Fruit-Flavor Concentrate.

OMB Number: 1513–0022.

TTB Form Number: 5520.2.

TTB Recordkeeping Requirement Number: 5520/1.

Abstract: Manufacturers of volatile fruit-flavor concentrate must provide reports as necessary to insure the protection of the revenue. The report accounts for all concentrates manufactured, removed, or treated so as to be unfit for beverage use. The information is required to verify that alcohol is not being diverted thereby jeopardizing tax revenues. The proprietor retains the records and report for 3 years from the date they were prepared, or 3 years from the date of last entry, whichever is later.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 91.

Estimated Total Annual Burden Hours: 30.

Title: ''Environmental Information'' and ''Supplemental Information on Water Quality Considerations under 33 U.S.C. 1341(a).''

OMB Number: 1513–0023.

TTB Form Numbers: 5000.29 and 5000.30, respectively.

Abstract: The environmental forms are necessary in order to comply with the provisions of the National Environmental Policy Act, 42 U.S.C. 4332 (TTB F 5000.29) and the Clean Water Act, 33 U.S.C. 1341(a) (TTB F 5000.30). Information regarding solid and liquid waste, air pollution, noise, etc. as collected on TTB F 5000.29 is evaluated to determine if a formal environmental impact statement or an environmental permit is necessary for a proposed operation. The environmental type information is collected from manufacturers such as distilled spirits plants, wineries, breweries, and tobacco products factories. Those manufacturers who discharge a solid or liquid effluent into navigable waters submit TTB F 5000.30. Applicants are required to describe any biological, chemical thermal, or other characteristic of the discharge as well as any methods or equipment used to monitor the condition of the discharge. Based upon this data, TTB makes a determination as to whether a certification or waiver by the applicable State water quality agency is required. Should a manufacturer be required to submit both forms (TTB F 5000.29 and TTB F 5000.30) they may incorporate by reference any redundant information especially regarding solid and waste. The record retention period for this information collection is 15 years after discontinuance of business for distilled spirits plants having production facilities. For all others, the retention period is 4 years after discontinuance of business.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Total Annual Burden Hours: 4,400.

Title: Specific and Continuing Transportation Bond—Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six; and Specific and Continuing Transportation Bond—Distilled Spirits and Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six.

OMB Number: 1513–0031.

TTB Form Numbers: 5100.12 and 5110.67, respectively.

Abstract: TTB F 5100.12 and TTB F 5110.67 are specific bonds which protect the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. The bonds identify the shipment, the parties, the date, and the amount of bond coverage. The record retention

requirement for this information collection is 2 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: One (1).

Estimated Total Annual Burden Hours: One (1).

Title: Offer in Compromise of Liability Incurred under Federal Alcohol Administration Act.

OMB Number: 1513–0055.

TTB Form Number: 5640.2.

Abstract: Persons who have committed violations of the FAA Act may submit an offer in compromise. The offer is a request by the party in violation to compromise penalties for the violations in lieu of civil or criminal action. TTB F 5640.2 identifies the violation(s) to be compromised by the person committing them, amount of offer plus justification for acceptance of the offer.

Current Actions: There are not changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 12.

Estimated Total Annual Burden Hours: 24.

Title: Wholesale Dealers Records of Receipt of Alcoholic Beverages, Disposition of Distilled Spirits, and Monthly Summary Report.

OMB Number: 1513–0065.

TTB Recordkeeping Requirement Number: 5170/2.

Abstract: TTB uses these records and reports as an accounting tool to ensure protection of the revenue. Records of receipt and disposition are the basic documents that describe the activities of wholesale dealers, and they provide an audit trail of taxable commodities from point of production to point of sale. Records of disposition are required only for distilled spirits. TTB requires the monthly report only in exceptional circumstances to ensure that a particular wholesale dealer is maintaining the required records. The records retention requirement is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 50.

Estimated Total Annual Burden Hours: 1,200.

Title: Manufacturers of Nonbeverage Products—Records to Support Claims for Drawback.

OMB Number: 1513–0073.

TTB Recordkeeping Requirement Number: 5530/2.

Abstract: The recordkeeping requirements included in TTB REC 5530/2 are part of the system necessary to prevent diversion of drawback spirits to beverage use. The records are necessary to maintain accountability over these spirits. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 611.

Estimated Total Annual Burden Hours: 12,831.

Title: Proprietors or Claimants Exporting Liquors.

OMB Number: 1513–0075.

TTB Recordkeeping Requirement Number: 5900/1.

Abstract: Distilled spirits, wine and beer may be exported from bonded premises without payment of excise taxes, or they may be exported if their taxes have been paid and the exporters may claim drawback of the taxes paid. This recordkeeping requirement is needed to allow the amounts exported to be verified and to maintain accountability over products. The records retention requirement for this information collection is 2 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 120.

Estimated Total Annual Burden Hours: 7,200.

Title: Federal Firearms and Ammunition Excise Tax.

OMB Number: 1513–0094.

TTB Form Number: 5300.26.

Abstract: A Federal excise tax is imposed by 26 U.S.C. 4181 on the sale of pistols and revolvers, other firearms, shells, and cartridges (ammunition) sold by firearms manufacturers, producers, and importers. The information on the form is necessary to establish the taxpayer's identity, the amount and type of taxes due, and the amount of payments made.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 965.

Estimated Total Annual Burden Hours: 27,020.

Title: Administrative Remedies, Closing Agreements.

OMB Number: 1513–0099.

Abstract: 26 U.S.C. 7121 authorizes the Alcohol and Tobacco Tax and Trade Bureau to prescribe regulations for entering into an agreement in writing with any person relating to any tax liability of such person imposed under 26 U.S.C. which is enforced and administered by TTB. Closing agreements may be related to the total tax liability of the taxpayer or to one or more separate items affecting the tax liability.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: One (1).

Estimated Total Annual Burden Hours: One (1).

Title: Marks and Notices on Packages of Tobacco Products.

OMB Number: 1513–0101.

TTB Recordkeeping Requirement Number: 5210/13.

Abstract: This information collection requires the manufacturer or exporter to place a mark and notice indicating a product's tax classification and quantity on packages, cases, or containers. Statutory authority for labeling and marking requirements pertaining to tobacco products is set forth in 26 U.S.C. 5723. The printing of this information on packages of tobacco products ensures effective administration of the Federal excise taxes imposed on tobacco products. There is no recordkeeping or reporting burden imposed on the proprietors.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 120.

Estimated Total Annual Burden Hours: One (1).

Title: Drawback of Tax on Tobacco Products and Cigarette Papers and Tubes-Export Shipment.

OMB Number: 1513–0102.

TTB Recordkeeping Requirement Number: 5210/2.

Abstract: Tobacco products have historically been a major source of excise tax revenue for the Federal government. In order to safeguard these taxes, tobacco products manufacturers are required to maintain a system of records designed to establish accountability over the tobacco products and cigarette papers and tubes. Exporters of tobacco products and cigarette papers and tubes on which they have paid tax may claim drawback of tax by complying with the requirements of laws and regulations. The records retention period is 3 years.

Current Actions: There are not changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: One (1).

Estimated Total Annual Burden Hours: 5.

Dated: February 16, 2005.

Marjorie D. Ruhf,

Acting Chief, Regulations and Procedures Division.

[FR Doc. 05–3713 Filed 2–25–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–62–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final and temporary regulations, IA–62–91 (TD 8482), Capitalization and Inclusion in Inventory of Certain Costs (§§ 1.263A–2 and 1.263A–3).

DATES: Written comments should be received on or before April 29, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Capitalization and Inclusion in Inventory of Certain Costs.

OMB Number: 1545–0987.

Regulation Project Number: IA–62–91.

Abstract: The requirements are necessary to determine whether taxpayers comply with the cost allocation rules of Internal Revenue Code section 263A and with the requirements for changing their methods of accounting. The information will be used to verify taxpayers' changes in method of accounting.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 20,000.

Estimated Average Time Per Respondent: The estimated annual reporting and recordkeeping burden per respondent varies from 1 hour to 9 hours.

Estimated Total Annual Burden Hours: 100,000.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 16, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–3695 Filed 2–25–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Nominations to the Electronic Tax Administration Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC), was established to provide continued input into the development and implementation of the Internal Revenue Service (IRS) strategy for electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. This document seeks nominations of individuals to be considered for selection as Committee members.

The Director, Electronic Tax Administration (ETA) will assure that the size and organizational representation of the ETAAC obtains balanced membership and includes

representatives from various groups including: (1) Tax practitioners and preparers, (2) transmitters of electronic returns, (3) tax software developers, (4) large and small businesses, (5) employers and payroll service providers, (6) individual taxpayers, (7) financial industry (payers, payment options and best practices), (8) system integrators (technology providers), (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12) state and local governments. We are soliciting nominations from professional and public interest groups, IRS officials, the Department of the Treasury, and Congress. Members serve a three-year term on the ETAAC to allow a change in membership. The change of members on the Committee ensures that different perspectives are represented. All travel expenses within government guidelines will be reimbursed.

DATES: Written nominations must be received on or before April 29, 2005.

ADDRESSES: Nominations should be sent to Kim Logan, Electronic Tax Administration, OS:CIO:I:ET:S:RM, 5000 Ellin Road (C4–226), Lanham, Maryland 20706 or by e-mail to: *etaac@irs.gov*. Please submit applications to the address above or via fax to 202–283–4829. However, if submitted via a facsimile or e-mail, the original application must be received by mail because the Electronic Tax Administration cannot consider an applicant nor process his/her application prior to receipt of an original signature. Application packages can be obtained by sending an e-mail to *etaac@irs.gov*.

FOR FURTHER INFORMATION CONTACT: Kim Logan, (202) 283–1947 or send an e-mail to *etaac@irs.gov*.

SUPPLEMENTARY INFORMATION: The ETAAC will provide continued input into the development and implementation of the IRS strategy for electronic tax administration. The ETAAC members will convey the public's observations about current or proposed policies, programs, and procedures, and suggest improvements. The ETAAC will also provide an annual report to Congress on IRS progress in meeting the Restructuring and Reform Act of 1998 goals for electronic filing of tax returns. This activity is based on the authority to administer the Internal Revenue laws conferred upon the Secretary of the Treasury by section 7802 of the Internal Revenue Code and delegated to the Commissioner of the Internal Revenue. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration.

Nominations should describe and document the proposed member's qualifications for membership to the Committee. Equal opportunity practices will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals, with demonstrated ability to represent minorities, women, and persons with disabilities.

Approved: February 23, 2005.

Jo Ann N. Bass,

Director, Strategic Services Division.

[FR Doc. 05–3824 Filed 2–25–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 22, 2005, at 11 a.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, March 22, 2005, at 11 a.m., Eastern time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: February 22, 2005.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 05–3823 Filed 2–25–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Availability of Annual Report

Under Section 10(d) of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that the Annual Report of the Department of Veterans Affairs Special Medical Advisory Group for Fiscal Year 2004 has been issued.

The report summarizes activities of the Group relative to the care and treatment of disabled veterans and other matters pertinent to the Department of Veterans Affairs, Veterans Health Administration. It is available for public inspection at two locations: Federal Advisory Committee Desk, Library of Congress, Anglo-American Acquisition Division, Government Documents Section, Room LM–B42, 101 Independence Avenue, SE., Washington, DC 20540; and Department of Veterans Affairs, Office of the Under Secretary for Health, VA Central Office, Suite 800, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: January 19, 2005.

By direction of the Secretary.

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 05–3789 Filed 2–25–05; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 70, No. 38

Monday, February 28, 2005

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

15 CFR Part 740

[Docket No. 050209030–5030–01]

RIN 0694–AD38

Revision of License Exception TMP for Activities by Organizations Working To Relieve Human Suffering in Sudan

Correction

In rule document 05–3215 beginning on page 8251 in the issue of Friday, February 18, 2005, make the following corrections:

1. On page 8251, in the third column, in the first full paragraph, in the next to last line, ''§730.2'' should read ''§740.2''.

§740.9 [Corrected]

2. On page 8252, in the second column, in §740.9(a)(2)(i)(A), in the second line, ''*D:2*'' should read ''*E:2* ''.

[FR Doc. C5–3215 Filed 2–25–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19961; Directorate Identifier 2004–CE–48–AD]

RIN 2120–AA64

Airworthiness Directives: Air Tractor, Inc. Models AT–502, AT–502A, AT–502B, and AT–503A Airplanes

Correction

In proposed rule document 05–2507 beginning on page 6786 in the issue of Wednesday February 9, 2005, make the following correction:

§ 39.13 [Corrected]

On page 6788, in §39.13, in the third column, under the heading **What Airplanes Are Affected by This AD?**, paragraph designation ''(b)'' should read paragraph designation ''(c)''.

[FR Doc. C5–2507 Filed 2–25–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
February 28, 2005

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; and Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR–2005–0031; FRL–7873–8]

RIN 2060–AM80

Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; and Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendments.

SUMMARY: Pursuant to section 111(b)(1)(B) of the Clean Air Act (CAA), the EPA has reviewed the emission standards for particulate matter (PM), sulfur dioxide (SO_2), and nitrogen oxides (NO_X) contained in the standards of performance for electric utility steam generating units, industrial-commercial-institutional steam generating units, and small industrial-commercial-institutional steam generating units. This action presents the results of EPA's review and proposes amendments to standards consistent with those results. Specifically, we are proposing amendments to the PM, SO_2, and NO_X emission standards. We are also proposing to replace the current percent reduction requirement for SO_2 with an output-based SO_2 emission limit. We are also proposing an amendment to the PM emission limit. In addition to amending the emissions limits, we also are proposing several technical clarifications and corrections to existing provisions of the current rules.

DATES: Comments on the proposed amendments must be received on or before April 29, 2005.

Public Hearing: If anyone contacts EPA by March 21, 2005, requesting to speak at a public hearing, EPA will hold a public hearing on March 30, 2005. Persons interested in attending the public hearing should contact Ms. Eloise Shepherd at (919) 541–5578 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID

No. OAR–2005–0031, by one of the following methods: *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments. *Agency Web site: http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: Send your comments via electronic mail to *a-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2005–0031.

By Facsimile: Fax your comments to (202) 566–1741, Attention Docket ID No. OAR–2005–0031.

Mail: Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2005–0031. Please include a total of two copies. The EPA requests a separate copy also be sent to the contact person identified below (*see* **FOR FURTHER INFORMATION CONTACT**). In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

Hand Delivery: Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room B108, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2005–0031. Such deliveries are accepted only during the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2005–0031. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or *regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing: If a public hearing is held, it will be held at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA West Building, 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 EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Christian Fellner, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–4003, e-mail *fellner.christian@epa.gov*.

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. General Information
  A. Does this action apply to me?
  B. What should I consider as I prepare my comments for EPA?
II. Background Information
  A. What is the statutory authority for the proposed amendments?
  B. What is the role of the NSPS program?
III. Summary of the Proposed Amendments
  A. What are the requirements for new electric utility steam generating units (40 CFR part 60, subpart Da)?
  B. What are the requirements for industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Db)?
  C. What are the requirements for small industrial-commercial-institutional

steam generating units (40 CFR part 60, subpart Dc)?
IV. Rationale for the Proposed Amendments
A. What is the performance of control technologies for steam generating units?
B. Regulatory Approach
C. How did EPA determine the amended standards for electric utility steam generating units (40 CFR part 60, subpart Da)?
D. How did EPA determine the amended standards for industrial-commercial-institutional steam generating units (40 CFR part 60, subparts Db and Dc)?
E. What technical corrections is EPA proposing?
V. Modification and Reconstruction Provisions
VI. Summary of Cost, Environmental, Energy, and Economic Impacts
A. What are the impacts for electric utility steam generating units?
B. What are the impacts for industrial, commercial, institutional boilers?
C. Economic Impacts
VII. Request for Comments
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer Advancement Act

I. General Information

A. Does This Action Apply to Me?

Regulated Entities. Categories and entities potentially regulated by the proposed amendments are new electric utility steam generating units and new, reconstructed, and modified industrial-commercial-institutional steam generating units. The proposed amendments would affect the following categories of sources:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Industry	221112		Fossil fuel-fired electric utility steam generating units.
Federal Government	22112		Fossil fuel-fired electric utility steam generating units owned by the Federal Government.
State/local/tribal government	22112		Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150		Fossil fuel-fired electric steam generating units in Indian Country.
Any industrial-commercial-institutional facility using a boiler as defined in CFR 60.40b or CFR 60.40c.	211	13	Extractors of crude petroleum and natural gas.
	321	24	Manufacturers of lumber and wood products.
	322	26	Pulp and paper mills.
	325	28	Chemical manufacturers.
	324	29	Petroleum refiners and manufacturers of coal products.
	316, 326, 339	30	Manufacturers of rubber and miscellaneous plastic products.
	331	33	Steel works, blast furnaces.
	332	34	Electroplating, plating, polishing, anodizing, and coloring.
	336	37	Manufacturers of motor vehicle parts and accessories.
	221	49	Electric, gas, and sanitary services.
	622	80	Health services.
	611	82	Educational Services.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be subjected to the proposed amendments. To determine whether your facility may be subject to the proposed amendments, you should examine the applicability criteria in 40 CFR part 60, sections 60.40a, 60.40b, or 60.40c. If you have any questions regarding the applicability of the proposed amendments to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit information that you consider to be confidential business information (CBI) electronically through EDocket, regulations.gov, or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Christian Fellner, c/o OAQPS Document Control Officer (Room C404–02), U.S. EPA, Research Triangle Park, 27711, Attention Docket ID No. OAR–2005–0031. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the proposed amendments by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions. The EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/

or data that you used in formulating your comments.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

Docket. The docket number for the proposed amendments to the standards of performance (40 CFR part 60, subpart Da, Db, and Dc) is Docket ID No. OAR–2005–0031. Other dockets incorporated by reference for the standards of performance include Docket ID Nos. A–79–02, A–83–27, A–86–02, and A–92–71.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed amendments is available on the WWW through the Technology Transfer Network (TTN). Following signature, EPA will post a copy of the proposed amendments on the TTN's policy and guidance page for newly proposed or promulgated amendments at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN Help line at (919) 541–5384.

II. Background Information

A. What Is the Statutory Authority for the Proposed Amendments?

New source performance standards (NSPS) implement CAA section 111(b), and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

Section 111 of the CAA requires that NSPS reflect the application of the best system of emissions reductions which (taking into consideration the cost of achieving such emissions reductions, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT).

The current standards for steam generating units are contained in the NSPS for electric utility steam generating units (40 CFR part 60, subpart Da), industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Db), and small industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Dc).

The NSPS for electric utility steam generating units (40 CFR part 60, subpart Da) were originally promulgated on June 11, 1979 (44 FR 33580) and apply to units capable of firing more than 73 megawatts (MW) (250 million British thermal units per hour(MMBtu/hr)) heat input of fossil fuel that commenced construction, reconstruction, or modification after September 18, 1978. The NSPS also apply to industrial-commercial-institutional cogeneration units that sell more than 25 MW and more than one-third of their potential output capacity to any utility power distribution system. The most recent amendments to emission standards under subpart Da, 40 CFR part 60, were promulgated in 1998 (63 FR 49442) resulting in new NO_X limitations for subpart Da, 40 CFR part 60, units. Furthermore, in the 1998 amendments, we incorporated the use of output-based emission limits.

The NSPS for industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Db) apply to units for which construction, modification, or reconstruction commenced after June 19, 1984 that have a heat input capacity greater than 29 MW (100 MMBtu/hr). Those standards were originally promulgated on November 25, 1986 (51 FR 42768) and also have been amended since the original promulgation to reflect changes in BDT for these sources. The most recent amendments to emission standards under subpart Db, 40 CFR part 60, were promulgated in 1998 (63 FR 49442) resulting in new NO_X limitations for subpart Db, 40 CFR part 60, units.

The NSPS for small industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Dc) were originally promulgated on September 12, 1990 (55 FR 37674) and apply to units with a maximum heat input capacity greater than or equal to 2.9 MW (10 MMBtu/hr) but less than 29 MW (100 MMBtu/hr). Those standards apply to units that commenced construction, reconstruction, or modification after June 9, 1989.

Section 111(b)(1)(B) of the CAA requires the EPA periodically to review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions.

B. What Is the Role of the NSPS Program?

The NSPS program is one part of the CAA's integrated air quality management program. The primary purpose of the NSPS are to achieve long-term emissions reductions by ensuring that the best demonstrated emission control technologies are installed as the industrial infrastructure is modernized. Since 1970, the NSPS have been successful in achieving long-term emissions reductions at numerous industries by assuring cost-effective controls are installed on new, reconstructed, or modified sources. Recently, however, with the rapid advance of control technologies, the case-by-case new source review (NSR) permitting program has required greater emissions reductions than required by the NSPS, particularly for utility boilers. The existing and proposed market-based cap and trade programs require greater overall emissions reductions from the entire utility industry than the technology-based emission limits of the NSPS can achieve by regulating individual new sources.

Utility steam generators are subject to the current cap and trade programs for acid rain, which imposes a national cap on annual utility SO_2 emissions, and for interstate transport of ozone, which imposes a regional cap on summer time utility NO_X emissions in the eastern United States. The Administration's proposed Clear Skies Act would impose three trading programs: a national SO_2 trading program tighter than the acid rain trading program and two annual NO_X trading programs (one for the eastern United States and one for the remaining part of the country). Alternatively, EPA's Clean Air Interstate Rule (CAIR) proposes two new trading programs for utility steam generators to further control SO_2 and NO_X emissions in the eastern United States to reduce the transport of fine particulate matter and ozone.

Under these types of cap and trade programs, emissions of the regulated pollutants from all the regulated units are capped at a prescribed level (tons per year). Each affected unit is allocated a number of emission allowances, each of which conveys the right to emit a certain amount of the regulated pollutant. The total number of allowances allocated for any given year equals the emissions cap for that year. Each year, an affected unit must turn in a number of allowances equal to its emissions. Allowances can be bought and sold. Therefore, units can comply either by emitting equal to or less than permitted by the number of allowances

they have been allocated or by obtaining additional allowances. This provides units with low cost reduction opportunities an incentive to reduce emissions below their allocated levels and allows units that face high costs for emissions reductions the opportunity to obtain allowances.

It is useful to understand the relationship between the NSPS program as it applies to utility steam generators and the various cap and trade programs being implemented or under development. First, the cap and trade program provides an incentive to apply modern emission controls on new sources because installing controls on a new unit is generally less expensive than installing similar controls on an existing unit. Minimizing emissions from a new source minimizes the allowances it must purchase (if no allowances are set aside for new sources) or may even allow it to sell allowances (if allowances are automatically allocated to new sources). Therefore, for source categories and pollutants subject to a stringent industry-wide emissions cap, a stringent NSPS is less important because new sources already have an economic incentive to install state-of-the-art controls. Second, over time, as technology improves, a cap continues to provide an incentive to install better technology, especially on new sources. In contrast, NSPS that are reviewed and amended every 8 years are unlikely to keep pace with technological improvements. Since the normal rulemaking process takes several years, more frequent updating of NSPS are impractical.

Finally, for sources and pollutants subject to a tight industry-wide emissions cap, stringent NSPS would have little or no effect on overall emissions in the geographic area regulated by the cap. Even if there were source specific reasons which result in it not making economic sense to install as effective emission controls as would be required under a stringent NSPS, that unit would have to use more allowances. This would result in fewer allowances being available for existing units, which would result in fewer emissions from existing sources. Therefore, for the pollutants, geographic area, and sources regulated by cap and trade programs, tighter NSPS would not necessarily affect total emissions. However, the stringency of the NSPS could affect the cost of achieving these emissions reductions. A cap and trade program allows the market to determine the most cost-effective way to achieve the overall emissions reductions goal. Installing modern controls on new sources will be the most cost-effective choice for most new sources. If there are circumstances where this is not the case, then overly stringent NSPS could limit a new source from using the most cost-effective controls for meeting its allocated portion of the emissions cap, thereby raising the cost of controls without necessarily increasing the environmental benefit.

The primary environmental benefit from the proposed amendments to the utility NSPS would come from the reduction of direct PM emissions, because direct emissions of PM are not subject to a cap and trade program (nor has such a program been proposed). For SO_2 (which is subject to a national trading program), the primary effect of the proposed amendments would be to establish the minimum control requirements for any steam generating units that are not subject to NSR. For NO_X, the same would be true nationally if Clear Skies were to pass or would be true in the eastern United States if CAIR is promulgated. Also, replacing the percent reduction requirement for SO_2 with an emission limit would harmonize the NSPS with the cap and trade programs by providing sources more flexibility in reducing emissions from new sources to meet the cap, while maintaining the same aggregate emissions.

III. Summary of the Proposed Amendments

The proposed amendments would amend the emission limits for SO_2, NO_X, and PM from steam generating units in subpart Da, 40 CFR part 60, (Electric Utility Steam Generating Units), and the PM emission limit for subpart Db, 40 CFR part 60, (Industrial-Commercial-Institutional Steam Generating Units), and subpart Dc, 40 CFR part 60, (Small Industrial-Commercial-Institutional Steam Generating Units). Only those units that begin construction, modification, or reconstruction after February 28, 2005, would be affected by the proposed amendments. Steam generating units subject to the proposed amendments but for which construction, modification, or reconstruction began on or before February 28, 2005, would continue to comply with the applicable standards under the current NSPS. Compliance with the proposed emission limits would be determined using the same testing, monitoring, and other compliance provisions set forth in the existing standards. In addition to amending the emission limits, we also are proposing several technical clarifications and corrections to existing provisions of the existing amendments, as explained below.

We are proposing language to clarify the applicability of subparts Da, Db, and Dc of 40 CFR part 60 to combined cycle power plants. Heat recovery steam generators that are associated with combined cycle gas turbines burning natural gas or a fuel other than synthetic-coal gas would not be subject to subparts Da, Db, or Dc, 40 CFR part 60, if the unit meets the applicability requirements of subpart KKKK, 40 CFR part 60 (Standards of Performance for Stationary Combustion Turbines). Subpart Da, Db, or Dc of 40 CFR part 60 would apply to a combined cycle gas turbine that burns synthetic-coal gas (*e.g.*, integrated coal gasification combine cycle power plants) and meets the applicability criteria of one of the proposed amendments, respectively.

We are proposing amendments to the definitions for boiler operating day, coal, coal-derived fuels, oil, and natural gas. The purpose of the proposed amendments is to clarify definitions across the three subparts and to incorporate the most current applicable American Society for Testing and Materials (ASTM) testing method references. Also, we are proposing to clarify the definition of an ''electric utility steam generating unit'' as applied to cogeneration units.

We are proposing several amendments to the provisions of the existing rule related to the use of continuous emission monitoring systems (CEMS) to obtain SO_2 and NO_X emission data for determining compliance with the rule requirements. The proposed amendments would eliminate duplicative or conflicting CEMS requirements for utility steam generating units that are subject to both 40 CFR part 60 and 40 CFR part 75 (acid rain).

A. What Are the Requirements for New Electric Utility Steam Generating Units (40 CFR Part 60, Subpart Da)?

The proposed PM emission limit for electric utility steam generating units is 6.4 nanograms per joule (ng/J) (0.015 lb/MMBtu) heat input regardless of the type of fuel burned. Compliance with this emission limit would be determined using the same testing, monitoring, and other compliance provisions for PM standards set forth in the existing rule.

The proposed SO_2 emission limit for electric utility steam generating units is 250 ng/J (2.0 pound per megawatt hour (lb/MWh)) gross energy output regardless of the type of fuel burned with one exception. The proposed SO_2 emission limit for electric utility steam

generating units that burn over 90 percent coal refuse is 300 ng/J (2.4 lb SO_2/MWh) gross energy output. Under the existing subpart Da of 40 CFR part 60, coal refuse is defined as waste products of coal mining, physical coal cleaning, and coal preparation operations (*e.g.*, culm, gob) containing coal, matrix material, clay, and other organic and inorganic material. Compliance with the proposed SO_2 emission limits would be determined on a 30-day rolling average basis using a CEMS to measure SO_2 emissions as discharged to the atmosphere and following the compliance provisions in the existing rule for the output-based NO_X standards applicable to new sources that were built after July 9, 1997.

The proposed NO_X emission limit for electric utility steam generating units is 130 ng/J (1.0 lb NO_X/MWh) gross energy output regardless of the type of fuel burned in the unit. Compliance with this emission limit would be determined on a 30-day rolling average basis using the testing, monitoring, and other compliance provisions in the existing rule for the output-based NO_X standards applicable to new sources that were built after July 9, 1997.

B. What Are the Requirements for Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subpart Db)?

The proposed PM emission limit for industrial-commercial-institutional steam generating units is 13 ng/J (0.03 lb/MMBtu heat input) for units that burn coal, oil, wood, or a mixture of these fuels with other fuels. This limit would apply to units larger than 29 MW (100 million British thermal units per hour).

C. What Are the Requirements for Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subpart Dc)?

The proposed PM emission limit for small industrial-commercial-institutional steam generating units is 13 ng/J (0.03 lb/MMBtu heat input) for units that burn coal, oil, wood, or a mixture of these fuels with other fuels. This limit would apply to units between 8.7 MW and 29 MW (30 to 100 million Btu per hour).

IV. Rationale for the Proposed Amendments

A. What Is the Performance of Control Technologies for Steam Generating Units?

Control technologies for steam generating units are based on either pre-combustion controls, combustion controls, or post-combustion controls. Pre-combustion controls remove contaminants from the fuel before it is burned, and combustion controls reduce the amount of pollutants formed during combustion. Post-combustion controls remove pollutants formed from the flue gases before the gases are released to the atmosphere.

Selecting control technologies to reduce emissions of PM, SO_2, and NO_X from a new steam generating unit is a function of the type of fuel burned in the unit, the size of the unit, and other site-specific factors (*e.g.*, type of unit, firing and loading practices used, regional and local air quality requirements). All new steam generating units incorporate control technologies to reduce NO_X emissions. Natural gas is a gaseous fuel composed of methane and other hydrocarbons with trace amounts of sulfur and no ash. Accordingly, PM and SO_2 emissions from steam generating units firing natural gas are inherently low and generally do not require the use of additional PM or SO_2 control technologies. For new steam generating units firing fuel oils, PM and SO_2 controls may be required depending on the grade and composition of the fuel oil being burned in the unit. New steam generating units firing coal use PM and SO_2 controls.

1. PM Control Technologies

Filterable PM emissions from a steam generating unit are predominately fly ash and carbon. Carbon particles are generated from incomplete combustion of the fuel, and fly ash from burning fuels containing ash materials (the mineral and other incombustible matter portion of a fuel). These incombustible solid materials are released during the combustion process and are entrained in the flue gases. Distillate oils contain insignificant levels of ash, but residual fuel oils have higher ash contents, up to 0.5 percent. While different ranks of coals vary in ash content, all coals contain significant quantities of ash. The percentage of ash in a given coal can vary from less than 5 percent to greater than 20 percent depending on the coal source and level of coal cleaning.

Control of PM emissions from steam generating units relies on the use of post-combustion controls to remove solid particles from the flue gases. Electrostatic precipitators (ESP) and fabric filters (also called baghouses) are the predominant technologies used to control PM from coal-fired steam generating units. Either of these PM control technologies can be designed to achieve overall PM collection efficiencies in excess of 99.9 percent. Control of PM emissions from oil-fired steam generating units can be achieved by using oil burner designs with improved atomization and fuel mixing characteristics, by implementing better maintenance practices, and by using an ESP.

Electrostatic Precipitator. An ESP operates by imparting an electrical charge to incoming particles, and then attracting the particles to oppositely charged metal plates for collection. Periodically, the particles collected on the plates are dislodged in sheets or agglomerates (by rapping the plates) and fall into a collection hopper. The fly ash collected in the ESP hopper is a solid waste that is either recycled for industrial use or disposed of in a landfill.

The effectiveness of particle capture in an ESP depends primarily on the electrical resistivity of the particles being collected. The size requirement for an ESP increases with increasing coal ash resistivity. Resistivity of coal fly ash can be lowered by conditioning the particles upstream of the ESP with sulfur trioxide, sulfuric acid, water, or sodium. In addition, collection efficiency is not uniform for all particle sizes. Collection efficiencies greater than 99.9 percent, however, are achievable for small particles (less than 0.1 micrometer (μm)) and large particles (greater than 10 μm). Collection efficiencies achieved by ESP for the portion of particles having sizes between 0.1 μm and 10 μm tend to be lower.

Fabric Filters. A fabric filter collects PM in the flue gases by passing the gases through a porous fabric material. The buildup of solid particles on the fabric surface forms a thin, porous layer of solids, which further acts as a filtration medium. Gases pass through this cake/fabric filter, and all but the finest-sized particles are trapped on the cake surface. Collection efficiencies of fabric filters can be as high as 99.99 percent.

A fabric filter must be designed and operated carefully to ensure that the bags inside the collector are not damaged or destroyed by adverse operating conditions. The fabric material must be compatible with the gas stream temperatures and chemical composition. Because of the temperature limitations of the available bag fabrics, location of a fabric filter for use by a coal-fired electric steam generating unit is restricted to locations downstream of the air heater.

2. SO_2 Control Technologies

During combustion, sulfur compounds present in a fuel are predominately oxidized to gaseous SO_2. A small portion of the SO_2 oxidizes further to sulfur trioxide (SO_3). One approach to controlling SO_2 emissions from steam generating units is to limit the maximum sulfur content in the fuel. This can be accomplished by burning a fuel that naturally contains low amounts of sulfur or a fuel that has been pre-treated to remove sulfur from the fuel. A second approach is use a post-combustion control technology that removes SO_2 from the flue gases. These technologies rely on either absorption or adsorption processes that react SO_2 with lime, limestone, or another alkaline material to form an aqueous or solid sulfur by-product.

Coal Pre-Treatment. Sulfur in coal occurs as either inorganic sulfur or organic sulfur that is chemically bonded with carbon. Pyrite is the most common form of inorganic sulfur. There are two ways to pre-treat coal before combustion to lower sulfur emissions: Physical coal cleaning and gasification. Physical cleaning removes between 20 to 90 percent of pyritic sulfur, but is not effective at removing organic sulfur. The amount of pyritic sulfur varies with different coal types, but it is typically half of the total sulfur for high sulfur coals.

Coal gasification breaks coal apart into its chemical constituents (typically a mixture of carbon monoxide, hydrogen, and other gaseous compounds) prior to combustion. The product gas is then cleaned of contaminants prior to combustion. Gasification reduces SO_2 emissions by over 99 percent.

Alkali Wet Scrubbing. The SO_2 in a flue gas can be removed by reacting the sulfur compounds with a solution of water and an alkaline chemical to form insoluble salts that are removed in the scrubber effluent. The most commonly used wet flue gas desulfurization (FGD) systems for coal-fired steam generating units are based on using either limestone or lime as the alkaline source. In a wet scrubber, the flue gas enters a large vessel located downstream of the particle control device where it contacts the lime or limestone slurry. The calcium in the slurry reacts with the SO_2 to form reaction products that are predominately calcium sulfite. Because of its high alkalinity, fly ash is sometimes mixed with the limestone or lime. Other alkaline solutions can be used for scrubbing including sodium carbonate, magnesium oxide, and dual alkali.

The SO_2 removal efficiency that a wet FGD system can achieve for a specific steam generating unit is affected by the sulfur content of the fuel burned, which determines the amount of SO_2 entering the wet scrubber, and site-specific scrubber design parameters including liquid-to-gas ratio, pH of the scrubbing medium, and the ratio of the alkaline sorbent to SO_2. Annual SO_2 removal efficiencies have been demonstrated above 98 percent. Advanced wet scrubber designs include limestone scrubbing with forced oxidation (LSFO) and magnesium enhanced lime scrubbing FGD systems.

Limestone Scrubbing with Forced Oxidation. Limestone scrubbing with forced oxidation is a variation of the wet scrubber described above and can use either limestone or magnesium enhanced lime. In the LSFO process, the calcium sulfite initially formed in the spray tower absorber is oxidized to form gypsum (calcium sulfate) by bubbling compressed air through the sulfite slurry. The resulting gypsum by-product has commercial value and can be sold to wallboard manufacturers. Also, because of their larger size and structure, gypsum crystals settle and dewater better than calcium sulfite crystals, reducing the required size of by-product handling equipment. The high gypsum content also permits disposal of the dewatered waste without fixation.

Spray Dryer Adsorption. An alternative to using wet scrubbers is to use spray dryer adsorber technology. A spray dryer adsorber operates by the same principle as wet lime scrubbing, except that instead of a bulk liquid (as in wet scrubbing) the flue gas containing SO_2 is contacted with fine spray droplets of hydrated lime slurry in a spray dryer vessel. This vessel is located downstream of the air heater outlet where the gas temperatures are in the range of 120 °C to 180 °C (250 °F to 350 °F). The SO_2 is absorbed in the slurry and reacts with the hydrated lime reagent to form solid calcium sulfite and calcium sulfate. The water is evaporated by the hot flue gases and forms dry, solid particles containing the reacted sulfur. Most of the SO_2 removal occurs in the spray dryer vessel itself, although some additional SO_2 capture has also been observed in downstream particulate collection devices. This process produces a dry waste product, which is mostly disposed of in a landfill.

The primary operating parameters affecting SO_2 removal are the calcium-reagent-to-sulfur stoichiometric ratio and the approach to saturation in the spray dryer. To decrease sorbent costs, a portion of the solids collected in the spray dryer and the PM collection device may be recycled to the spray dryer. The SO_2 removal efficiencies of new lime spray dryer systems are generally greater than 90 percent.

Dry Injection. For the dry injection process, dry hydrated or slaked lime (or another suitable sorbent) is directly injected into the ductwork or boiler upstream of a PM control device. Some systems use spray humidification followed by dry injection. The SO_2 is adsorbed and reacts with the powdered sorbent. The dry solids are entrained in the combustion gas stream, along with fly ash, and then collected by the downstream PM control device.

The dry injection process produces a dry, solid by-product that is easier to dispose. However, the SO_2 removal efficiencies for existing dry injection systems are lower than for the other FGD technologies ranging from approximately 40 to 60 percent when using lime or limestone, and up to 90 percent using other sorbants (*e.g.*, sodium bicarbonate).

Fluidized-bed Combustion with Limestone. One of the appealing features of selecting a steam generating unit that uses a fluidized-bed combustor (FBC) is the capability to control SO_2 emissions during the combustion process. This is accomplished by adding finely crushed limestone along with the coal (or other solid fuel) to the fluidized bed. During combustion, calcination of the limestone (reduction to lime by subjecting to heat) occurs simultaneously with the oxidation of sulfur in the coal to form SO_2. The SO_2, in the presence of excess oxygen, reacts with the lime particles to form calcium sulfate. The sulfated lime particles are removed with the bottom ash or collected with the fly ash by a downstream PM control device (for most existing FBC steam generating unit applications, a fabric filter is used as the PM control device). Fresh limestone is continuously fed to the bed to replace the reacted limestone. The SO_2 removal efficiencies for some FBC units are in the range of approximately 80 to 98 percent.

3. NO_X Control Technologies

Nitrogen oxides are formed in a steam generating unit by the oxidation of molecular nitrogen in the combustion air and any nitrogen compounds contained in the fuel. The formation of NO_X from nitrogen in the combustion air is dependent on two conditions occurring simultaneously in the unit's combustion zone: high temperature and an excess of combustion air. Under these conditions, significant quantities

of NO_X are formed regardless of the fuel type burned. New steam generating units being installed today in the United States routinely include burners and other features designed to reduce the amounts of NO_X formed during combustion.

Beyond the lower levels of NO_X emissions achieved using combustion controls, additional NO_X emission control can be achieved for steam generating units by installing post-combustion control technologies. These technologies involve converting the NO_X in the flue gas to molecular nitrogen (N2) and water using either a process that requires a catalyst (called selective catalytic reduction (SCR)) or a process that does not use a catalyst (called selective noncatalytic reduction (SNCR)). Both SCR and SNCR technologies have been applied widely to gas-, oil-, and coal-fired steam generating units.

NO_X Combustion Controls. Combustion controls reduce NO_X emission formation by controlling the peak flame temperature and excess air in and around the combustion zone through staged combustion. With staged combustion, the primary combustion zone is fired with most of the air needed for complete combustion of the fuel. The remaining air is introduced into the products of the partial combustion in a second combustion zone. Air staging lowers the peak flame temperature, thereby reducing thermal NO_X, and reduces the production of fuel NO_X by reducing the oxygen available for combination with the fuel nitrogen. Staged combustion may be achieved internally in the fuel burners using specially designed burner configurations (often referred to as low-NO_X burners), or external to the burners by diverting a portion of the combustion air from the burners and introducing it through separate ports and/or nozzles, mounted above the burners (often referred to as overfire air (OFA)). The actual NO_X reduction achieved with a given NO_X combustion control technology varies from unit to unit. Use of low-NO_X burners can reduce NO_X emissions by approximately 35 to 55 percent. Use of OFA reduces NO_X emissions levels in the range of 15 to 30 percent. Higher NO_X emissions reductions are achieved when combustion control technologies are combined (*e.g.*, combining OFA with low-NO_X burners can achieve NO_X emissions reductions in the range of 60 percent).

Other NO_X combustion control techniques include reburning, co-firing natural gas, and flue gas recirculating. In reburning, coal, oil, or natural gas is injected above the primary combustion zone to create a fuel rich zone to reduce burner-generated NO_X to N2 and water vapor. Overfire air is added above the reburning zone to complete combustion of the reburning fuel. Natural gas co-firing consists of injecting and combusting natural gas near or concurrently with the main oil or coal fuel. Flue gas recirculating decreases combustion temperatures by mixing flue gases with the incoming combustion air. For gas and oil units, flue gas recirculating can reduce NO_X emissions by 75 percent.

SCR Technology. The SCR process uses a catalyst with ammonia (NH_3) to reduce the nitrogen oxide (NO) and nitrogen dioxide (NO_2) in the flue gas to molecular nitrogen and water. Ammonia is diluted with air or steam, and this mixture is injected into the flue gas upstream of a metal catalyst bed that typically is composed of vanadium, titanium, platinum, or zeolite. The SCR catalyst bed reactor is usually located between the economizer outlet and air heater inlet, where temperatures range from 230 °C to 400 °C (450 °F to 750 °F). The SCR technology is capable of NO_X reduction efficiencies of 90 percent or higher.

SNCR Technology. A SNCR process is based on the same basic chemistry of reducing the NO and NO2 in the flue gas to molecular nitrogen and water, but does not require the use of a catalyst to promote these reactions. Instead, the reducing agent is injected into the flue gas stream at a point where the flue gas temperature is within a specific temperature range of 870 °C to 1,090 °C (1,600 °F to 2,000 °F). Currently, two SNCR processes are commercially available; one uses ammonia as the reagent, and the other process uses an aqueous urea solution in place of ammonia. The NO_X reduction levels for SNCR are in the range of approximately 30 to 50 percent.

B. Regulatory Approach

We have reviewed emission data and control technology information applicable to criteria pollutants and have concluded that the regulation of NO_X, PM, and SO_2 emissions from these sources under the NSPS is appropriate. The proposed amendments to the NSPS reflect the BDT for these sources based on the performance and cost of the emission control technologies discussed above. In amending the emission limits based on BDT, we have incorporated a fuel-neutral concept and, to the extent that it is practical and reasonable, output-based emission limits. These approaches provide the level of emission limitation required by the CAA for the NSPS program and achieve additional benefits of compliance flexibility, increased efficiency, and the use of cleaner fuels.

1. Fuel-Neutral Approach

We are proposing to amend emission limits using a fuel-neutral approach in most cases. This approach is currently used for the NO_X emission standards under subparts Da and Db of 40 CFR part 60 and encourages pollution prevention by recognizing the environmental benefits of combustion controls based on the use of clean fuels. The fuel-neutral approach provides a single emission limit for steam generating units based on BDT without regard to specific type of steam generating equipment or fuel type. This approach provides an incentive to facilities to consider fuel use, boiler type, and control technology when developing an emission control strategy. Therefore, owners and operators of affected sources are able to use the most effective combination of add-on control technologies, clean fuels, and boiler design to meet the emission limit. For example, an owner and operator may decide that the blending of a low sulfur fuel with coal or physically washing the coal in combination with dry-injection technology would be a more cost-effective way of meeting the NSPS than burning a higher sulfur coal and installing a FGD system. Alternatively, if a source does not have long-term access to clean fuels at a reasonable cost, then emission control technology is available to allow units to burn higher sulfur fuels and still comply with the emission limits.

To develop a fuel-neutral emission limit, we analyzed emission control performance from coal-fired units to establish an emission level that represents BDT. The higher sulfur, nitrogen, and ash contents for coal compared to oil or gas makes application of BDT to coal-fired units more complex than application to either oil-or gas-fired units. Therefore, emission levels selected for coal-fired steam generating units using BDT would be achievable by oil- and gas-fired electric utility steam generating units. The resulting emission levels from coal-fired units would apply to all boiler types and fuel use combinations. It is appropriate for all fuels to have the same limits to avoid discouraging the use of cleaner fuels. The BDT analysis was conducted separately for 40 CFR part 60, subparts Da, Db, and Dc.

2. Output-Based Emission Standards

We have established pollution prevention as one of our highest

priorities. One of the opportunities for pollution prevention is maximizing the efficiency of energy generation. An output-based standard establishes emission limits in a format that incorporates the effects of unit efficiency by relating emissions to the amount of useful-energy generated, not the amount of fuel burned. By relating emission limitations to the productive output of the process, output-based emission limits encourage energy efficiency because any increase in overall energy efficiency results in a lower emission rate. Allowing energy efficiency as a pollution control measure provides regulated sources with an additional compliance option that can lead to reduced compliance costs as well as lower emissions. The use of more efficient technologies reduces fossil fuel use and leads to multi-media reductions in environmental impacts both on-site and off-site. On-site benefits include lower emissions of all products of combustion, including hazardous air pollutants, as well as reducing any solid waste and wastewater discharges. Off-site benefits include the reduction of emissions and non-air environmental impacts from the production, processing, and transportation of fuels.

While output-based emission limits have been used for regulating many industries, input-based emission limits have been the traditional method to regulate steam generating units. However, this trend is changing as we seek to promote pollution prevention and provide more compliance flexibility to combustion sources. For example, in 1998 we amended the NSPS for electric utility steam generating units (40 CFR part 60, subpart Da) to use output-based standards for NO_X (40 CFR 63.44a, 62 FR 36954, and 63 FR 49446). In this action, we are proposing output-based emission limits for SO_2 and NO_X under subpart Da of 40 CFR part 60. The format of the proposed output-based limits is mass of pollutant per megawatt hour of gross energy output. We are proposing to base the limits on gross energy output because of the monitoring difficulties in measuring net output. The current output-based emission limit for NO_X in subpart Da of 40 CFR part 60 is based on gross energy output. The difficulties of monitoring net energy output are explained in the preamble to the 1998 NO_X amendment for subpart Da of 40 CFR part 60 (63 FR 49448).

Electrical Generating Units. For subpart Da of 40 CFR part 60, we are proposing amendments which establish output-based emission limits for SO_2 and NO_X. For PM, we are proposing an amended input-based emission limit and requesting comments on an output-based limit. The proposed output-based emission limit for SO_2 will replace both the current percentage reduction requirement and input-based emission limit.

Industrial-Commercial-Institutional Units. For subpart Db of 40 CFR part 60, we are soliciting comment on an optional output-based NO_X emission limit for units that generate electricity. Units that generate electricity have the greatest opportunity for achieving increases in energy efficiency. We would structure the output-based limit as an option because we determined that for some applications of industrial, commercial, and institutional boilers, the monitoring, recordkeeping, and reporting costs for demonstrating compliance with output-based emission limits would be unreasonable.

Determining compliance with an output-based emission limit requires the use of a CEMS. Specifically, emission data must be collected in units of pounds per hour to calculate an output-based emission rate. The CEMS currently required by subpart Db of 40 CFR part 60, do not provide that data. A CEMS also would need to collect continuous exhaust flow data to calculate emissions in units of pounds per hour. Additionally, continuous energy monitoring devices would be needed to comply with an output-based limit. Not all electric generating units subject to subpart Db of 40 CFR part 60 may be designed with these monitoring systems. Due to costs, we are not expanding the monitoring requirements under subpart Db of 40 CFR part 60 to require the collection of exhaust flow and electrical generation data, and we are not proposing an output-based emission limit for subpart Db of 40 CFR part 60. Instead, we are proposing that individual facilities be given the option of complying with either the current input-based or an equivalent output-based limit.

Output-based limits may be feasible for NO_X at units that operate continuous emission flow and electrical generation monitoring equipment. For example, some industrial-commercial-institutional electric generating units may be required to install continuous exhaust flow monitoring systems to demonstrate compliance with State regulatory programs, such as NO_X requirements in State implementation plans. Where the required monitors are in place, an output-based emission limit provides an incentive for increased energy efficiency and the use of highly efficient technologies like combined heat and power systems (next section).

The use of output-based emission limits is less feasible for PM because current regulations generally do not require industrial-commercial-institutional steam generators to operate PM CEMS. Furthermore, the percent removal format for SO_2 contained in subpart Db of 40 CFR part 60 is not compatible with an output-based standard.

3. Combined Heat and Power

Combined heat and power (CHP) is the sequential generation of power (electricity or shaft power) and thermal energy from a common combustion source. The application of CHP captures and uses much of the waste heat that ordinarily is discarded from conventional electrical generation, where two-thirds of the input energy typically becomes waste heat (through exhaust stacks and cooling towers). In a CHP system, this captured energy can be used to provide process heat and space cooling or heating. By recovering waste heat, CHP systems achieve much higher fuel efficiencies than separate electric and thermal generators, and emit less pollution. Using CHP is a method for industry not only to decrease criteria pollutants and hazardous air pollutants, but also to move forward on addressing concerns about increasing levels of heat trapping gases in the atmosphere.

Because CHP units produce both electrical and thermal energy, the proposed amendments must account for both types of energy in demonstrating compliance with an output-based emission limit. Energy output for CHP units is the sum of gross electrical output and the useful energy of the process steam. For the output-based emission limits currently contained in subpart Da of 40 CFR part 60, we defined the useful energy of the process steam from CHP units as 50 percent of the thermal output. We chose the 50 percent allowance at that time because using an allowance as if the steam would be converted to electricity (up to 38 percent efficiency) would not account for the environmental benefits of CHP applications, and allowing 100 percent could potentially overstate the environmental benefits of CHP applications. Additionally, this approach to CHP units was consistent with a Federal Energy Regulatory Commission (FERC) regulation determining the efficiency of CHP units.

In the proposed amendments, we are soliciting comments on the appropriateness of giving more than 50 percent credit for thermal output, and on a different approach to account for the thermal energy from CHP units. The proposed approach would account for

the efficiency benefits of the thermal output based on the amount of avoided emissions that a conventional boiler system would otherwise emit had it provided the same thermal output as the CHP system. The avoided emissions would be determined for each unit based on individual unit operating factors. The proposed compliance procedures for CHP units follow this logic:

(1) Determine the emission rate of the combustion source that provides energy to the CHP unit (in units of pounds per hour) from the continuous emission and flow monitoring system;

(2) Calculate the avoided emissions (in units of pounds per hour) for the amount of thermal energy generated from the CHP unit; and

(3) Subtract the avoided emissions from the total emissions of the CHP unit and divide that value by the gross electrical output of the CHP unit.

This approach more accurately reflects the environmental benefits of CHP units and accounts for site-specific differences in system design, operation, and various power-to-heat ratios (the ratio of gross electrical energy generation to useful thermal energy generation).

If a CHP unit demonstrates compliance with the output-based emission limit, an output-based emission rate would be calculated based on the following equation:

$$Echp = [Et - THa]/Oe \qquad \text{(Eq. 1)}$$

Where:

Echp = CHP emission rate (lb/MWh)
Et = total emissions (pounds per hour (lb/hr))
THa = avoided thermal emissions (lb/hr)
Oe = electrical output (MW)

The avoided thermal emissions (A) would be calculated based on the following equation:

$$A = [E/0.8] * Oth \qquad \text{(Eq. 2)}$$

Where:

A = avoided thermal emissions (lb/hr)
E = applicable NSPS emission limit for the displaced boiler (pound per million British thermal units heat input (lb/MMBtu))
0.8 = assumed boiler efficiency (percent)
Oth = thermal output (MMBtu/hr)

Under this approach, the avoided emission rate for the displaced steam generating capacity would be calculated using the input-based 40 CFR part 60, subpart Db, NSPS emission limit applicable to the steam generating unit. This is appropriate since, in the absence of the CHP facility, the thermal energy would be provided by a new boiler subject to 40 CFR part 60, subpart Db. The NSPS limit would be converted from an input- to a thermal output-based emission rate by dividing the input-based emission limit by an assumed thermal system efficiency of 80 percent. We have chosen a boiler thermal efficiency of 80 percent because it is considered reasonable and takes into consideration all fuels and a variety of design configurations used for boilers in CHP facilities. Then, the avoided emission rate is converted to units of pounds per hour by multiplying by the recovered useful thermal output of the CHP system. We are soliciting comments both on this approach and other methods of determining displaced thermal emissions besides a boiler subject to 40 CFR part 60, subpart Db.

C. How Did EPA Determine the Amended Standards for Electric Utility Steam Generating Units (40 CFR Part 60, Subpart Da)?

New source performance standards for electric utility steam generating units in the proposed amendments would apply only to affected sources that begin construction, modification, or reconstruction after February 28, 2005. As discussed earlier in this preamble, the regulatory approach we are using to develop the proposed standards is based on our determination of BDT for control of PM, SO_2, and NO_X from electric utility steam generating units. Furthermore, we decided that the proposed standards should use a fuel-neutral and an output-based emission limit format, to the extent that it is practical and reasonable.

To set the proposed output-based standards at new plants, we used measured output-based emissions where available. When gross output information was unavailable, we selected emission limits based on heat input and used a gross electrical efficiency to determine the output-based standard. Recent technical publications assert that new supercritical plants will be able to achieve net efficiencies as high as 45 percent, and analysis of EPA's Clean Air Markets Division data indicates that the top 10 percent of utility units are presently operating at a gross efficiency of 38 percent or greater. However, to account for variations in boiler designs and to allow efficiency as a control technology, we selected 36 percent gross efficiency (top 25 percent of existing units) as our conversion factor. We are soliciting comments on this approach and the appropriateness of the selected value.

Only three new coal utility units have been built since the prior NSPS amendments in 1998. The plants are the Red Hills facility in Mississippi, the Hawthorn facility in Missouri, and the Northside facility in Florida. These plants are designed to burn lignite, subbituminous, and bituminous coal, respectively. To provide a broader set of data to base the proposed amendments on, we also analyzed older plants that have been retrofitted with controls.

1. Selection of the Proposed PM Standard

Direct particulate matter emissions from steam generating units firing coal result from the entrainment of fly ash in the flue gases and, to a lesser extent, from unburned fuel particles and downstream post-combustion reactions. Currently, 40 CFR part 60, subpart Da, limits PM emissions from electric utility steam generating units to 0.03 lb/MMBtu heat input regardless of the fuel burned in the unit.

Coal-fired electric utility steam generating units meeting the current PM emission limit under subpart Da, 40 CFR part 60, predominately use either a fabric filter or ESP to remove PM from the flue gases. Over the years, the performance of fabric filters and ESP installed on coal-fired steam generating units has improved as a result of advanced control device designs and other performance enhancements (*e.g.*, use of new bag materials for fabric filters and use of computer modeling and improved rapper and electrical system designs for ESP). We concluded that fabric filters and ESP represent BDT for continuous reduction of PM emissions from coal-fired electric utility steam generating units.

To assess performance levels achievable by fabric filters and ESP installed on new coal-fired electric utility steam generating units, we reviewed the permits of three recent facilities covered under subparts Da of 40 CFR part 60. The permit limits for the Hawthorn, Red Hills, and Northside facilities are 0.018, 0.015, and 0.011 lb PM/MMBtu heat input respectively. The Hawthorn limit includes condensible PM, and the facility is achieving filterable PM control of 0.012 lb/MMBtu. The Northside facility is achieving filterable PM control of 0.004 lb/MMBtu. Based on this information, we concluded that current fabric filter and ESP control technologies being installed on new electric utility steam generating units can achieve PM emission levels below the level of the existing PM standard, and that amending this PM standard for new electric utility steam generating units is warranted.

To select a level for the proposed PM standard, we evaluated the cost-effectiveness of two limits (0.018 lb PM/MMBtu and 0.015 lb PM/MMBtu) along

with the ability of a broad range of coal types and boiler configurations to achieve the standard. The annual reduction and incremental cost of reducing PM emissions from the existing NSPS (0.03 lb/MMBtu) to 0.018 lb/MMBtu is 420 tons at an average incremental cost of $3,100/ton. The annual reduction and incremental cost of reducing the PM standard from 0.018 lb/MMBtu to 0.015 lb/MMBtu is 110 tons at an average incremental cost of $8,400/ton. We selected a level for the proposed standard considering the above performance information, non-air quality health effects, and effects on energy production associated with achieving these emission levels. The proposed PM standard is 6.5 ng/J (0.015 lb/MMBtu heat input). Based on information from the Department of Energy Cost and Quality of Fuels for Electric Utility Plants 2001, 75 percent of existing coal utility units would be able to comply with the proposed limit using either an ESP or fabric filter operating at a 99.8 percent collection efficiency, and 95 percent would be able to comply with either an ESP or fabric filter operating at a 99.9 percent collection efficiency. The remaining 5 percent would be able to comply with either a high efficiency ESP or fabric filter operating at a 99.95 percent collection efficiency or coal washing in conjunction with a less efficient PM control device. We are particularly interested in soliciting comments providing information to guide this determination. In the event data is presented indicating a more stringent standard is achievable, we would consider a 4.7 ng/J (0.011 lb/MMBtu heat input) standard. If data is presented demonstrating that this standard will pose significant technical difficulties for a range of fuels, we would consider a standard of 8.6 ng/J (0.02 lb/MMBtu heat input).

2. How Did EPA Select the Proposed SO_2 Standard?

The current SO_2 standard in 40 CFR part 60, subpart Da, uses a percent reduction format in conjunction with a maximum emission limit but provides an allowance for a lower percent reduction requirement if a target emission limit is demonstrated. Effectively, these standards require a new coal-fired steam generating unit to achieve a 90 percent reduction of the potential combustion concentration of SO_2 (*i.e.*, the theoretical amount of SO_2 that would be emitted in the absence of using any emission control systems), and meet an emission limit of 1.2 lb SO_2/MMBtu heat input. However, if a unit can demonstrate an SO_2 emission rate less than 0.6 lb/MMBtu heat input, then the unit is only required to achieve a 70 percent reduction.

As discussed earlier in this preamble, a number of SO_2 control technologies are currently available for use with new coal-fired electric utility steam generating units. The SO_2 control strategy used for a particular new electric utility steam generating unit project is fundamentally determined by the type of combustion technology that is selected for the new unit. Owners and operators building a new steam generating unit using integrated gasification combined cycle (IGCC) or fluidized-bed combustion technology generally use different control strategies than owners and operators building a new steam generating unit using pulverized coal combustion technology.

Another important factor influencing the selection of SO_2 control technology for a new unit is the sulfur content of the coals expected to be burned. According to the most recent Department of Energy data (FERC form–423 and form EIA–423), non-refuse coal-fired power plants in the United States had an average uncontrolled sulfur emissions potential of 1.8 lb SO_2/MMBtu heat input in 2002. Since 1995, eight new coal-fired electric utility steam generating units have been built in the United States, and these units have an average uncontrolled SO_2 emission level of 1.6 lb SO_2/MMBtu heat input and a maximum of 2.1 lb SO_2/MMBtu heat input. We concluded that new electric utility steam generating projects will use either IGCC technology, state-of-the-art SO_2 controls, or burn low- and medium-sulfur content coals to achieve reductions.

New steam generating projects that use IGCC technology will inherently have only trace SO_2 emissions because over 99 percent of the sulfur associated with the coal is removed by the coal-gasification process. New steam generating units that use fluidized-bed combustion technology can control SO_2 during the combustion process by coal washing, coal blending, adding limestone into the fluidized-bed, and installing polishing scrubbers. However, to date, application of fluidized-bed combustion technology has been limited to the lower end of the steam generating unit sizes expected for new electric utility projects (the largest FBC unit built to date is 350 MW). For SO_2 controls applied to steam generating units using pulverized coal combustion technology, control strategies involve the burning of low sulfur coals, coal washing, coal blending, the use of post-combustion controls to remove SO_2 from the flue gases, and co-firing with natural gas, low sulfur fuel oil, or biomass. The majority of new electric utility steam generating units will use pulverized coal combustion technology. Therefore, using the fuel-neutral approach discussed earlier, we decided to base the BDT determination for development of an amended SO_2 standard on application of SO_2 control technologies to pulverized coal-fired steam generating units.

We reviewed the SO_2 control technologies currently available for application to pulverized coal-fired electric utility steam generating units. We concluded that FGD is BDT for these units. The type of FGD system used for a given new unit depends on a number of site-specific factors, including unit size, sulfur content of coal to be burned in the unit, and the overall economics of each application.

Existing wet FGD systems used for pulverized coal-fired electric utility steam generating units, especially the scrubber technologies installed in the last 10 years, are capable of consistently achieving SO_2 removal efficiencies of 95 percent and higher. Multiple plants have demonstrated that this level of control is achievable on a long-term basis.

Enhanced wet FGD systems are capable of achieving high removal efficiencies and can be used for units burning the highest sulfur content coals. In addition, dry FGD technologies such as lime spray dryer (LSD) systems can be used to achieve significant reductions in SO_2 emissions under certain conditions. Typically, LSD systems have been used for smaller size electric utility steam generating units burning lower sulfur content coals. There are several LSD systems designed for 90 percent or higher SO_2 removal efficiencies. Based on this information, we concluded that current FGD systems being installed on new electric utility steam generating units can achieve SO_2 emission levels below the level of the existing SO_2 standard, and that amending this SO_2 standard for new electric utility steam generating units is warranted.

To assess the SO_2 control performance level of utility units, we reviewed new and retrofitted facilities with SO_2 controls. Since 1995, the Harrison coal-fired power plant in West Virginia has used a FGD system based on wet scrubbing technology that has achieved annual SO_2 emissions of approximately 1 lb/MWh gross output from an uncontrolled level of 5.4 lb/MMBtu heat input. Based on hourly acid rain data from 1997 to 2000, the highest 30-day average from the three stacks ranged between 1.3 to 1.5 lb SO_2/MWh gross

output. The Conemaugh facility in Pennsylvania has maintained 30-day average emissions under 1.4 lb SO_2/MWh gross output over the same period using coal with uncontrolled emissions of 3.4 lb SO_2/MMBtu heat input. Based on the performance of the Harrison facility, we are selecting a single limit for all fuels of 0.21 lb SO_2/MMBtu heat input as the basis for the proposed standard. We realize many new units will operate below this value, but the proposed limit would allow the highest sulfur coals (uncontrolled emissions of 7 lb SO_2/MMBtu) to meet the limit using similar technology as the Harrison facility. Using a gross electrical generating efficiency of 36 percent, the proposed standard is 250 ng/J (2.0 lb/MWh) of SO_2. Based on the third quarter 2004 emissions data from EPA's Clean Air Markets Division, eleven percent of existing coal units are presently operating at or below this limit. We are soliciting comments on the proposed limit and are considering the range of 120 to 250 ng/J (0.9 to 2.0 lb/MWh) for the final rule.

Of the coals used in existing electric utility plants, 70 percent could comply with the proposed standard using spray dryers. Eighty nine percent could meet the standard with conventional wet FGD technology, and ninety nine percent with enhanced wet scrubbing. Only one percent of existing coal utilities use coal with uncontrolled SO_2 emissions greater than 7 lb/MMBtu. If a utility were to elect to use a fuel with uncontrolled SO_2 emissions above 7 lb/MMBtu heat input, technology is available that would allow the unit to meet the proposed standard. Options include physical coal washing, blending with low sulfur fuels, combining SO_2 control technologies like those applied at the JEA Northside facility, super-critical high-efficiency boilers, combined heat and power, and gasification. In addition, emerging SO_2 control technologies will allow the direct use of any fuel in a conventional coal plant without fuel blending or pretreatment. Therefore, regardless of the sulfur content of the bituminous, subbituminous, or lignite coal burned by a new electric utility steam generating unit, SO_2 emission control technologies are available that would allow the unit owner or operator to comply with the proposed SO_2 standard at a reasonable cost.

Coal refuse (also called waste coal) is a combustible material containing a significant amount of coal that is reclaimed from refuse piles remaining at the sites of past or abandoned coal mining operations. Coal refuse piles are an environmental concern because of acid seepage and leachate production, spontaneous combustion, and low soil fertility. Advancements in fluidized-bed combustion technology allow reclaimed coal refuse to be burned in power plants and cogeneration facilities. Facilities that burn coal refuse provide special multimedia environmental benefits by combining the production of energy with the clean up of coal refuse piles and by reclaiming land for productive use. Consequently, because of the unique environmental benefits that coal refuse-fired power plants provide, these units warrant special consideration so as to prevent the amended NSPS from discouraging the construction of future coal refuse-fired power plants in the United States.

We reviewed emissions data and title V permit information for the existing coal refuse-fired power plants currently operating in the United States. Based on our review, we concluded that the PM and NO_X emission levels for these facilities were comparable to the emission levels from other coal-fired electric utility power plants using similar control technology. Thus, coal refuse-fired electric utility steam generating units can achieve the same PM and NO_X emission standards being proposed for bituminous, subbituminous, and lignite coals. However, there is a possibility that coal refuse from some piles will have sulfur contents at such high levels that they present potential economic and technical difficulties in achieving the same SO_2 standard that we are proposing for higher quality coals. Therefore, so as not to preclude the development of these projects, we are proposing a separate SO_2 emission limit that we concluded is achievable for the full range of coal refuse piles remaining in the United States. The proposed standard is 0.25 lb SO_2/MMBtu heat input for facilities that burn over 90 percent coal refuse. Using the same baseline efficiency of 36 percent, the proposed standard is 300 ng/J (2.4 lb/MWh) of SO_2 for units that burn coal refuse. We are requesting comment on the proposed limit and are considering the range of 180 to 360 ng/J (1.4 to 2.8 lb/MWh) for the final rule.

3. How Did EPA Select the Proposed NO_X Standard?

In 1998, we amended the NO_X emission limits for new electric utility steam generating units built or reconstructed after July 9, 1997 (63 FR 49444, September 9, 1998). At that time, we concluded that SCR represented BDT for continuous reduction of NO_X emissions from electric utility steam generating units. The level of the amended NO_X emission limit was selected based on the performance data of SCR control technology in combination with combustion controls on coal-fired steam generating units. The existing NSPS is 200 ng/J of gross output (1.6 lb/MWh) for new units and 65 ng/J of heat input (0.15 lb/MMBtu) for reconstructed units (63 FR 49444).

We reviewed the NO_X control technologies currently available for application to electric utility steam generating units, and concluded that SCR remains BDT for continuous reduction of NO_X emissions from these sources. However, since the time we selected the current NO_X emission limits, the number of electric utility steam generating units in the United States using SCR control technology has substantially increased. In 2002, more than 50 electric utility steam generating units were operating SCR controls, with additional facilities installing or planning to install the technology. In addition, at units operating SCR controls, the installation of NO_X CEMS allows the collection of long-term data on SCR control performance. As a result, we now have access to significantly more data on the performance of SCR control technology than was available to us in 1998.

The design NO_X reduction efficiencies of the SCR controls in use on specific electric utility steam generating units vary depending on site-specific conditions (*e.g.*, retrofit to existing units versus new unit applications, facility's air permit requirements, other NO_X combustion controls used), but operating data indicate that NO_X emission reduction levels of 90 percent or more can consistently be achieved for coal-fired electric utility steam generating units.

Two units built after the 1998 NO_X NSPS amendments for utility units are the JEA Northside facility in Florida and the Hawthorn facility in Missouri. Both are operating within their permit limits of 0.09 lb NO_X/MMBtu heat input and 0.08 lb NO_X/MMBtu heat input, respectively. These values are below the current standard of 1.6 lb/MWh, which is based on 0.15 lb NO_X/MMBtu heat input. Based on the incorporation of combustion control technologies into new electric utility steam generating unit designs and the demonstrated SCR performance for recently built units, we concluded that amending this NO_X standard for new electric utility steam generating units is warranted.

While the WA Parish coal facility in Texas has demonstrated control of approximately 0.04 lb NO_X/MMBtu heat input, we are proposing a level of 0.11 lb/MMBtu heat input as the basis for the proposed standard. This emission limit

allows for the possibility of using fluidized beds and advanced-combustion controls as an alternative to SNCR or SCR. Advanced combustion controls reduce compliance costs, parasitic energy requirements, and ammonia emissions. We converted this value to the corresponding value in units of lb/MWh using an overall efficiency factor of 36 percent. Therefore, we are proposing for the NO_X standard a level of 130 ng/J (1.0 lb/MWh) gross electricity output as determined on a 30-day rolling average. Based on third quarter 2004 emissions data from EPA's Clean Air Markets Division, approximately 14 percent of existing units are achieving this limit. We are soliciting comments on this approach and are particularly interested in additional data on the achievable NO_X levels of fluidized beds without additional NO_X controls and pulverized coal units with advanced combustion controls. The range of values we are presently considering for the final rule is 60 to 170 ng/J (0.47 to 1.3 lb/MWh).

D. How Did EPA Determine the Amended Standards for Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subparts Db and Dc)?

New source performance standards for industrial-commercial-institutional steam generating units in the proposed amendments would apply only to affected sources that begin construction, modification, or reconstruction after February 28, 2005. In this action, we are proposing an amended emission limit for PM under 40 CFR part 60, subparts Db and Dc, and no change to the emission limits for SO_2 and NO_X. However, we are requesting public comments on the concept of adopting a single, fuel-neutral emission limit for SO_2 to replace the current 90 percent reduction requirement in the final rule. We are also requesting comment on the possibility of lowering the SO_2 emission limits in 40 CFR part 60, subpart Dc, for units with heat input capacities of 10 MMBtu/hr to 75 MMBtu/hr and developing NO_X emission limits for units subject to 40 CFR part 60, subpart Dc.

1. How Did EPA Select the Proposed PM Limit?

The current PM standards under 40 CFR part 60, subpart Db, for industrial, commercial, and institutional boilers greater than 100 MMBtu/hr heat input range from 0.051 lb/MMBtu heat input to 0.2 lb/MMBtu heat input, depending on the type and amount of fuels burned. The current PM standards under 40 CFR part 60, subpart Dc, for industrial, commercial, and institutional boilers with heat input capacities of 30 MMBtu/hr to 100 MMBtu/hr range from 0.051 lb/MMBtu heat input to 0.3 lb/MMBtu heat input, depending on the type and amount of fuels burned.

We are proposing a PM limit of 0.03 lb/MMBtu heat input for units that burn coal, oil, wood or a mixture of these fuels with other fuels and have a heat input capacity greater than 30 MMBtu/hr. The emission limit is based on the use of fabric filters or high efficiency ESP, which represents BDT. Fabric filters have been shown to achieve greater than 99 percent reduction in PM emissions and may achieve as high as 99.99 percent reduction for some units.

To determine the appropriate limit, we reviewed boiler permit limits and emission information gathered for industrial, commercial, and institutional boilers. Based on this information, we concluded that new boilers can achieve an emission limit of 0.03 lb/MMBtu heat input using a fabric filter or high-efficiency ESP. An emission limit of 0.03 lb/MMBtu heat input is achievable by all industrial, commercial, and institutional boilers considering the wide variety of fuels fired and the range of operating conditions under which those boilers are run.

The proposed NSPS emission limits would not pose significant new costs. New industrial-commercial-institutional steam generating units that are major sources of hazardous air pollutants will be covered also by the National Emission Standards for Hazardous Air Pollutants (NESHAP) for industrial, commercial, institutional boilers and process heaters (40 CFR part 63, subpart DDDDD). The industrial, commercial, institutional boiler and process heater NESHAP require all boilers with a heat input greater than 10 MMBtu/hr and firing solid fuels to meet either a PM limit of 0.025 lb/MMBtu heat input or a total selected metals limit of 0.0003 lb/MMBtu heat input. Liquid-fired units with heat inputs greater than 10 MMBtu/hr must meet a PM limit of 0.03 lb/MMBtu heat input. Accordingly, for most boilers the proposed NSPS would not impose any additional costs because these units are already required to comply with equivalent or more stringent emission limits in the industrial, commercial, institutional boiler and process heater NESHAP.

However, the industrial, commercial, institutional boiler and process heater NESHAP also allow several compliance alternatives that would allow some sources to comply without installing a fabric filter. These alternatives include demonstrating that emissions are below a risk threshold, meeting an alternative metals emission limit, or by demonstrating the metal hazardous air pollutant (HAP) content in the fuel is below the metals emission limit. A review of the data gathered for the industrial, commercial, institutional boiler and process heater NESHAP shows that some wood-fired units are expected to be able to use the alternative compliance options, because wood has a low HAP-to-PM ratio. Therefore, the primary impact of the proposed NSPS would be to require wood-fired boilers to install more efficient controls than would be needed to demonstrate compliance with the industrial, commercial, institutional boiler and process heater NESHAP. For wood-fired boilers, there is a significant flamability risk with fabric filter bags due to particulate loading. Therefore, we analyzed the cost and emissions reductions achieved using a high-efficiency ESP to meet the NSPS limits. Emission test information from industrial, commercial, institutional boilers and utility boilers shows that ESP can achieve the same emissions reductions as fabric filters for these units.

We are projecting that 13 wood-fired units with heat inputs larger than 100 MMBtu/hr will be constructed over the next 5 years. Annual PM emissions would be reduced by 888 tons per year (tpy), from 1,300 tpy, based on the current subpart Db, 40 CFR part 60, emission limits, to 412 tpy with the proposed PM emission limit. The incremental annualized cost of installing and operating an ESP on wood-fired units would be about $2,300 per ton of PM removed.

For the 30 to 100 million Btu/hr size range, we project that four wood-fired units will be constructed over the next 5 years. For these units, annual PM emissions would be reduced by 43 tpy, from about 62 tpy, under the current subpart Dc, 40 CFR part 60, emission limits, to 19 tpy with the proposed PM emission limit. The incremental annualized cost of installing and operating an ESP on a wood-fired unit would be $3,200 per ton of PM removed.

2. How Did EPA Select the Proposed SO_2 Emission Limit?

The existing SO_2 standard for coal- and oil-fired units larger than 75 MMBtu/hr is 90 percent reduction of potential SO_2 emissions and a maximum emission limit of 1.2 lb/MMBtu heat input for coal and 0.8 lb/MMBtu heat input for oil. These limits are based on the use of FGD systems or lime spray dryers. The percent reduction requirement does not apply to

units burning fuel oil that have an SO_2 emission potential of 0.5 lb/MMBtu heat input or less. Fluidized bed boilers burning refuse coal are subject to an 80 percent reduction requirement. For small boilers (less than 75 MMBtu/hr) the existing NSPS are based on low sulfur fuels (1.2 lb SO_2/MMBtu heat input).

Based on our review, we are proposing to retain the current SO_2 standard for industrial, commercial, and institutional boilers. In determining BDT, we reviewed the performance of available control technologies and the permits issued for new coal-fired industrial, commercial, and institutional boilers constructed since the publication of 40 CFR part 60, subparts Db and Dc. Based on a review of the information in the Reasonably Available Control Technology/Best Available Control Technology/Lowest Achievable Emission Rate (RACT/BACT/LAER) Clearinghouse, all NSPS units smaller than 75 MMBtu/hr were issued permits to use low sulfur coal. For units greater than 75 MMBtu/hr, the technology used was either lime spray dryers, duct injection, or fluidized-bed boilers with limestone injection. These technologies have been demonstrated to achieve a 90 percent reduction in SO_2. No industrial-commercial-institutional units were found to use wet FGD systems.

To determine BDT, we evaluated two options. Option 1 was to amend subparts Db and Dc, 40 CFR part 60, to adopt a 95 percent reduction requirement for units larger than 75 MMBtu/hr (the size range currently required to meet a 90 percent reduction). Option 2 was to amend subpart Dc, 40 CFR part 60, to require a 90 percent reduction for units smaller than 75 MMBtu/hr.

Option 1 would achieve a 5th year emission reduction of 1,400 tons SO_2 per year (50 percent reduction from the current NSPS) at an incremental cost of about $4,000 per ton removed (table 1 of this preamble). The costs range from $605 per ton removed for some units larger than 250 MMBtu/hr to $12,000 per ton for some units between 100 and 250 MMBtu/hr. The relatively high incremental cost would occur because meeting the 95 percent limit would require a technology switch to more expensive wet FGD systems for many new units. Most new units currently achieve 90 percent reduction using either sorbent injection or spray dryers. Under Option 1, these units would switch to wet FGD systems, because spray dryers and injection technology have not been demonstrated to achieve a 95 percent SO_2 emission reduction. The annualized cost of wet FGD is higher than for these technologies. The cost of wet FGD is about 20 percent higher for large coal-fired units and about 50 percent higher for coal-fired units between 100 and 250 million Btu/hour.

Option 2 would achieve a 5th year emission reduction of 111 tons SO_2 per year (68 percent reduction) for subpart Dc, 40 CFR part 60, units (table 1 of this preamble). The incremental cost-effectiveness would range from about $3,000 to more than $8,000 per ton removed. This cost range represents the cost of applying injection technologies on units of 50 MMBtu/hr and 25 MMBtu/hr, respectively. The relatively high incremental cost would occur because this option would achieve a relatively small additional emissions reductions compared to the current NSPS. Under the current NSPS, units are achieving compliance using low sulfur coals with an emission potential of 1.2 lb SO_2/MMBtu heat input. If the NSPS were changed to require a 90 percent reduction, we project that many new units would select higher sulfur coals because of the reduced fuel cost. For those units that select a higher sulfur coal, a 90 percent reduction in potential SO_2 emission would result in less than a 90 percent reduction in emissions compared to the current NSPS.

Considering these potential impacts, we determined that the current NSPS continues to reflect BDT for 40 CFR part 60, subparts Db and Dc, industrial, commercial, and institutional boilers. The current performance levels can be met by using low sulfur fuels for smaller units and cost-effective control technologies for larger units. Requiring additional control technology would impose unacceptable compliance costs that are not warranted for the emissions reductions that would be achieved.

TABLE 1.—NATIONAL 5TH YEAR IMPACTS OF SO_2 CONTROLS ON INDUSTRIAL BOILERS 2004$

Option	Unit size range (MMBtu/hr)	Emission reduction (tpy)	Annualized cost (million $)	Incremental cost-effectiveness ($/ton)	
				Overall	Range
95 percent [1]	75–250	232	1.68	7,220	6,320–12,060
	>250	1,163	1.56	1,340	610–1,960
90 percent [2] [3]	<75	111	0.48	4,280	2,970–8,890

[1] Baseline emissions and emissions reductions used on Option 1 for units greater than 75 MMBtu/hr assume 90 percent SO_2 reduction using a mix of medium sulfur content bituminous coal (2.38 lb SO_2/MMBtu) and subituminous coal (1.41 lb SO_2/MMBtu).
[2] Baseline emissions for units less than 75 MMBtu/hr assume bituminous coal with a 1.2 lb SO_2/MMBtu emission potential.
[3] Emissions reductions were calculated for Option 2 assuming a fuel switch to a 2 to 1 ratio of medium sulfur coal (1.41 lb/MMBtu) to high sulfur coal (6.81 lb/MMBtu).

3. How Did EPA Select the Proposed NO_X Emission Limit?

The current NSPS for NO_X apply to fossil fuel-fired industrial-commercial-institutional steam generating units greater than 100 MMBtu/hr. The NO_X emission limit is 0.2 lb NO_X/MMBtu heat input for units burning coal, oil, or natural gas. Units burning 90 percent or more non-fossil fuel are not required to meet a NO_X emission limit (51 FR 42768). Low heat release rate units that burn more than 30 percent natural gas or distillate oil are required to meet a limit of 0.1 lb NO_X/MMBtu heat input. There are currently no NO_X emission limits for new industrial-commercial-institutional steam generating units less than 100 MMBtu/hr.

The current emission limits for fossil fuel-fired units are based on the application of SCR in combination with combustion controls (*i.e.*, low-NO_X burners). We are not aware of a more effective NO_X control technology for new industrial-commercial-institutional steam generating units. Based on available performance data and cost considerations, the Administrator has concluded that application of SCR with combustion controls represents the BDT (taking into account costs, non-air quality health and environmental impacts, and energy requirements) for coal- and residual oil-fired units.

We, therefore, are proposing to retain the current emission limits for subpart Db, 40 CFR part 60, units. In the 1998

amendments, we presented information that showed that SCR can reduce NO_X emissions from coal-fired utility units to 0.15 lb/MMBtu heat input. However, an emission limit of 0.2 lb/MMBtu heat input was chosen for industrial-commercial-institutional units based on the cost associated with applying flue gas treatment to the wide range of boiler types used in industrial-commercial-institutional applications. Since the 1998 proposal, only eight coal-fired units subject to subpart Db, 40 CFR part 60, have been permitted. Therefore, only limited information is available on the performance of SCR on new coal-fired industrial-commercial-institutional units today. No new performance information or emissions data have been gathered since the 1998 amendments to indicate that lower limits are consistently achievable across the full range of boiler types that may be constructed in the future. In addition, we re-evaluated the costs of SCR. Recent cost information indicates that the cost of operating SCR technology at lower levels than the current standard has not decreased significantly since 1998. We concluded, therefore, that the current emission limits for fossil fuel-fired units constitute BDT (taking into account costs, nonair quality health and environmental impacts, and energy requirements). We are requesting comments and supporting emissions data on the ability of SCR to achieve lower emission limits on fossil fuel-fired industrial-commercial-institutional steam generators and the cost of achieving any lower emission limits.

We are proposing no NO_X emission limits for units with heat input capacities of 100 MMBtu/hr or less (subpart Dc, 40 CFR part 60, units). Information in the RACT/BACT/LAER Clearinghouse shows that in the last 14 years only one coal-fired unit and 16 solid fuel-fired units with heat inputs less than 100 MMBtu/hr have been permitted. Over this same period, 204 units firing natural gas were permitted. This trend is expected to continue. Consequently, new units under 100 MMBtu/hr are expected to be predominantly natural gas-or oil-fired.

One possible control option is to adopt an emission limit based on the performance of low-NO_X burners. This option would have almost no impact on emissions, because most new industrial, commercial, and institutional boilers today are equipped with low-NO_X burners. The primary impact would be to require the installation of a CEMS and impose recordkeeping and reporting requirements to demonstrate that units are continuously meeting the NO_X emission limits. It is unclear that these measures would result in a significant emissions reductions. We, therefore, concluded that the cost of a CEMS to monitor low-NO_X burners is not reasonable for units smaller than 100 MMBtu/hr given that little or no emissions reductions is likely.

We also considered the impact of adopting a 0.2 lb/MMBtu heat input emission limit based on the use of SCR on coal-fired units (table 2 of this preamble). This option would reduce NO_X emissions from subpart Dc of 40 CFR part 60 units by 250 tpy, or about a 10 percent reduction. Given that baseline NO_X emissions from gas-fired units are less than 0.2 lb/million Btu, this limit would have no effect on emissions for the largest projected subset of units operating between 10 and 100 million Btu/hr. Gas-fired units, however, would incur some costs due to monitoring and reporting requirements. Incremental control costs would range from $3,000 to $17,000 per ton removed. Based on these costs, and the factors discussed above, we are proposing not to adopt NO_X emission limits for industrial-commercial-institutional units smaller than 100 MMBtu/hr heat input.

TABLE 2.—NATIONAL 5TH YEAR IMPACTS OF NO_X CONTROL OPTION FOR INDUSTRIAL UNITS SUBJECT TO 40 CFR PART 60, SUBPART DC 2004$

Size range (MMBtu/hr)	Fuel	Number of units	Emission reduction (tpy)	Annual cost (million$)	Incr. cost effect. ($/ton)
30–100	Gas	61	0	2.42	.....
	Coal	1	34	0.20	5,830
	Liquid	8	126	0.38	3,040
	Wood	4	52	0.90	17,320
10–30	Gas	20	0	0.79	.....
	Liquid	3	21	.14	6,850
	Wood	2	20	0.18	9,160
Total		99	253	5.02	.....

* Liquid and gas units can meet the 0.2 lb/MMBtu limit with a Low-NO_X Burner (LNB). Coal and wood units require an SCR to meet the 0.2 limit.

E. What Technical Corrections Is EPA Proposing?

We are proposing several technical corrections to the current subparts Da, Db, and Dc of 40 CFR part 60 requirements in the proposed amendments. The amendments are being proposed to clarify the intent of the current requirements, correct inaccuracies, and correct oversights in previous versions that were promulgated.

Heat Recovery Steam Generators

Heat recovery steam generating units are used to recover energy from the exhaust of combustion turbines.

Some heat recovery steam generators use duct burners or other types of supplemental heat supply to increase the amount of steam production. Depending on the heat input capacity of the supplemental heat in a heat recovery generator, these units may meet the applicability requirements of 40 CFR part 60, subparts Da, Db, and Dc. However, we recognized that these units would be more appropriately regulated as part of the combustion turbine NSPS. In recognition of this, 40 CFR 60.40a(b) and 40 CFR 60.40b(i) provide that when the emission limits for heat recovery steam generators are incorporated into 40 CFR part 60, subpart GG, these units would be subject to 40 CFR part 60, subpart GG, and 40 CFR part 60, subparts Da and Db, would no longer apply. This language was inadvertently left out of 40 CFR part 60, subpart Dc. In a separate action, we are proposing to amend the NSPS for combustion turbines that would be codified as subpart KKKK of 40 CFR part 60 instead

of amending subpart GG of 40 CFR part 60. The proposed subpart will include requirements for heat recovery steam generators. Therefore, we are proposing to amend subparts Da, Db, and Dc of 40 CFR part 60 to require heat recovery steam generators to comply with either subpart GG of 40 CFR part 60 or subpart KKKK of 40 CFR part 60 as applicable. The proposed rule language states that ''* * * Heat recovery steam generators that are associated with combustion turbines and meet the applicability requirements of subpart KKKK of 40 CFR part 60 of this part are not subject to this subpart. If the heat recovery steam generator is subject to this subpart, only emissions resulting from combustion of fuels in the steam-generating unit are subject to this subpart. (The combustion turbine emissions are subject to 40 CFR part 60, subpart GG, or 40 CFR part 60, subpart KKKK, as applicable, of this part.)''

NO_X Monitoring Requirements for Units Without NO_X Emission Limits

During the 1998 amendments to 40 CFR part 60, subpart Db, we amended the monitoring requirements of 40 CFR 60.48b(b) to allow units that are subject to 40 CFR part 75 (acid rain regulations) to demonstrate compliance with the NSPS by using CEMS that meet the requirements of part 75. In making these amendments, we made a drafting error by inadvertently excluding a phrase from the original NSPS language. The amended 1998 language could be interpreted to require the use of NO_X CEMs for units that are not subject to the NO_X emission limits of 40 CFR part 60, subpart Db. The intended language of 40 CFR 60.48b(b) was, ''* * *, the owner or operator of an affected facility subject to the nitrogen oxides standards of 60.44b shall comply with either * * * *'' (emphasis added to the missing phrase). We did not intend for units without a NO_X emission limit to install CEMS for NO_X. In the proposed amendments, we are adding the inadvertently removed phrase.

Definition of Coal

We are proposing to amend the definition of coal in 40 CFR part 60, subpart Dc, to reflect the most recent testing methods published by the ASTM.

Definitions for 40 CFR Part 60, Subpart Da

We are proposing to add definitions of coal, bitimunous coal, petroleum, and natural gas to 40 CFR part 60, subpart Da, to clarify applicability and make the rules more uniform.

We are also proposing to amend the definition of boiler operating day for new utility units to be consistent with the existing definition for industrial units. The proposed limits reflect the amended procedure utility units would use to calculate 30-day averages. Our preliminary analysis of the hourly CEM data from the Harrison facility indicates that the standards would be approximately 3 percent lower if the existing definition of boiler-operating day is maintained. The amended definition also more accurately reflects environmental performance since less data is excluded from the calculation.

Harmonization of 40 CFR Part 60 and 40 CFR Part 75 Monitoring Requirements

As a continuation and expansion of the ''turbine initiative'' begun by EPA in 2001, we are proposing to harmonize portions of the 40 CFR part 60 continuous emission monitoring regulations with similar provisions in 40 CFR part 75.

Background. In the late 1990's, the electric utility industry began planning and constructing numerous combustion turbine projects, to meet the rising demand for electrical generating capacity in the United States. Essentially all of these new turbines are subject to both 40 CFR part 60, subpart GG, of the NSPS regulations (40 CFR 60.330 through 60.335) and the Acid Rain regulations (40 CFR part 72 through 40 CFR part 78). In an August 24, 2001 **Federal Register** action (66 FR 44622), EPA estimated that as a result of the new turbine projects, the number of combustion turbines in the Acid Rain Program would increase from 400 to more than 1,000 within a few years.

The compliance requirements for combustion turbines under the NSPS and the Acid Rain Program intersect in a number of key places. For instance, under both programs, the owner or operator of an affected combustion turbine is accountable for the SO_2 and NO_X emissions from the unit. In cases such as this, where two Federal regulations affect the same unit for the same pollutant(s), it is always desirable to simplify compliance, to the extent possible. In view of this, in the previously-cited August 24, 2001 **Federal Register** action, EPA requested comments from stakeholders on ways to streamline and harmonize the 40 CFR part 60 and 40 CFR part 75 regulations, in order to facilitate compliance for sources that are subject to both sets of rules. EPA's initiative was directed principally at 40 CFR part 60, subpart GG, combustion turbines that are also in the Acid Rain Program. However, the Agency also asked for comments on ''other needed changes to the regulations,'' at places where the 40 CFR part 60 and 40 CFR part 75 monitoring and reporting requirements overlap.

EPA received several sets of comments in response to the August 24, 2001, **Federal Register** action. After careful consideration of these comments, the Agency proposed substantive amendments to 40 CFR part 60, subpart GG, on April 14, 2003 (68 FR 18003), incorporating many suggestions provided by the commenters. The amendments to 40 CFR part 60, subpart GG, were promulgated on July 8, 2004 (69 FR 41346). The final amendments, which differed little from the proposal, harmonized the 40 CFR part 60, subpart GG, and 40 CFR part 75 regulations in a number of key areas. For example:

(1) Amended 40 CFR part 60, subpart GG, allows the use of a certified 40 CFR part 75 NO_X monitoring system to demonstrate continuous compliance with the NO_X emission limit in 40 CFR 60.332;

(2) If a fuel is documented to be natural gas according to the criteria in appendix D, 40 CFR part 75, then the 40 CFR part 60, subpart GG, requirement to monitor the sulfur content of the fuel is waived; and

(3) A 40 CFR part 60, subpart GG, turbine that combusts fuel oil may use the oil sampling and analytical methods in appendix D, 40 CFR part 75 to demonstrate compliance with the 40 CFR part 60, subpart GG, sulfur-in-fuel limit.

The July 8, 2004 revisions to 40 CFR part 60, subpart GG, significantly simplify compliance with the 40 CFR part 60 and 40 CFR part 75 regulations, where both sets of rules apply to the same combustion turbine. However, the area of overlap between 40 CFR part 60 and 40 CFR part 75 extends beyond combustion turbines. Many electric utility and industrial boilers regulated under 40 CFR part 60, subparts D, Da, Db and Dc, are also subject to 40 CFR part 75. Therefore, a more comprehensive approach to 40 CFR part 60 versus 40 CFR part 75 compliance is needed. A number of stakeholders pointed this out in their comments on the August 24, 2001, **Federal Register** action. In particular, the commenters requested that EPA address the following problematic areas in the 40 CFR part 60 and 40 CFR part 75 continuous emission monitoring provisions:

(1) Inconsistent definitions of operating hours;

(2) Inconsistent CEMS data validation criteria;

(3) Duplicative quality-assurance (QA) test requirements. For instance, many sources with gas monitors are required to perform both 40 CFR part 75 linearity checks and 40 CFR part 60 cylinder gas audits;

(4) Lack of alternative calibration error and relative accuracy specifications in 40 CFR part 60 for low-emitting sources;

(5) Inconsistent span and range requirements for gas analyzers; and

(6) For infrequently-operated units, the difficulty of performing the 40 CFR part 60 calibration drift test over 7 consecutive calendar days.

Today's proposed amendments would address the chief concerns expressed by the stakeholders in their comments on the August 24, 2001, **Federal Register** action, by amending a number of key sections in 40 CFR part 60. The proposed amendments are discussed in detail in the paragraphs below.

Operating Hours and CEMS Data Validation. For all CEMS except opacity monitors, 40 CFR 60.13(h) in the General Provisions of the NSPS requires a minimum of four equally-spaced data points to calculate an hourly emissions average. However, the underlying assumption in the proposed rule text is that the unit operates for the whole hour, and no guidelines are given for validating partial operating hours. Section 60.13(h) also appears to conflict with 40 CFR 60.47a(g), subpart Da, and 40 CFR 60.47b(d) and 40 CFR 60.48b(d), subpart Db, which require only two valid data points to calculate hourly SO_2 and NO_X emission averages. Further, all four of these sections (*i.e.*, 40 CFR 60.13(h), 40 CFR 60.47a(g), 40 CFR 60.47b(d) and 40 CFR 60.48b(d)) are inconsistent with 40 CFR 75.10(d)(1) and with 40 CFR 60.334(b)(2) of the recently-amended 40 CFR part 60, subpart GG, which require you to obtain at least one valid data point in each 15-minute quadrant of the hour in which the unit operates, except for hours in which required QA and maintenance activities are performed for these hours, you may calculate the hourly averages from a minimum of two data points (one in each of two 15-minute quadrants).

Today's proposed amendments would make the CEMS data validation requirements of 40 CFR 60.13(h), 40 CFR 60.47a(g), 40 CFR 60.47b(d) and 40 CFR 60.48b(d) consistent with 40 CFR 75.10(d)(1) and 40 CFR 60.334(b)(2), as follows:

(1) First, a clear distinction would be made in 40 CFR 60.13(h) between full and partial operating hours. A full operating hour would be a clock hour in which the unit operates for 60 minutes, and a partial operating hour would be one with less than 60 minutes of unit operation. To calculate an hourly emissions average for a full operating hour, at least one valid data point would be required in each of the four 15-minute quadrants of the hour. For a partial operating hour, at least one valid data point would be required in each 15-minute quadrant in which the unit operates;

(2) Second, for hours in which required QA or maintenance activities are performed, 40 CFR 60.13(h) would be amended to allow the hourly averages to be calculated from a minimum of two data points (if the unit operates in two or more of the 15-minute quadrants) or one data point (if the unit operates in only one quadrant of the hour);

(3) Third, 40 CFR 60.13(h) would be amended to require all valid data points to be used in the calculation of each hourly average;

(4) Fourth, 40 CFR 60.13(h) would require invalidation of any hour in which a calibration error test is failed, unless in that same hour, a subsequent calibration error test is passed and sufficient data are captured after the passed calibration to validate the hour;

(5) Fifth, 40 CFR 60.13(h) would be amended to make it clear that hourly averages are not to be calculated for certain partial operating hours, where specified in an applicable NSPS subpart (*e.g.*, hours with <30 minutes of unit operation are to be excluded from the calculations under 40 CFR 60.47b(d)); and

(6) Sixth, 40 CFR part 60.47a(g), 40 CFR part 60.47b(d) and 40 CFR part 60.48b(d) would be amended by removing the provisions that allow hourly averages to be calculated from only two data points. Rather, these sections would specify that hourly averages must be calculated according to amended 40 CFR 60.13(h).

These proposed revisions would provide a single, consistent method of calculating hourly emission averages from CEMS data for sources that are subject to both 40 CFR part 60 and 40 CFR part 75. Thus, the same basic set of CEM data could be used for both 40 CFR part 60 and 40 CFR part 75 compliance, although certain differences between the two programs would still remain. For instance, 40 CFR part 75 requires substitute data to be reported for each hour in which sufficient quality-assured data is not obtained to validate the hour, whereas 40 CFR part 60 requires these hours to be reported as monitor down time. Also, 40 CFR part 75 requires a bias adjustment factor (BAF) to be applied to SO_2 and NO_X data when a CEMS fails a bias test, whereas 40 CFR part 60 does not require adjustment of the emissions data for bias. And for certain partial operating hours, data that is reported as quality-assured under 40 CFR part 75 is excluded from the 40 CFR part 60 emission calculations (*e.g.*, see 40 CFR 60.47b(d)). However, these differences between the 40 CFR part 60 and 40 CFR part 75 programs are relatively minor, and in no way detract from the benefits of having a unified approach to reducing the CEMS data to hourly averages.

As noted above, EPA is proposing to remove the provisions in 40 CFR 60.47a(g) of subpart Da and in 40 CFR 60.47b(d) and 40 CFR 60.48b(d) of subpart Db, which require only two valid data points to calculate hourly SO_2 and NO_X emission averages. The reason for this is that these rule texts do not properly communicate the Agency's original intent. The idea of basing an hourly average on two data points was first presented in the preamble for subpart Da, 40 CFR part 60 (44 FR 33581, June 11, 1979). In that preamble, EPA clearly stated that whenever required QA activities such as daily calibration error checks are performed, the Agency would allow the hourly average (assuming it was a full operating hour) to be based on a minimum of two data points instead of the usual four points required by 40 CFR 60.13(h). This relaxation in the data capture requirement for certain operating hours was made with the realization that for many CEMS, calibration checks can take up to 30 minutes, preventing any emissions data from being collected. However, it was never the Agency's intent to replace the four-point data capture requirement of 40 CFR 60.13(h) with a less stringent two-point requirement. The authors of the original 40 CFR part 75 rule understood this, and cited the subpart Da, 40 CFR part 60, preamble as the basis for CFR 75.10(d)(1) (56 FR 63067–68, December 3, 1991). In 40 CFR 75.10(d)(1), at least one valid data point is required to be obtained in each 15-minute quadrant of the hour in which the unit operates, except that two data points, separated by at least 15 minutes may be used to calculate an hourly average if required QA tests or maintenance activities are performed during that hour. More recently, these same minimum data capture requirements have been incorporated into 40 CFR 60.334(b)(2) of subpart GG. In view of these considerations, it is appropriate to remove the two-point minimum data capture provisions from 40 CFR 60.47a(g), 40 CFR 60.47b(d) and 40 CFR 60.48b(d), and simply to require that the

SO_2 and NO_X emission averages be calculated according to amended 40 CFR 60.13(h).

CEMS Certification and Quality-Assurance. Today's proposed amendments would add two sections to appendix F, 40 CFR part 60, pertaining to the on-going quality-assurance requirements for CEMS. These proposed amendments would apply to sources that are subject to the QA requirements of both appendix F, 40 CFR part 60 and appendix B, 40 CFR part 75 and would serve a three-fold purpose: (1) To eliminate duplicative QA test requirements; (2) to allow a single set of data validation criteria to be applied to the CEMS data; and (3) to allow certain alternative 40 CFR part 75 performance specifications for low-emitting sources to be used for 40 CFR part 60 compliance. Today's proposed amendments also would amend section 8.3.1 of performance specification 2 (PS–2) in appendix B, 40 CFR part 60, to allow the 7-day calibration drift test to be performed on 7 consecutive unit operating days, rather than 7 consecutive calendar days.

EPA proposes to add new sections 4.5 and 5.4 to appendix F, 40 CFR part 60. Under proposed section 4.5, sources would be allowed to implement the daily calibration error and calibration adjustment procedures in sections 2.1.1 and 2.1.3 of appendix B, 40 CFR part 75, instead of (rather than in addition to) the calibration drift (CD) assessment procedures in section 4.1 of appendix F, 40 CFR part 60. Sources electing to use this option would be required to follow the data validation and out-of-control provisions in sections 2.1.4 and 2.1.5 of appendix B, 40 CFR part 75 instead of the excessive CD and out-of-control criteria in section 4.3 of appendix F, 40 CFR part 60.

Proposed section 5.4 of appendix F, 40 CFR part 60 would allow sources to perform the quarterly linearity checks described in section 2.2.1 of appendix B, 40 CFR part 75, instead of (rather than in addition to) performing the cylinder gas audits described in section 5.1.2 of appendix F, 40 CFR part 60. If a source elected to use this option, then: (1) The linearity checks would be performed at the frequency prescribed in section 2.2.1 of appendix B, 40 CFR part 75; (2) the linearity error specifications in section 3.2 of appendix A, 40 CFR part 75 would have to be met; (3) the data validation criteria in section 2.2.3 of appendix B, 40 CFR part 75 would be applied in lieu of the excessive audit inaccuracy criteria in section 5.2 of appendix F, 40 CFR part 60; and (4) the grace period provisions in section 2.2.4 of appendix B, 40 CFR part 75 would apply.

Proposed section 5.4 of appendix F, 40 CFR part 60 also would allow sources to perform the on-going quality-assurance relative accuracy test audit (RATA) of their NO_X-diluent and SO_2-diluent monitoring systems according to section 2.3 of appendix B, 40 CFR part 75. If a source elected to use this option, then: (1) The RATA frequency would be as specified in section 2.3.1 of appendix B, 40 CFR part 75; (2) the applicable relative accuracy specification in Figure 2 of appendix B, 40 CFR part 75 would have to be met; (3) the data validation criteria in section 2.3.2 of appendix B, 40 CFR part 75 would be applied in lieu of the excessive audit inaccuracy criteria in section 5.2 of appendix F, 40 CFR part 60; and (4) the grace period provisions in section 2.3.3 of appendix B, 40 CFR part 75 would apply.

These proposed amendments to appendix F, 40 CFR part 60 would greatly simplify compliance without sacrificing data quality. Currently, sources that are required to perform periodic QA testing under both appendix F, 40 CFR part 60, and appendix B, 40 CFR part 75, have two reference frames for CEMS data validation. Neither the CEMS performance specifications nor the out-of-control criteria are the same in the two appendices. Generally speaking, the 40 CFR part 75 specifications and data validation criteria are more stringent than those of 40 CFR part 60. For example, when daily calibrations are performed, appendix F, 40 CFR part 60, allows the calibration drift of an SO_2 or NO_X monitor to exceed 5 percent of span for 5 consecutive days before the monitor is declared out-of-control. Under appendix B, 40 CFR part 75, however, a monitor is considered out-of-control whenever the results of a daily calibration check exceed 5 percent of span. For a 40 CFR part 75 linearity check, three calibration gases are used (as opposed to two gases for a part 60 cylinder gas audit (CGA)), and the linearity error (LE) specification (*i.e.*, LE $\leq$5 percent of the reference gas concentration) is much more stringent than the CGA acceptance criterion of 15 percent. For RATA, the principal 40 CFR part 75 relative accuracy specification is 10 percent, whereas the appendix F, 40 CFR part 60, specification is 20 percent. Thus, it is safe to say that the data from a CEMS that meets the quality-assurance requirements of appendix B, 40 CFR part 75 may be used with confidence for the purposes of 40 CFR part 60 compliance.

Allowing sources to perform the 40 CFR part 75 QA in lieu of (rather than in addition to) appendix F, 40 CFR part 60, is actually consistent with section 1.1 of appendix F, 40 CFR part 60, which encourages sources to ''develop and implement a more extensive QA program or continue such programs where they already exist.'' It also harmonizes with 40 CFR 60.47a(c)(2) of subpart Da, 40 CFR 60.48b(b)(2) of subpart Db, and 40 CFR 60.334(b)(3)(iii) of subpart GG, which allows certified 40 CFR part 75 NO_X monitoring systems to be used to demonstrate compliance with the applicable NO_X emission limits. However, despite these clear statements in the amendments, today's proposed amendments to appendix F, 40 CFR part 60 are needed to eliminate any doubt that meeting the quality-assurance testing requirements of appendix B, 40 CFR part 75, fully satisfies the requirements of appendix F, 40 CFR part 60. Many operating permits have required sources to implement both appendix B, 40 CFR part 75, and appendix F, 40 CFR part 60, QA procedures for their CEMS. This has proved to be burdensome, not only because of the previously-mentioned differences in the specifications and data validation criteria between the two appendices, but also because 40 CFR part 60 cylinder gas audits and 40 CFR part 75 linearity checks are so similar in nature (*i.e.*, they are essentially two tests of the same type). Since the linearity check is far more stringent than the CGA, many sources have questioned why CGA are necessary if quarterly linearity checks are being performed. Today's proposed amendments would effectively eliminate this duplicative QA test requirement.

EPA is also proposing to amend section 8.3.1 of PS–2 in appendix B, 40 CFR part 60, to allow the 7-day calibration drift test, which is performed for the initial certification of a CEMS, to be performed on 7 consecutive unit operating days, rather than 7 consecutive calendar days. The intent of the proposed amendment is to provide regulatory relief to infrequently-operated units. Many new sources (particularly gas turbines) seldom, if ever, operate for 7 consecutive days, making the 7-day drift test difficult to perform. Allowing the test to be performed on 7 consecutive operating days should make the test much easier to complete within the time allotted for initial certification. The proposed amendment is consistent with section 6.3.1 in appendix A, 40 CFR part 75, and with 40 CFR 60.334(b)(1) of subpart GG.

CEM Span Values. Today's proposed amendments would amend several sections of subparts D, Da, Db, and Dc, 40 CFR part 60, pertaining to CEM span values. The span values for SO_2 and NO_X monitors under subparts D, Da, Db and Dc, 40 CFR part 60, are fuel-specific and are rather prescriptive. For example, subparts D, Da and Db, 40 CFR part 60, all require a NO_X span value of 1000 part per million (ppm) for coal combustion and 500 ppm for oil and gas combustion. Subpart D, 40 CFR part 60 requires a 1500 ppm SO_2 span value for coal combustion, and subparts Da, Db and Dc, 40 CFR part 60, all require the span value of the SO_2 monitor installed on the control device outlet to be 50 percent of the maximum estimated hourly potential SO_2 emissions for the type of fuel combusted.

Under 40 CFR part 75, SO_2 and NO_X span values are determined in quite a different manner. Sources are required to determine the maximum potential concentration (MPC) of SO_2 or NO_X and then to set the span value between 1.00 and 1.25 times the MPC, and select a full-scale measurement range so that the majority of the data recorded by the monitor will be between 20 and 80 percent of full-scale. The full-scale range must be greater than or equal to the span value.

Under 40 CFR part 75, units are allowed to determine the MPC values in a number of different ways, *e.g.*, using a fuel-specific default value, emission test data, historical CEM data, etc. Units with add-on SO_2 or NO_X emission controls are further required to determine the maximum expected concentration (MEC), which is the highest concentration expected with the emission controls operating normally. If the MEC is less than 20 percent of the high scale range, then a second (low-scale) measurement range is required.

The span value is an important concept in 40 CFR part 60 and 40 CFR part 75, for two reasons. First, the concentrations of the calibration gases used for daily calibrations, cylinder gas audits, and linearity checks are expressed as percentages of the span value (*e.g.*, under 40 CFR part 75, a ''mid'' level gas is 50 to 60 percent of span). Second, the maximum allowable calibration error (CE) for daily calibration checks of SO_2 and NO_X monitors is expressed as a percentage of the span value (*i.e.*, CE ≤5 percent of span). In view of this, it is essential that the span values be properly-sized, in order to ensure the accuracy of the CEM measurements. For example, suppose that a coal-fired unit is subject to both subpart Da, 40 CFR part 60, and the Acid Rain Program. The owner or operator installs low-NO_X burners to meet the NO_X emission limit under 40 CFR part 76, and the actual NO_X readings are consistently between 150 and 200 ppm. Subpart Da, 40 CFR part 60, would require a span value of 1000 ppm for this unit, but this span would be too high for 40 CFR part 75, since the NO_X data would be consistently on the lower 20 percent of the measurement scale. Also, by using a span value of 1000 ppm, the ''control limits'' on daily calibration error tests would be ±5 percent of span, or ±50 ppm. Thus, when measuring a true NO_X concentration of 150 ppm, the NO_X monitor could be off by as much as 50 ppm (*i.e.*, by 33 percent) and the monitor would still be considered to be ''in-control.''

In view of this, it is evident that some of the differences between the 40 CFR part 60 and 40 CFR part 75 span provisions are not easily reconcilable, and this raises certain legal and compliance issues. For instance, in the example cited above, if the owner or operator elects to use a 500 ppm NO_X span value to meet the requirements of part 75, it is not clear whether he would still be required to maintain a 1,000 ppm span value to satisfy subpart Da, 40 CFR part 60. To address these issues, EPA is proposing to amend several sections of subparts D, Da, Db and Dc, 40 CFR part 60, pertaining to the determination of SO_2 and NO_X span values. The affected sections are 40 CFR 60.45(c)(3) and (4) of subpart D, 40 CFR 60.47a(i)(3), (4), and (5) of subpart Da, 40 CFR 60.47b(e)(3), 40 CFR 60.48b(e)(2) and (3) of subpart Db, and 40 CFR 60.46c(c)(3) and (c)(4) of subpart Dc. The proposed amendments would allow SO_2 and NO_X span values determined in accordance with section 2 of appendix A, 40 CFR part 75, to be used in lieu of the span values prescribed by 40 CFR part 60.

Electric Utility Steam Generating Unit

A CHP unit that meets the definition of an electric utility steam generating unit is subject to 40 CFR part 60, subpart Da. Under 40 CFR part 60, subpart Da, an electric utility steam generating unit means ''* * * any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electric output to any utility power distribution system for sale.'' We recognize that under certain utility rate structures, it is more economical for CHP facilities to sell all electric output to the grid and then meter back electric power for non-utility plant use. The intent of the definition of an electric utility steam generating unit under subpart Da, 40 CFR part 60, is to consider net sales and not gross sales to the grid. Therefore, we are proposing to amend the definition to change ''electric output'' to ''net electric output'' and to define net electric output as ''gross electric sales to the electric distribution system minus purchased power on a 30-day rolling average.''

V. Modification and Reconstruction Provisions

Existing steam generating units that are modified or reconstructed would be subject to today's proposed amendments. Analysis of acid rain and ozone season data for existing sources indicates that reconstructed and modified units should be able to achieve the proposed standards.

A modification is any physical or operational change to an existing facility which results in an increase in the facility's emission rate (40 CFR 60.14). Changes to an existing facility that do not result in an increase in the emission rate, either because the nature of the change has no effect on emission or because additional control technology is employed to offset an increase in the emission rate, are not considered modifications. In addition, certain changes have been exempted under the General Provisions (40 CFR 60.14). These exemptions include an increase in the hours of operation, addition or replacement of equipment for emission control (as long as the replacement does not increase the emission rate), and use of an alternative fuel if the existing facility was designed to accommodate it.

Rebuilt steam generating units, as defined in section 63.2, would become subject to the proposed amendments under the reconstruction provisions, regardless of changes in emission rate. Reconstruction means the replacement of components of an affected facility such that; (1) the fixed capital cost of the new components exceeds 50 percent of the cost of an entirely new steam generating unit of comparable design, and (2) it is technologically and economically feasible to meet the applicable standard (40 CFR 60.15).

VI. Summary of Cost, Environmental, Energy, and Economic Impacts

In setting the standards, the CAA requires us to consider alternative emission control approaches, taking into account the estimated costs and benefits, as well as the energy, solid waste and other effects. The EPA requests comment on whether it has identified the appropriate alternatives and whether the proposed standards adequately take into consideration the

incremental effects in terms of emission reductions, energy and other effects of these alternatives. The EPA will consider the available information in developing the final rule.

The costs, environmental, energy, and economic impacts are expressed as incremental differences between the impacts of utility and industrial-commercial-institutional steam generating units complying with the proposed amendments and the current NSPS emission limits (*i.e.*, baseline). The impacts are presented for new steam generating units constructed over the next 5 years.

For the electric utility sector, The Energy Information Administration forecasts 1,300 MW of new coal-fired electric utility steam generating units will be built during the next 5 years. We used permit data and engineering judgement to determine that the distribution of these new units by type of coal burned would be as follows: two bituminous coal-fired units, two subbituminous coal-fired units, and one coal refuse-fired unit. All new natural gas-fired electric utility generating units built in the foreseeable future will most likely be combined cycle units or combustion turbine peaking units and, thus not subject to subpart Da, 40 CFR part 60, but instead subject to the NSPS for combustion turbines under 40 CFR part 60, subpart GG, or subpart KKKK of 40 CFR part 60. Furthermore, because of fuel supply availability and cost considerations, we assumed that no new oil-fired electric utility steam generating units will be built during the next 5 years.

For the industrial-commercial-institutional sector, we project that 87 new steam generating units larger than 100 million Btu per hour will be built and 99 new steam generating units between 10 and 100 million Btu per hour will built over the next 5 years. Of these 186 projected new units, we estimate 8 new coal units, 133 natural gas units, 21 biomass units, 22 liquid fuel units, and 2 non-fossil solid fuel units. Of the biomass units, only 17 are wood-fired and would be impacted by the proposed amendments.

The combined impact of the proposed amendments (compared to the existing NSPS) is to reduce SO_2 emissions by about 8,400 tpy, NO_X emissions by about 1,400 tpy, and PM emissions by about 1,500 tpy. The annualized cost of achieving these reductions in new source emissions is about $6.5 million. The cost and environmental impacts for each proposed amendment are summarized below.

A. What Are the Impacts for Electric Utility Steam Generating Units?

As discussed earlier, cap and trade programs and new source review often result in new utility units installing controls beyond what is required by the existing NSPS. Since only the existing NSPS set specific limits, we are using those standards as the baseline to be conservative in our estimating of costs. Actual costs (and benefits) of the proposed amendments could be less than stated in our analysis. Also, for pollutants and geographic regions regulated by cap and trade programs, most new units would install controls as tight or tighter than the proposed amendments. Therefore, the proposed amendments would not significantly impact allowance prices or costs for existing utility sources.

The primary environmental impacts resulting from the proposed amendments to subpart Da of 40 CFR part 60 for electric utility steam generating units are further reductions in the amounts of PM, SO_2, and NO_X that would be emitted from new units subject to subpart Da of 40 CFR part 60. Achieving these additional emissions reductions would increase the costs of installing and operating controls by approximately 4 percent on a steam generating unit subject to the proposed standards above those costs for the unit to comply with the applicable existing standards under subpart Da of 40 CFR part 60. In general, the same types of the PM, SO_2, and NO_X controls would be installed on a given unit to comply with either of the applicable existing or proposed standards. However, there would be an increase in the capital and annual costs for these controls to achieve the higher performance levels needed for the proposed standards due to design modifications and operating changes to the controls. The estimated nationwide 5-year incremental emissions reductions and cost impacts for the proposed standards beyond those estimated for the regulatory baseline are summarized in Table 3 of this preamble.

TABLE 3.—NATIONAL EMISSIONS REDUCTIONS AND COST IMPACTS FOR ELECTRIC UTILITY STEAM GENERATING UNITS SUBJECT TO AMENDED STANDARDS UNDER SUBPART DA OF 40 CFR PART 60

[5th Year after proposal]

Pollutant	Annual emissions reductions (tpy)	Total capital investment cost ($ million/yr)	Annualized cost ($ million/yr)
PM	530	$10.4	$2.2
SO_2	8,400	$0.9	$0.7
NO_X	1,400	$4.9	$1.5

1. PM Impacts

The impact of new source review is not included in our baseline so actual costs (and benefits) of the proposed amendments could be less than stated in our analysis. The regulatory baseline for PM emissions is defined to be installation of fabric filters on all new units (*i.e.*, electric utility companies would install fabric filters to comply with the PM standard under the existing NSPS). Design modifications and operating changes to the fabric filters would be required to achieve the higher performance level needed to comply with the proposed PM standard.

Estimated baseline PM emissions from the projected new electric utility steam generating units are approximately 960 megagrams per year (Mg/yr) (1,100 tpy). The proposed standards are projected to reduce PM emissions by 480 Mg/yr (530 tpy). This represents an approximate 50 percent reduction in the growth of PM emissions from new units that would be subject to the proposed standards.

The nationwide increases in total capital investment costs and the annual operating costs of the control equipment required to meet the proposed PM standards over the baseline costs are estimated to be $10.4 million and $2.2 million per year, respectively.

Compliance with the proposed PM standard would increase the quantity of fly ash collected by the fabric filters over the baseline levels. Depending on the practices used at a given power plant site, this would increase the amount of fly ash the utility company

can recycle as a by-product (*e.g.*, sell as raw material for concrete or roadway fill material) or increase the amount of fly ash the company must dispose of as a solid waste either on-site or off-site. No significant energy impacts, as measured relative to the regulatory baseline, are expected as a result of the proposed PM standard.

2. SO_2 Impacts

The impacts of new source review and the acid rain trading program are not included in our baseline so actual costs (and benefits) of the proposed amendments could be less than stated in our analysis. The regulatory baseline for SO_2 emissions is defined to be the installation of one of three SO_2 control configurations, depending on the type of coal burned. New units burning bituminous coal were assumed to use pulverized coal-fired boilers equipped with limestone wet scrubbers with forced oxidation. New units burning low sulfur, subbituminous coal were assumed to use either spray dryers or LSFO depending on the boiler size. New units burning lignite or coal refuse were assumed to use circulating fluidized-bed (CFB) boilers with limestone addition. Design modifications and operating changes to these baseline controls would be required to achieve the higher performance level needed to comply with the proposed SO_2 standards.

Estimated baseline SO_2 emissions from the projected new electric utility steam generating units are approximately 14,000 Mg/yr (16,000 tpy). The proposed standards are projected to reduce SO_2 emissions by 7,600 Mg/yr (8,400 tpy). This represents an approximate 48 percent reduction in the growth of SO_2 emissions from new units that would be subject to the proposed standards. The proposed limit is approximately 65 percent lower than the existing limit, but many of the baseline units are over complying by using low sulfur coals.

The nationwide increases in total capital investment cost and the annual operating cost of the control equipment required to meet the proposed standards over the baseline costs are estimated to be $0.9 million and $0.7 million per year, respectively.

For steam generating units using LSFO, compliance with the proposed SO_2 standard would increase the quantity of scrubber sludge over the baseline levels. Depending on the practices used at a given power plant site, the resulting scrubber sludge (mostly calcium sulfite hemihydrate and gypsum) is disposed of in a landfill or is recovered as a salable by-product (*e.g.*, sold to a wallboard manufacturer). For those units using a dry scrubber or a CFB with limestone addition, the dry reaction solids are entrained in the flue gases, along with fly ash, and then collected by the downstream particulate control device. Compliance with the applicable proposed SO_2 standard would increase the quantity of solid materials collected by the particulate control devices over the baseline levels. No significant energy impacts, as measured relative to the regulatory baseline, are expected as a result of the proposed SO_2 standard.

3. NO_X Impacts

The impact of new source review is not included in our baseline so actual costs (and benefits) of the proposed amendments could be less than stated in our analysis. The regulatory baseline for NO_X emissions is defined to be installation of SCR controls on all new pulverized coal-fired units burning bituminous or subbituminous coal, and no additional NO_X controls on the CFB units burning lignite or coal refuse. Design modifications and operating changes to the SCR systems would be required to achieve the higher performance level needed to comply with the proposed NO_X standard. Installation and use of SNCR systems on the CFB units burning lignite or coal refuse is assumed to be needed to comply with the proposed NO_X standard.

Estimated baseline NO_X emissions from the projected new electric utility steam generating units are approximately 4,700 Mg/yr (5,200 tpy). The proposed standards are projected to reduce NO_X emissions by 1,200 Mg/yr (1,400 tpy). This represents an approximate 26 percent reduction in the growth of NO_X emissions from new units that would be subject to the proposed standards. The proposed limit is approximately 38 percent lower than the existing limit, but CFB baseline units are over complying with the existing limit.

The nationwide increases in total capital investment costs and the annual operating costs of the control equipment required to meet the proposed standards over the baseline costs are estimated to be $4.9 million and $1.5 million per year, respectively. These cost estimates may overstate the actual costs to meet the proposed NO_X standard because of the assumption used for the analysis that the CFB units burning lignite or coal refuse can meet the existing NO_X standard in subpart Da of 40 CFR part 60 without the need to install flue gas controls for NO_X emissions. Thus, the estimated costs include the full costs of installing SNCR systems on the CFB units to meet the proposed NO_X standard. Also, data for some western subbituminous coals suggests that the NO_X emission levels from burning these coals will be lower than the baseline NO_X emission levels used for the cost analysis.

Using nitrogen-based reagents requires operators of SCR and SNCR systems to closely monitor and control the rate of reagent injection regardless of the level of an applicable emission standard. If injection rates are too high, emissions of ammonia from a steam generating unit using SCR or SNCR may be in the range of 10 to 50 ppm. No significant energy impacts, as measured relative to the regulatory baseline, are expected as a result of the proposed NO_X standard.

B. What Are the Impacts for Industrial, Commercial, Institutional Boilers?

The nationwide increase in annualized costs for new industrial-commercial-institutional steam generating units greater than 100 MMBtu/hr heat input is about $2.1 million in the 5th year following proposal (table 4 of this preamble). This cost reflects the cost for wood-fired and wood and other fuel co-fired units to comply with the proposed PM limit. The cost-effectiveness for affected boilers under the proposed PM standard was $2,400 per ton removed. The proposed standard would impose no additional costs on fossil fuel-fired boilers.

The nationwide increase in annualized costs for new industrial-commercial-institutional units operating between 30 and 100 MMBtu/hr is about $140,000 in the 5th year following proposal. This cost reflects the control and monitoring cost for wood units to comply with the proposed PM limit. The range in cost-effectiveness for affected boilers under the proposed PM standard for subpart Dc of 40 CFR part 60 was about $3,200 per ton for high moisture wood units to about $3,500 per ton for dry wood-fired units.

TABLE 4.—NATIONAL COST AND EMISSION IMPACTS FOR INDUSTRIAL STEAM GENERATING UNITS

[5-Year impacts]

Subpart	Number of units	Emission reduction (tpy)	Annualized cost (million $)	Incremental cost-effectiveness ($/ton)	
				Overall	Range
Db	13	888	2.11	2,372	2,352–2,577
Dc	4	43	0.14	3,227	3,142–3,479

The range represents the difference in cost-effectiveness between wet and dry wood fuels.

The primary environmental impact resulting from the proposed PM standards is a reduction in the amount of PM emitted from new steam generating units. The estimated emissions reductions in the 5th year following proposal is about 840 Mg/yr (930 tpy) for subparts Db and Dc of 40 CFR part 60 units combined (about a 70 percent reduction for wood-fired units).

Secondary emission impacts would occur as a result of the additional electricity required to operate PM controls. A range of secondary air impacts for five criteria pollutants is shown in table 5 of this preamble. The range of impacts represents the instances where all electricity is generated off-site versus on-site.

There would be no significant impacts on the discharges to surface waters as a result of the proposed amendments to the PM standard. Fabric filter and ESP technologies do not demand water resources to control PM.

Solid waste impacts result from disposal of the PM collected in the fabric filter or ESP control device. The estimated solid waste impacts are 1,400 Mg/yr (1,500 tpy) for new industrial-commercial-institutional units at the end of the 5th year following proposal. The estimated costs of handling the additional solid waste generated are $33,000 for new industrial-commercial-institutional units greater than 100 MMBtu/hr and $1,600 for new industrial-commercial-institutional sources operating between 30 and 100 MMBtu/hr.

The proposed amendments require additional energy to operate fans on ESP controls. The estimated additional energy requirements are 4.1 million kilowatt hours (kWh) for new industrial-commercial-institutional units greater than 100 MMBtu/hr and 0.2 million kWh for new units between 30 and 100 MMBtu/hr. This additional energy requirement is estimated at about 0.1 percent of the boiler output.

TABLE 5.—ENVIRONMENTAL IMPACTS OF INDUSTRIAL UNITS

[5-Year impacts]

Subpart	Secondary air impacts (tpy)					Solid waste (tpy)	Energy (kWh/yr)
	SO_2	NO_X	CO	PM	VOC		
Db	0–83	12–50	0–34	1–33	0–2	1,482	4,063,397
Dc	0–3	0–2	0–1	0–1	0	69	167,860

A range of secondary air impacts represent emissions from electricity generated on-site vs. off-site. On-site generation assumed the use of wood fuel, and off-site generation assumed the use of coal for electricity generation.

C. Economic Impacts

Utilities. The analysis shows minimal changes in prices and output for the industries affected by the final rule. The price increase for baseload electricity is 0.23 percent and the reduction in domestic production is 0.05 percent. The analysis also shows the impact on the distribution of electricity supply. First, the construction of the five units with add-on controls may be delayed; hence the engineering cost analysis of controls are not incurred by society. Therefore the social costs of the proposed standard are approximately $0.7 million and reflect costs associated with existing units bringing higher-cost capacity online and consumers' welfare losses associated with the price increases and quantity decreases in the electricity market. However, this estimate of social costs does not account for the benefits of emissions reductions associated with this proposed New Source Performance Standard (NSPS). For more information on these impacts, please refer to the economic impact analysis in the public docket.

Industrial, Institutional, and Commercial Boilers. Based on economic impact analysis, the amendments are expected to have a negligible impact on the prices and production quantities for both the industry as a whole and the 17 affected entities. The economic impact analysis shows that there would be less than 0.01 percent expected price increase for output in the 17 affected entities as a result of the amendments for wood-fueled industrial boilers, subparts Db and Dc of 40 CFR part 60. The estimated change in production of affected output is also negligible with less than a 0.01 percent change expected. In addition, impacts to affected industries show that prices of lumber and wood products, as well as paper and allied products, would not change as a result of implementation of the amendments as proposed, and output of these types of manufacturing industries would remain the same. Therefore, it is likely that there is no adverse impact expected to occur for those industries that produce output affected by the proposed amendments, such as lumber and wood products and paper and allied products manufacturing. For further information, please refer to the economic impact analysis in the public docket.

VII. Request for Comments

We request comments on all aspects of the proposed amendments. All significant comments received will be considered in the development and selection of the final amendments. We specifically solicit comments on additional amendments that are under consideration. These potential amendments are described below.

Industrial Boiler SO_2 Standard. We are requesting additional information on

the ability of industrial boilers fueled by inherently low sulfur fuels to achieve a 90 percent reduction. Preliminary information indicates that industrial boilers using fuels with inherently low SO_2 emissions encounter technical difficulties achieving 90 percent sulfur removal. With this issue in mind, we are considering replacing the SO_2 percent reduction requirement in subparts Db and Dc of 40 CFR part 60 with a single, fuel-neutral emission limit in the final rule. Also, we would like comments on whether this change, if it is made, should be available for existing units or only apply to new units.

The emission limit could be expressed in either an output-based or input-based format. Either format would not create disincentives for the use of inherently low sulfur fuels. In addition, using an emission limit format exclusively may have benefits for industrial boilers in terms of compliance flexibility. Our initial analysis indicates that FGD systems can economically reduce SO_2 emissions from industrial, commercial, and institutional coal-fired boilers to 100 ng/J (0.24 lb/MMBtu heat input) heat input or less. The corresponding optional output-based emission limit would be 320 ng/J (2.6 lb SO_2 per MWh) of gross electrical output.

If we adopt a 0.24 lb SO_2/MMBtu heat input emission limit, as we are considering doing, the impacts depend on the mix of coals that are burned in new industrial boilers. For units burning coal with an emission potential greater than 2.4 lb SO_2/MMBtu heat input, control costs would be higher and emissions lower than under the current NSPS because more than a 90 percent reduction in emissions would be required. For units burning coal with an emission potential less than 2.4 lb SO_2/MMBtu heat input, control costs would be reduced and allowable emissions would be somewhat higher than the current NSPS. Industrial boilers using coal with an emission potential of 2.4 lb SO_2/MMBtu heat input would experience no difference in required control, but compliance costs would be lower because the testing and monitoring costs of complying with an emission limitation would be less than for a percent reduction standard, which requires testing at the inlet and outlet of the control device.

Preliminary analysis shows that a 0.24 lb/MMBtu standard would reduce emissions by 40 tpy with a small net cost savings. This analysis is based on the projection of six new coal-fired units with an SO_2 emission potential of 2.4 lb SO_2/MMBtu heat input or less, and one new boiler co-firing coal and wood with an emission potential of 3.0 lb SO_2/MMBtu heat input.

We request comments on the advantages and disadvantages of amending the current 40 CFR part 60, subpart Db and Dc, standards to an SO_2 emission limitation only and the likely cost and emissions reductions impacts. We also solicit data on the sulfur content of coals used by industrial boilers and future market projections.

If we adopt an emission limit format, we solicit comments on whether the emission limit should be expressed in an input-based or output-based format. In the 1998 NSPS amendments, we concluded that an output-based format provided only limited opportunity for promoting energy efficiency at subpart Db, 40 CFR part 60, units. In addition, we concluded that an output-based format could impose additional hardware and software costs because instrumentation to measure energy output generally did not exist at industrial-commercial-institutional facilities. In the case that we decide to replace the percent reduction requirement for 40 CFR part 60, subpart Db, and 40 CFR part 60, subpart Dc, units, we solicit comments on the benefits and costs of adopting an output-based emission limit either as the sole emission limit or as an optional emission limit.

An alternate approach we are considering and would like comment on is maintaining the percent reduction requirement and establishing an alternate emission limit. Under this approach, all units would comply with either an emissions limit of 0.2 lb SO_2/MMBtu or a 95 percent reduction. We would like comments both on this approach and appropriate limits.

Selection of Optional Output-Based NO_X Emission Limit for 40 CFR Part 60, Subpart Db, Units That Generate Electricity

For industrial-commercial-institutional units that generate electricity, we are considering an optional output-based emission limit in units of pounds of pollutant per MWh of gross energy output. Ideally, the output-based emission limit would be based on emissions data and energy output data that were measured simultaneously. However, output-based emission data are not readily available for industrial steam generating units. Most emission test data today are reported based on energy input, consistent with current State and Federal compliance reporting requirements. In the absence of measured output-based data, we would develop the emission limit using input-based emissions data and a baseline energy generating efficiency.

To develop the emission limit, we would use a baseline gross electrical generating efficiency of 32 percent, or a corresponding heat rate of 10.667 MMBtu/MWh. Most existing electric utility steam generating units achieve an overall efficiency of 29 to 38 percent, with newer units trending to the upper end of that range. However, given the diverse use of industrial-commercial-institutional steam generating unit applications, and since these units are primarily designed for providing process steam and not optimized for electrical production, we decided that applying an efficiency of 38 percent (*i.e.*, at the high end of the efficiency range) would be unreasonable. The output-based emission limit was, therefore, calculated by multiplying the input-based emission limit by the heat rate corresponding to a 32 percent gross electrical generating efficiency. Given a NO_X emission limit of 86 ng/J (0.2 lb/MMBtu heat input) for fossil fuel-fired units, we are proposing a corresponding output-based emission limit of 270 ng/J (2.1 lb/MWh). If you choose to comply with the optional output-based emission limit for your unit, then you must demonstrate compliance based on a 30-day rolling average. This averaging period is consistent with the input-based emission limit requirements, and it provides a sufficient averaging period to account for any variability in unit operating efficiency.

Applicability of the Industrial-Commercial-Institutional Boiler PM standard. The existing emission limits for PM in 40 CFR part 60, subpart Db, and 40 CFR part 60, subpart Dc, apply only to coal, oil, and wood-fired units. We are considering and requesting comment on extending the applicability of the proposed NSPS to cover all solid fuel-fired fuels in the final rule. A review of the BACT/LAER database revealed that since 1991, construction permits have been issued for seven units burning bagasse, two units burning hull fuel, and nine units burning non-fossil fuel (*e.g.*, wastewater sludge and tire-derived fuel). Emissions data indicate that these fuels are capable of meeting the same emission limits as coal-fired units. We solicit comment on the cost, environmental, and economic implications of extending the applicability of the proposed PM emission limits for 40 CFR part 60, subpart Db, and 40 CFR part 60, subpart Dc, to all solid fuels. Assuming use of a mechanical collector as the basis for baseline controls, preliminary analysis indicates that PM emissions could be

reduced by 134 tpy at an incremental cost of about $1,700 per ton removed.

Reporting Requirements for 40 CFR Part 60, Subpart Dc. Natural gas-fired units and low sulfur oil-fired units fall under the applicability of 40 CFR part 60, subpart Dc, due to the heat input capacity of the unit, but have no applicable emission limits. However, subpart Dc of 40 CFR part 60 requires daily fuel usage recordkeeping for natural gas and low sulfur oil under section 60.48c(g) to ensure that no other fuels are being burned in combination with them. Since no emission limits apply to these units, we are considering amending the reporting requirements in 40 CFR 60.48c(g) of subpart Dc for units permitted to fire only natural gas or low sulfur oil from daily to monthly. This reduction in burden is consistent with recordkeeping alternatives approved by EPA and will reduce the reporting burden for those facilities that currently report fuel usage on a daily basis.

Output-based PM Emission Limit for 40 CFR Part 60, Subpart Da. The proposed amendments to 40 CFR part 60, subpart Da, for electric utility steam generating units would establish output-based emission limits for SO_2 and NO_X. Although we prefer to use output-based formats for all of the emission limits applicable to an electric utility steam generating unit subject to the proposed standards, the proposed emission limit for PM retains the heat input format while we continue to evaluate PM CEMS. We are considering converting the proposed PM emission limit to an output-based format and requiring PM CEMS for the final rule.

For more than two decades, CEMS have been used in Europe to monitor PM emissions from a variety of industrial sources, including electric utility steam generating units. In the United States, however, PM CEMS presently are not routinely used to monitor emissions from coal-fired electric utility steam generating units. However, several electric utility companies in the United States have now installed or are planning to install PM CEMS on electric utility steam generating units.

In recognition of the fact that PM CEMS are commercially available, we have developed and promulgated PS and QA procedures for PM CEMS (69 FR 1786, January 12, 2004). Performance specifications for PM CEMS are established under PS–11 in appendix B to 40 CFR part 60 for evaluating the acceptability of a PM CEMS used for determining compliance with the emission standards on a continuous basis. Additional quality assurance procedures are established under procedure 2 in appendix F to 40 CFR part 60 for evaluating the effectiveness of quality control and quality assurance procedures and the quality of data produced by the PM CEMS.

Based on our analysis of available data, there is no technical reason that PM CEMS cannot be installed and operate reliably on electric utility steam generating units. Thus, the availability of PM CEMS makes establishing an output-based PM emission limit under 40 CFR part 60, subpart Da, a realistic option. We are requesting comment on the application of PM CEMS to electric utility steam generating units, and the use of data from such systems for compliance determinations under 40 CFR part 60, subpart Da.

For an output-based PM standard, we would convert the proposed PM emission limit of 0.015 lb/MMBtu heat input to the corresponding value in units of lb/MWh using an overall electrical generating efficiency of 36 percent. The resulting PM emission limit would be 18 ng/J (0.14 lb/MWh) gross electricity output as determined on a 30-day rolling average basis. The unit owner or operator would not be required to conduct the periodic performance tests required for demonstrating compliance with the input-based emission limit. In lieu of these performance testing requirements, under the proposed amendments the owner or operator would be required to install and operate a PM CEMS and demonstrate compliance with the alternative PM standard following the same procedures used to demonstrate compliance with the SO_2 and NO_X standards.

Net Output. The proposed output-based emission limits for utility boilers are based on gross energy output. To provide a greater incentive for energy efficiency, we would prefer to base output-based emission limits on net-energy output. But, as explained earlier, we are proposing to use gross energy output because a net output approach could result in monitoring difficulties and unreasonable monitoring costs, particularly at facilities with both affected and unaffected units. In general, about 6 to 10 percent of station power is used internally by parasitic loads, but these parasitic loads vary on a source-by-source basis. At some facilities, the use of a net output-based emission limit might be more advantageous. We are considering, therefore, including an optional net output-based emission limit wherever the proposed amendments have an output-based limit. We would develop the limit using a 32 to 34 percent net output efficiency to convert the gross output-based emission limit to a net output-based emission limit. Therefore, we are requesting comments on publishing both a gross output-based emission limit and an optional net output-based emission limit under 40 CFR 60, subpart Da.

Renewable Energy. We are considering adopting a rule provision to recognize the environmental benefits and encourage the installation of non-combustion based renewable electricity generation technologies. We are requesting comments on allowing an affected facility that generates electricity and installs a renewable generation technology (*e.g.*, solar, wind, geothermal, low-impact (small) hydro) to add the electric output from the renewable energy facility to the output of the affected facility when calculating compliance with output-based emission limits. To be eligible, the renewable generation would have to be constructed during the same time period as the affected facility and be located on a contiguous property. This provision could increase compliance flexibility, decrease costs, and contribute to multimedia-pollutant reduction. We are requesting comment on including such a provision in 40 CFR 60, subpart Da and Db, and on what forms of renewable energy would quality.

Definition of Boiler-Operating Day. We are considering amending the definition of boiler-operating day for existing utility units to be consistent with the proposed definition for new units. This would allow 30-day rolling average emission rates to be calculated consistently across sources. We are soliciting comments on if this is appropriate for existing sources.

CEM Availability. In recognition that 40 CFR part 75 requirements are more stringent than the NSPS and provide incentives to keep monitors as close to 100 percent as possible, we are intending to increase NSPS CEM availability. We would like comment on increasing CEM availability from 70 percent to 95 percent under 40 CFR part 60, subpart Da for both existing and new units. Data from EPA's Clean Air Markets Divisions indicates that in 2003 average NO_X hourly CEM availability was 96 percent and average SO_2 hourly CEM availability was 99 percent.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is ''significant'' and, therefore, subject to

review by OMB and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a action that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed amendments are a ''significant regulatory action'' because they raise novel legal or policy issues within the meaning of paragraph (4) above. Consequently, the proposed amendments were submitted to OMB for review under Executive Order 12866. Any written comments from OMB and written EPA responses are available in the docket (*see* **ADDRESSES** section of this preamble).

B. Paperwork Reduction Act

The proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The proposed amendments result in no changes to the information collection requirements of the existing standards of performance and would have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the development of the existing standards of performance. Therefore, the information collection requests have not been amended. The OMB has previously approved the information collection requirements contained in the existing standards of performance (40 CFR part 60, subparts Da, Db, and Dc) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, at the time the standards were promulgated on June 11, 1979 (40 CFR part 60, subpart Da, 44 FR 33580), November 25, 1986 (40 CFR part 60, subpart Db, 51 FR 42768), and September 12, 1990 (40 CFR part 60, subpart Dc, 55 FR 37674). The OMB assigned OMB control numbers 2060–0023 (ICR 1053.07) for 40 CFR part 60, subpart Da, 2060–0072 (ICR 1088.10) for 40 CFR part 60, subpart Db, 2060–0202 (ICR 1564.06) for 40 CFR part 60, subpart Dc.

Copies of the information collection request document(s) may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business according to Small Business Administration size standards by the North American Industry Classification System (NAICS) category of the owning entity. The range of small business size standards for the 17 affected industries ranges from 500 to 750 employees, except for electric utility steam generating units. In the case of utility boilers the size standard is 4 million kilowatt-hours of production or less; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, we conclude that this action will not have a significant economic impact on a substantial number of small entities. We have determined for electric utility steam generating units, that based on the existing inventory for the corresponding NAICS code and presuming the percentage of entities that are small in that inventory, estimated to be 3 percent, is representative of the percentage of small entities owning new utility boilers in the 5th year after promulgation, that at most, one entity out of five new entities in the industry may be small entities and thus affected by the proposed amendments. We have determined for industrial-commercial steam generating units, based on the existing industrial boilers inventory for the corresponding NAICS codes and presuming the percentage of small entities in that inventory is representative of the percentage of small entities owning new wood-fueled industrial boilers in the 5th year after promulgation, that between two and three entities out of 17 in the industry with NAICS code 321 and 322 may be small entities, and thus affected by the proposed amendments. Based on the boiler size definitions for the affected industries (subpart Db of 40 CFR part 60: greater than or equal to 100 MMBtu/hr; subpart Dc of 40 CFR part 60: 10–100 MMBtu/hr), EPA determined that the firms being affected were likely to fall under the subpart Dc of 40 CFR part 60 boiler category. These two or three affected small entities are estimated to have annual compliance costs between $70 and $105 thousand which represents less than 5 percent of the total compliance cost for all affected wood-fired industrial boilers. Based on the average employment per facility data from the U.S. Census Bureau, for the corresponding NAICS codes under the subpart Db of 40 CFR part 60 and subpart Dc of 40 CFR part 60 categories, the compliance cost of these facilities is expected to be less than 1 percent of their estimated sales. For more information on the results of the analysis of small entity impacts, please

refer to the economic impact analysis in the docket.

Although the proposed NSPS would not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the proposed amendments on small entities. In the proposed amendments, the Agency is applying the minimum level of control and the minimum level of monitoring, recordkeeping, and reporting to affected sources allowed by the CAA. This provision should reduce the size of small entity impacts. We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final actions with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA action for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the action. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final action an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the proposed amendments are not subject to the requirements of section 202 and 205 of the UMRA. In addition, we determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small governments. Therefore, the proposed amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, we may not issue a regulation that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed action. Also, we may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed action.

The proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed amendments will not impose substantial direct compliance costs on State or local governments, it will not preempt State law. Thus, Executive Order 13132 does not apply to the proposed amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, (65 FR 67249, November 9, 2000), requires us to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The proposed amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the proposed amendments.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any action that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have 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 action on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives we considered.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health and safety risks. Also, the proposed amendments are not ''economically significant.''

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

Executive Order 13211 (66 FR 28355, May 22, 2001) provides that agencies

shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''* * * any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final action or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. * * *''

This action is not a ''significant energy action,'' as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or energy use. Further, we concluded that this action is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d)(15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not use available and applicable voluntary consensus standards.

This action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, the consideration of voluntary consensus standards is not relevant to this action.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 9, 2005.

Stephen L. Johnson,

Acting Administrator.

For the reasons cited in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

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

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

Subpart A—[Amended]

2. Section 60.13 is amended by revising paragraph (h), to read as follows:

§ 60.13 Monitoring requirements

* * * * *

(h)(1) Owners or operators of all continuous monitoring systems for measurement of opacity shall reduce all data to 6-minute averages and for continuous monitoring systems other than opacity to 1-hour averages for time periods as defined in § 60.2. Six-minute opacity averages shall be calculated from 36 or more data points equally spaced over each 6-minute period.

(2) For continuous monitoring systems other than opacity, 1-hour averages shall be computed as follows:

(i) For a full operating hour (60 minutes of unit operation), at least four valid data points are required to calculate the hourly average, *i.e.*, one data point in each of the 15-minute quadrants of the hour.

(ii) For a partial operating hour (less than 60 minutes of unit operation), at least one valid data point in each 15-minute quadrant of the hour in which the unit operates is required to calculate the hourly average.

(iii) Notwithstanding the requirements of paragraphs (h)(2)(i) and (h)(2)(ii) of this section, for any operating hour in which required maintenance or quality-assurance activities are performed:

(A) If the unit operates in two or more quadrants of the hour, a minimum of two valid data points, separated by at least 15 minutes, is required to calculate the hourly average; or

(B) If the unit operates in only one quadrant of the hour, at least one valid data point is required to calculate the hourly average.

(iv) If a daily calibration error check is failed during any operating hour, all data for that hour shall be invalidated, unless a subsequent calibration error test is passed in the same hour and sufficient valid data are recorded after the passed calibration to meet the requirements of paragraph (h)(2)(iii) of this section.

(v) For each full or partial operating hour, all valid data points shall be used to calculate the hourly average.

(vi) Data recorded during periods of continuous monitoring system breakdown, repair, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this paragraph.

(vii) Notwithstanding the requirements of paragraph (h)(2)(vi) of this section, owners and operators complying with the requirements of § 60.7(f)(1) or (2) must include any data recorded during periods of monitor breakdown or malfunction in the data averages.

(viii) When specified in an applicable subpart, hourly averages for certain partial operating hours shall not be computed or included in the emission averages (*e.g.* § 60.47b(d)).

(ix) Either arithmetic or integrated averaging of all data may be used to calculate the hourly averages. The data may be recorded in reduced or nonreduced form (*e.g.*, ppm pollutant and percent O_2 or ng/J of pollutant).

(3) All excess emissions shall be converted into units of the standard using the applicable conversion procedures specified in the applicable subpart. After conversion into units of the standard, the data may be rounded to the same number of significant digits used in the applicable subpart to specify the emission limit (*e.g.*, rounded to the nearest 1 percent opacity).

* * * * *

Subpart D—[Amended]

3. Section 60.45 is amended by revising paragraph (c)(3) to read as follows:

§ 60.45 Emission and fuel monitoring

* * * * *

(c) * * *

(3) For affected facilities burning fossil fuel(s), the span values for a continuous monitoring system measuring the opacity of emissions shall be 80, 90, or 100 percent. For a continuous monitoring system measuring sulfur oxides or nitrogen oxides, the span value shall be determined using one of the following procedures:

(i)For affected facilities that are not subject to part 75 of this chapter, SO_2 and NO_X span values determined as follows:

[In parts per million]

Fossil fuel	Span value for sulfur dioxide	Span value for nitrogen oxides
Gas	(1)	500
Liquid	1,000	500
Solid	1,500	1,000
Combinations	1,000+1,500z	500(x+y)+1,000z

[1] Not applicable.

Where:

x = the fraction of total heat input derived from gaseous fossil fuel, and

y = the fraction of total heat input derived from liquid fossil fuel, and

z = the fraction of total heat input derived from solid fossil fuel.

(ii) For affected facilities that are also subject to part 75 of this chapter, SO_2 and NO_X span values determined according to section 2 in appendix A to part 75 of this chapter may be used for the purposes of this subpart.

Subpart Da—[Amended]

4. Section 60.40a is amended by revising paragraph (b) to read as follows:

§ 60.40a Applicability and designation of affected facility.

* * * * *

(b) Heat recovery steam generators that are associated with combined cycle gas turbines burning fuels other than synthetic-coal gas and that meet the applicability requirements of subpart KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other electric utility combined cycle gas turbines that are capable of combusting more than 73 MW (250 MMBtu/hour) heat input of fossil fuel in the heat recovery steam generator. If the heat recovery steam generator is subject to this subpart and the combined cycle gas turbine burn fuels other than synthetic-coal gas, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The combustion turbine emissions are subject to subpart GG or KKKK, as applicable, of this part).

* * * * *

5. Section 60.41a is amended by revising the definitions of ''boiler operating day'' and ''electric utility steam generating unit,'' and by adding in alphabetical order the definitions of ''bituminous coal,'' ''coal,'' ''cogeneration,'' ''natural gas,'' and ''petroleum'' to read as follows:

§ 60.41a Definitions.

* * * * *

Bituminous coal means coal that is classified as bituminous according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D38877, 90, 91, 95, or 98a (incorporated by reference—*see* § 60.17).

* * * * *

Boiler operating day for units constructed, reconstructed, or modified on or before February 28, 2005, means a 24-hour period during which fossil fuel is combusted in a steam generating unit for the entire 24 hours. For units constructed, reconstructed, or modified after February 28, 2005, boiler operating day means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

* * * * *

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388–77, 90, 91, 95, or 98a, Standard Specification for Classification of Coals by Rank (incorporated by reference—see § 60.17), coal refuse, and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures are included in this definition for the purposes of this subpart.

* * * * *

Cogeneration means a facility that simultaneously produces both electrical (or mechanical) and useful thermal energy from the same primary energy source.

* * * * *

Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. For the purpose of this subpart, net-electric output is the gross electric sales to the utility power distribution system minus purchased power on a 30-day rolling average. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected facility.

* * * * *

Natural gas means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or liquid petroleum gas, as defined by the American Society for Testing and Materials in ASTM D1835–82, 86, 87, 91, or 97, ''Standard Specification for Liquid Petroleum Gases'' (Incorporated by reference—see § 60.17).

* * * * *

Petroleum means crude oil or petroleum or a liquid fuel derived from crude oil or petroleum, including distillate and residual oil.

* * * * *

6. Section 60.42a is amended by revising the introductory text in paragraph (a) and adding paragraph (c) to read as follows:

§ 60.42a Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced before or on February 28, 2005, any gases that contain particulate matter in excess of:

* * * * *

(c) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February

28, 2005, any gases that contain particulate matter in excess of 6.4 ng/J (0.015 lb/MMBtu) heat input derived from the combustion of solid, liquid, or gaseous fuel.

7. Section 60.43a is amended by revising the introductory text in paragraphs (a) and (b) and adding paragraphs (i) and (j) to read as follows:

§ 60.43a Standard for sulfur dioxide.

(a) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts solid fuel or solid-derived fuel and for which construction, reconstruction, or modification commenced before or on February 28, 2005, except as provided under paragraphs (c), (d), (f) or (h) of this section, any gases that contain sulfur dioxide in excess of:

* * * * *

(b) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility which combusts liquid or gaseous fuels (except for liquid or gaseous fuels derived from solid fuels and as provided under paragraphs (e) or (h) of this section) and for which construction, reconstruction, or modification commenced before or on February 28, 2005, any gases that contain sulfur dioxide in excess of:

* * * * *

(i) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, any gases that contain sulfur dioxide in excess of 250 ng/J (2.0 lb/MWh) gross energy output, based on a 30-day rolling average, except as provided under paragraph (j) of this section.

(j) On and after the date on which the performance test required to be conducted under § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility that burns over 90 percent (by heat input) coal refuse and for which construction, reconstruction, or modification commenced after February 28, 2005, any gases that contain sulfur dioxide in excess of 300 ng/J (2.4 lb/MWh) gross energy output, based on a 30-day rolling average.

8. Section 60.44a is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 60.44a Standard for nitrogen oxides.

* * * * *

(d)(1) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no new source owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction commenced after July 9, 1997 but before or on February 28, 2005, any gases that contain nitrogen oxides (expressed as NO_2) in excess of 200 ng/J (1.6 lb/MWh) gross energy output, based on a 30-day rolling average, except as provided under § 60.46a(k)(1).

(2) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no existing source owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which reconstruction commenced after July 9, 1997 but before or on February 28, 2005, any gases that contain nitrogen oxides (expressed as NO_2) in excess of 65 ng/J (0.15 lb/MMBtu) heat input, based on a 30-day rolling average.

(e) On and after the date on which the initial performance test required to be conducted under § 60.8 is completed, no new source owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, any gases that contain nitrogen oxides (expressed as NO_2) in excess of 130 ng/J (1.0 lb/MWh) gross energy output, based on a 30-day rolling average, except as provided under § 60.46a(k)(1).

9. Section 60.46a is amended by revising paragraph (i) and adding paragraph (l) to read as follows:

§ 60.46a Compliance provisions.

* * * * *

(i) Compliance provisions for sources subject to § 60.44a(d)(1) or (e). The owner or operator of an affected facility subject to § 60.44a(d)(1) or (e) shall calculate NO_X emissions by multiplying the average hourly NO_X output concentration, measured according to the provisions of § 60.47a(c), by the average hourly flow rate, measured according to the provisions of § 60.47a(l), and dividing by the average hourly gross energy output, measured according to the provisions of § 60.47a(k).

* * * * *

(l) Compliance provisions for sources subject to § 60.43a(i) or (j). The owner or operator of an affected facility subject to § 60.44a(i) or (j) shall calculate SO_2 emissions by multiplying the average hourly SO_2 output concentration, measured according to the provisions of § 60.47a(b), by the average hourly flow rate, measured according to the provisions of § 60.47a(l), and divided by the average hourly gross energy output, measured according to the provisions of § 60.47a(k).

10. Section 60.47a is amended by:

a. Revising paragraph (b)(2);

b. Adding paragraph (b)(4);

c. Revising paragraph (g); and

d. Adding new sentences at the end each of the following paragraphs: (i)(3), (i)(4), and (i)(5) to read as follows:

§ 60.47a Emission monitoring.

* * * * *

(b) * * *

(1) * * *

(2) For a facility that qualifies under the provisions of § 60.43a(d), (i), or (j), sulfur dioxide emissions are only monitored as discharged to the atmosphere.

(3) * * *

(4) If the owner or operator has installed a sulfur dioxide emission rate continuous emission monitoring system (CEMS) to meet the requirements of part 75 of this chapter and is continuing to meet the ongoing requirements of part 75 of this chapter, that CEMS may be used to meet the requirements of this section, except that the owner or operator shall also meet the requirements of § 60.49a. Data reported to meet the requirements of § 60.49a shall not include data substituted using the missing data procedures in subpart D of part 75 of this chapter, nor shall the data have been bias adjusted according to the procedures of part 75 of this chapter.

* * * * *

(g) The 1-hour averages required under § 60.13(h) are expressed in ng/J (lb/million Btu) heat input and used to calculate the average emission rates under § 60.46a. The 1-hour averages are calculated using the data points required under § 60.13(h)(2).

* * * * *

(i) * * *

(3) For affected facilities burning only fossil fuel, the span value for continuous monitoring system for measuring opacity is between 60 and 80 percent. For a continuous monitoring

system measuring nitrogen oxides, the span value shall be determined using one of the following procedures:

(i) For affected facilities that are not subject to part 75 of this chapter, NO_X span values determined as follows:

Fossil fuel	Span value for nitrogen oxides (ppm)
Gas	500
Liquid	500
Solid	1,000
Combination	500 (x+y)+1,000z

Where:

x is the fraction of total heat input derived from gaseous fossil fuel,

y is the fraction of total heat input derived from liquid fossil fuel, and

z is the fraction of total heat input derived from solid fossil fuel.

(ii) For affected facilities that are also subject to part 75 of this chapter, NO_X span values determined according to section 2 in appendix A to part 75 of this chapter may be used for the purposes of this subpart.

(4) * * * NO_X span values that are computed under part 75 of this chapter and used for the purposes of this subpart shall be rounded off according to section 2 in appendix A to part 75 of this chapter.

(5) * * * Alternatively, if the affected facility is also subject to part 75 of this chapter, SO_2 span values determined according to section 2 in appendix A to part 75 of this chapter may be used for the purposes of this subpart.

* * * * *

Subpart Db—[Amended]

11. Section 60.40b is amended by revising paragraph (i) to read:

§ 60.40b Applicability and delegation of authority.

* * * * *

(i) Heat recovery steam generators that are associated with combined cycle gas turbines and that meet the applicability requirements of subpart KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other heat recovery steam generators that are capable of combusting more than 29 MW (100 million Btu/hour) heat input of fossil fuel. If the heat recovery steam generator is subject to this subpart, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The gas turbine emissions are subject to subpart GG or KKKK, as applicable, of this part).

* * * * *

12. Section 60.41b is amended by adding the definition of ''cogeneration'' in alphabetical order to read as follows:

§ 60.41b Definitions.

* * * * *

Cogeneration means a facility that simultaneously produces both electrical (or mechanical) and useful thermal energy from the same primary energy source.

* * * * *

13. Section 60.43b is amended by adding paragraph (h) to read as follows:

§ 60.43b Standard for particulate matter.

* * * * *

(h) On or after the date on which the initial performance test is completed or is required to be completed under 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter emissions in excess of 13 ng/J (0.03 lb/million Btu) heat input. Affected facilities subject to this paragraph are also subject to paragraphs (f) and (g) of this section.

14. Section 60.47b is amended by revising paragraph (d) and adding a new sentence at the end of paragraph (e)(3) to read as follows:

§ 60.47b Emission monitoring for sulfur dioxide

* * * * *

(d) The 1-hour average sulfur dioxide emission rates measured by the CEMS required by paragraph (a) of this section and required under § 60.13(h) is expressed in ng/J or lb/million Btu heat input and is used to calculate the average emission rates under § 60.42(b). Each 1-hour average sulfur dioxide emission rate must be based on 30 or more minutes of steam generating unit operation. The hourly averages shall be calculated according to § 60.13(h)(2).

Hourly sulfur dioxide emission rates are not calculated if the affected facility is operated less than 30 minutes in a given clock hour and are not counted toward determination of a steam generating unit operating day.

(e) * * *

(3) * * * Alternatively, if the affected facility is also subject to part 75 of this chapter, SO_2 span values determined according to section 2 in appendix A to part 75 of this chapter may be used for the purposes of this subpart.

* * * * *

15. Section 60.48b is amended by revising paragraphs (b) introductory text, (d), and (e)(2), and adding a new sentence at the end of paragraph (e)(3) to read as follows:

§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.

* * * * *

(b) Except as provided under paragraphs (g), (h), and (i) of this section, the owner or operator of an affected facility subject to a nitrogen oxides standard under 60.44b shall comply with either paragraphs (b)(1) or (b)(2) of this section.

* * * * *

(d) The 1-hour average nitrogen oxides emission rates measured by the continuous nitrogen oxides monitor required by paragraph (b) of this section and required under § 60.13(h) shall be expressed in ng/J or lb/million Btu heat input and shall be used to calculate the average emission rates under § 60.44b. The 1-hour averages shall be calculated using the data points required under § 60.13(h)(2).

(e) * * *

(2) For affected facilities combusting coal, oil, or natural gas, the span value for nitrogen oxides shall be determined using one of the following procedures:

(i) For affected facilities that are not subject to part 75 of this chapter, NO_X span values determined as follows:

Fossil fuel	Span value for nitrogen oxides (ppm)
Natural gas	500
Oil	500
Coal	1,000
Mixture	500(x+y)+1,000z

where:

x is the fraction of total heat input derived from natural gas,

y is the fraction of total heat input derived from oil, and

z is the fraction of total heat input derived from coal.

(ii) For affected facilities that are also subject to part 75 of this chapter, NO_X span values determined according to section 2 in appendix A to part 75 of this chapter may be used for the purposes of this subpart.

(3) * * * NO_X span values that are computed under part 75 of this chapter and used for the purposes of this subpart shall be rounded off according to section 2 in appendix A to part 75 of this chapter.

* * * * *

Subpart Dc—[Amended]

16. Section 60.40c is amended by adding paragraph (e) to read as follows:

§ 60.40c Applicability and delegation of authority.

* * * * *

(e) Heat recovery steam generators that are associated with combined cycle gas turbines and meet the applicability requirements of subpart KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other heat recovery steam generators that are capable of combusting more than or equal to 2.9 MW (10 million Btu/hour) heat input of fossil fuel but less than or equal to 29 MW (100 million Btu/hr) heat input of fossil fuel. If the heat recovery steam generator is subject to this subpart, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The gas turbine emissions are subject to subpart GG or KKKK, as applicable, of this part).

17. Section 60.41c is amended by revising the definition of coal to read as follows:

§ 60.41c Definitions.

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388–77, 90, 91, 95, or 98a, Standard Specification for Classification of Coals by Rank (IBR—see § 60.17), coal refuse, and petroleum coke. Coal-derived synthetic fuels derived from coal for the purposes of creating useful heat, including but not limited to solvent refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are also included in this definition for the purposes of this subpart.

* * * * *

18. Section 60.43c is amended by adding paragraph (e) to read as follows:

§ 60.43c Standard for particulate matter.

* * * * *

(e) On or after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification after February 28, 2005, and that combusts coal, oil, wood, a mixture of these fuels, or a mixture of these fuels with any other fuels shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter emissions in excess of 13 ng/J (0.03 lb/million Btu) heat input. Affected facilities subject to this paragraph, are also subject to the requirements of paragraphs (c) and (d) of this section.

19. Section 60.46c is amended by adding a new sentence at the end of paragraphs (c)(3) and (c)(4) to read as follows:

* * * * *

(c) * * *

(3) * * * Alternatively, if the affected facility is also subject to part 75 of this chapter, SO_2 span values determined according to section 2 in appendix A to part 75 of this chapter may be used for the purposes of this subpart.

(4) * * * Alternatively, for affected facilities that are also subject to part 75 of this chapter, SO_2 span values determined according to section 2 in appendix A to part 75 of this chapter may be used for the purposes of this subpart.

* * * * *

Appendix B—[Amended]

20. Appendix B to part 60 is amended by adding a new sentence at the end of section 8.3.1 in Performance Specification 2, to read as follows:

Appendix B to Part 60—Performance Specifications

* * * * *

Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_X Continuous Emission Monitoring Systems in Stationary Sources

* * * * *

8.3.1 * * * Alternatively, the CD test may be conducted over 7 consecutive unit operating days, rather than 7 consecutive calendar days.

* * * * *

Appendix F—[Amended]

21. Appendix F to part 60 is amended by adding sections 4.5 and 5.4, to read as follows:

Appendix F to Part 60—Quality Assurance Procedures

* * * * *

4.5 Alternative CD Assessment. For an affected facility that is also subject to the monitoring and reporting requirements of part 75 of this chapter, the owner or operator may implement the daily calibration error test and calibration adjustment procedures described in sections 2.1.1 and 2.1.3 of appendix B to part 75 of this chapter, instead of the CD assessment procedures in section 4.1 of this appendix. If this option is selected, the data validation and out-of-control provisions in sections 2.1.4 and 2.1.5 of appendix B to part 75 of this chapter shall be followed instead of the excessive CD and out-of-control criteria in section 4.3 of this appendix.

* * * * *

5.4 Alternative Data Accuracy Assessment. If an affected facility is also subject to the monitoring and reporting requirements of part 75 of this chapter, and if emissions data are reported on a year-round basis under § 75.64 or § 75.74(b) of this chapter, the owner or operator may implement the following alternative data accuracy assessment procedures:

5.4.1 Linearity Checks. Instead of performing the cylinder gas audits described in section 5.1.2 of this appendix, the owner or operator may perform quarterly linearity checks of the SO_2, NO_X, CO_2 and O_2 monitors required by this part, in accordance with section 2.2.1 of appendix B to part 75 of this chapter. If this option is selected:

5.4.1.1 The frequency of the linearity checks shall be as specified in section 2.2.1 of appendix B to part 75 of this chapter; and

5.4.1.2 The applicable linearity specifications in section 3.2 of appendix A to part 75 of this chapter shall be met; and

5.4.1.3 The data validation and out-of-control criteria in section 2.2.3 of appendix B to part 75 of this chapter shall be followed instead of the excessive audit inaccuracy and out-of-control criteria in section 5.2 of this appendix; and

5.4.1.4 The grace period provisions in section 2.2.4 of appendix B to part 75 of this chapter shall apply.

5.4.2 Relative Accuracy Test Audits. Instead of following the procedures in section 5.1.1 of this appendix, the owner or operator may perform RATA of the NO_X-diluent or SO_2-diluent CEMS required by this part (or both), in accordance with section 2.3 of appendix B to part 75 of this chapter. If this option is selected for a particular CEMS:

5.4.2.1 The frequency of the RATA shall be as specified in section 2.3.1 of appendix B to part 75; and

5.4.2.2 The applicable relative accuracy specifications shown in Figure 2 in appendix B to part 75 of this chapter shall be met; and

5.4.2.3 The data validation and out-of-control criteria in section 2.3.2 of appendix B to part 75 of this chapter shall be followed instead of the excessive audit inaccuracy and out-of-control criteria in section 5.2 of this appendix; and

5.4.2.4 The grace period provisions in section 2.3.3 of appendix B to part 75 of this chapter shall apply.

[FR Doc. 05–2996 Filed 2–25–05; 8:45 am]

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Part III

Department of Housing and Urban Development

Final Report of HUD Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4943–N–02]

Final Report of HUD Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to present a final report of the Department of Housing and Urban Development's review of certain accessibility provisions of the International Building Code, 2003 edition (2003 IBC), published by the International Code Council (ICC).[1] ICC requested that the Department review the accessibility provisions of the 2003 IBC to determine whether those provisions are consistent with the accessibility requirements of the Fair Housing Act (the Act), the regulations implementing the 1988 Amendments to the Act, and the Fair Housing Accessibility Guidelines (the Guidelines) and, therefore, that the 2003 IBC could be recognized by the Department as a safe harbor for compliance with the law.

The Department published a draft report on its review of the accessibility provisions of the 2003 IBC on August 6, 2004, soliciting comments on preliminary findings made by a Departmental Task Force that identified eight issues in which it appeared that the 2003 IBC was not consistent with the Act or the Guidelines, and an additional issue (Issue 9) which related to changes made to the 2003 IBC in the 2004 Supplement.

The Task Force reviewed and analyzed the comments responding to the draft report. Based on this analysis, of the eight issues that apply to the 2003 IBC, the Department has concluded that it can withdraw seven of its areas of concern, leaving one major issue that is clearly inconsistent with the Act and the Guidelines.

The Department is aware of the benefits of having a more recent edition of the IBC recognized by the Department as a safe harbor for compliance with the Act. Then buildings will be built with the accessible features required by the Act. Rather than declining to grant safe harbor status to the 2003 IBC in total, the Department has decided to grant safe harbor status conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating that:

> ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7.

The Department expects that ICC will publish and disseminate this statement in the following ways:

1. Placement on its Web site, especially on pages where technical aspects of 2003 IBC are described;
2. Including the statement with all versions of 2003 IBC that are distributed 30 days after publication of HUD's final report;
3. Within 45 days of the publication of HUD's final report, sending the statement by U.S. Mail or e-mail to jurisdictions and individuals on ICC's marketing lists for code materials, and
4. Providing the statement orally or in writing whenever technical assistance is provided concerning the 2003 IBC requirements for accessible routes between site arrival points and accessible building entrances.

During the next code change cycle, if ICC seeks to have the 2006 edition of the IBC declared a safe harbor, ICC must modify the IBC to clearly state, in a manner acceptable to the Department, that an accessible pedestrian route must be provided from site arrival points to accessible building entrances of buildings required to provide Type B dwelling units, unless site impracticality applies.

The Department's final report is intended to provide technical assistance to ICC and other interested parties. The Department is not promulgating any new technical requirements or standards by way of this final report, nor is this final report an endorsement of a model building code. The Department recognizes however, that one important way to increase compliance with the design and construction requirements of the Act is to incorporate those requirements into state and local building codes.

FOR FURTHER INFORMATION CONTACT: Cheryl Kent, Special Advisor for Disability Policy, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5240, Washington, DC 20410–0500; telephone (202) 708–2333, extension 7058 (voice). (This is not a toll free number.) Hearing- or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339 (TTY).

Location of Documents: This final report is located at *http://www.hud.gov/offices/fheo/disabilities/modelcodes/.* The Fair Housing Act, the Fair Housing Act regulations, and the Fair Housing Accessibility Guidelines can also be obtained through links provided at this Web site.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Fair Housing Act Accessibility Provisions

Title VIII of the Civil Rights Act (the Fair Housing Act) (42 U.S.C. 3601 *et seq.*) prohibits discrimination in housing and housing-related transactions based on race, color, religion, national origin, sex, familial status, and disability.[2] In its 1988 Amendments to the Act, Congress provided that all covered multifamily dwellings built for first occupancy after March 13, 1991 shall be designed and constructed so that: (1) The public and common use portions of such dwellings are readily accessible to and usable by persons with disabilities; (2) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and (3) all premises within such dwellings contain the following features of adaptive design: (a) an accessible route into and through the dwelling; (b) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) reinforcements in bathroom walls to allow later installation of grab bars; and (d) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. (42 U.S.C. 3604(f)(3)(C)). These basic accessibility requirements are known as the Act's design and construction requirements.

The Act does not set forth specific technical design criteria that have to be followed in order to comply with the design and construction requirements. It does provide, however, that compliance with the appropriate requirements of the ''American National Standard for buildings and facilities providing

[1] The 2003 International Building Code (8©) is a copyrighted work owned by the International Code Council, Inc. Quotations are included in this notice by permission of the Council.

[2] The Fair Housing Act refers to people with ''handicaps.'' Subsequently, in the Americans with Disabilities Act of 1990 and other legislation, Congress adopted the term ''persons with disabilities,'' or ''disability,'' which is the preferred usage. Accordingly, this Report hereinafter uses the terms ''persons with disabilities,'' ''disability,'' or ''disabled.''

accessibility and usability for physically handicapped people,'' commonly referred to as ANSI A117.1, satisfies the Act's design and construction requirements for the interiors of dwelling units (42 U.S.C. 3604(f)(4)).

In 1989, the Department issued its regulations implementing the design and construction requirements of the Act. 24 CFR 100.205. In the regulations, the Department specifically stated that compliance with the appropriate requirements of ANSI A117.1–1986 satisfies the technical requirements of the Act relating to interiors of dwelling units. 24 CFR 100.205(e). In addition, the Department's regulations reference the requirements of ANSI A117.1–1986 as a means of compliance with respect to the following features of covered multifamily dwellings: (a) public and common use areas, (b) accessible routes, and (c) building entrances on an accessible route. (24 CFR 100.201).

Congress directed the Secretary of HUD to ''provide technical assistance to states and units of local government and other persons to implement [the design and construction requirements].'' (42 U.S.C. 3604(f)(5)(C)). Over the last 13 years, the Department has undertaken numerous activities to provide technical guidance and has published several technical guidance documents. For example, on March 6, 1991, the Department published the ''Final Fair Housing Accessibility Guidelines'' (56 FR 9472–9515), which set forth specific technical guidance for designing covered multifamily dwellings to be consistent with the Act. Section I of the Guidelines states: ''These guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act.'' (56 FR at 9499).

On June 24, 1994, the Department published its ''Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines'' (59 FR 33362–33368). The Department published a Fair Housing Act Design Manual (Design Manual) in 1996 that was reissued in 1998 with minor changes. The Design Manual is also a safe harbor for compliance with the Act.

The Act states that Congress did not intend the Department to require states and units of local government to include the Act's accessibility requirements in their state and local procedures for the review and approval of newly constructed covered multifamily dwellings (42 U.S.C. 3604(f)(5)(C)). However, Congress authorized the Department to encourage the inclusion of these requirements into their state and local procedures. *Id.*

The Department's review of model codes falls within its mandate to provide technical assistance to state and local governments to incorporate the design and construction requirements of the Act into their laws and procedures for review and approval of newly constructed multifamily dwellings.[3] In the course of its review of model codes over the past several years, the Department has made every effort to ensure that any code or version of a code it deems a safe harbor provides at least the same level of accessibility that is required under the Act.

B. The 2000 International Building Code, 2001 Supplement to the International Codes and the Code Requirements for Housing Accessibility

The International Building Code (IBC) represents an effort to bring national uniformity to building codes. Representatives of three national model code bodies developed drafts of the proposed code under the auspices of the International Code Council (ICC), an umbrella organization created in 1994 to assist common code development. The IBC includes provisions for accessibility intended to reflect the intent of the Act, the regulations, and the Guidelines.

Unlike the Act, the IBC is a model building code and not a law. It provides minimum standards for public safety, health, and welfare as they are affected by building construction. Compliance with the IBC or any other model code is not required unless adopted by a state or local jurisdiction's governing body. A jurisdiction may adopt a model building code in its entirety or with modifications.

With respect to housing, the IBC contains requirements for three different types of accessible dwelling units, which include sleeping units when such units are used as a residence. The most accessible of these three types is an ''Accessible Unit,'' which is wheelchair accessible and meets the requirements of those chapters of the ICC/ANSI A117.1–1998 standard that apply to numerous types of buildings, and not just dwelling units. A second level of accessibility is set forth in the requirements for ''Type A'' dwelling units. Under the IBC, a percentage of units must provide for a high level of accessibility, especially in kitchens and bathrooms, but will also have some features of adaptability. The third level of accessibility is a ''Type B'' dwelling unit, which is a unit that is intended to comply with those features of accessible and adaptable design required under the Fair Housing Act. The requirements set forth for Type B dwelling units apply to a greater number of dwelling units in a building but do not require as great a level of accessibility as Type A dwelling units, and instead provide a basic degree of accessibility as well as some features of adaptable design, particularly in kitchens and bathrooms.

In 1999, at the request of the model code organizations, the Department reviewed three existing model building codes and the draft 2000 International Building Code (2000 IBC) for the purpose of determining if these codes met the design and construction requirements in the Act. In conjunction with its review of the model building codes, the Department also reviewed the 1992 and 1998 editions of ANSI A117.1 (CABO/ANSI A117.1–1992 and ICC/ANSI A117.1–1998).

On March 23, 2000, the Department published its Final Report of HUD Review of Model Building Codes in the **Federal Register** (65 FR 15740). This report concluded that with revisions, the 2000 IBC could be made consistent with the Act's design and construction requirements. In this report, the Department also stated that it reviewed the 1992 CABO/ANSI A117.1 and the 1998 ICC/ANSI A117.1, and believes that CABO/ANSI A117.1–1992 and ICC/ANSI A117.1–1998 are consistent with the Act and are additional safe harbors for compliance with the Act's technical accessibility requirements. It is important to note, however, that ANSI A117.1 contains only technical criteria, whereas the Act, the implementing regulations, and the Guidelines contain both ''scoping'' and technical criteria. Scoping criteria define when a building element or space must be accessible; technical criteria provide the technical specifications on how to make an element accessible. Therefore, designers and builders relying on ANSI A117.1 also need to consult the Act, the Department's regulations, and the Guidelines for the scoping criteria.

Following publication of this report, at the request of a group of representatives from ICC, major building industry groups and disability advocacy groups, the Department provided

[3] The Act also makes it clear that it does not invalidate or limit any other state or federal laws that require dwellings to be designed or constructed in a manner that affords persons with disabilities greater access than that required under the Act. 42 U.S.C. 3604(f)(8). Further, federally funded facilities and dwelling units covered by section 504 of the Rehabilitation Act of 1973 (Section 504), the Architectural Barriers Act (ABA), the Uniform Federal Accessibility Standard, or the Americans with Disabilities Act (ADA), must comply with the regulatory requirements of those laws in addition to the requirements of the Act, when applicable. For Section 504, regulatory requirements may be found at 24 CFR part 8; for the ABA, 24 CFR part 40; and for the ADA, 28 CFR parts 35 and/or 36, as applicable.

technical assistance to ICC in developing code text changes to address HUD's concerns with the accessibility provisions in the code. The resulting code text changes were incorporated into the IBC in the 2001 Supplement to the International Codes. In addition, at the request of this same group of representatives, HUD provided technical assistance to ICC in the review of a document that compiled all of the housing-related accessibility provisions in the 2000 IBC as amended by the 2001 Supplement in a separate, stand-alone document which also includes related commentary entitled, ''Code Requirements for Housing Accessibility'' (CRHA), published by ICC in October 2000. The ICC subsequently issued an errata sheet to the CRHA. This errata sheet includes corrections that are reflected in the 2001 Supplement to the IBC.

Based upon HUD's review, the 2000 IBC, as amended by the 2001 Supplement, and the CRHA have been deemed by the Department to constitute additional safe harbors for compliance with the design and construction requirements of the Act.

II. HUD-Recognized Safe Harbors for Compliance With the Fair Housing Act Design and Construction Requirements

As a result of the review and subsequent actions outlined above, the Department has recognized seven documents as safe harbors for compliance with the Act's design and construction requirements. These documents are:

1. Fair Housing Accessibility Guidelines, March 6, 1991, in conjunction with the June 28, 1994 Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines;
2. Fair Housing Act Design Manual, published by HUD in 1996, updated in 1998;
3. ANSI A117.1–1986, Accessible and Usable Buildings and Facilities, in conjunction with the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements;
4. CABO/ANSI A117.1–1992, Accessible and Usable Buildings and Facilities, in conjunction with the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements;
5. ICC/ANSI A117.1–1998, Accessible and Usable Buildings and Facilities, in conjunction with the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements;
6. 2000 ICC Code Requirements for Housing Accessibility (CRHA), published by the International Code Council (ICC), October 2000; and
7. 2000 International Building Code (IBC), as amended by the 2001 Supplement to the International Building Code.

If a state or locality has adopted one of the above documents, covered residential buildings that are built to those specifications will be designed and constructed in accordance with the Act as long as the building code official does not waive or incorrectly interpret or apply one or more of those requirements. See HUD Policy Statement, 65 FR 15756 (March 23, 2000).

III. The 2003 International Building Code Review and Comment Process

The International Building Code is updated on a regular basis by means of a code development process. Under this process, any interested person may submit proposed changes to the code and participate in the proceedings under which proposed changes are considered for adoption. At present, ICC is utilizing an 18-month development cycle. Changes approved during the 2003/2004 code development cycle will appear in the 2004 Supplement; followed by another 18-month cycle that will result in the 2006 IBC.

ICC contacted HUD in 2003 to request that HUD review the accessibility requirements contained in the 2003 IBC to make a determination as to whether the 2003 IBC would also be deemed a safe harbor for compliance with the Act's design and construction requirements. The Department convened a Task Force that consisted of representatives of HUD's Offices of Fair Housing and Equal Opportunity and General Counsel, and the Department of Justice's (DOJ) Civil Rights Division, Housing and Civil Enforcement Section, to review the changes to the 2003 IBC from the 2000 IBC, as amended by the 2001 Supplement, to ascertain whether, with those changes, the 2003 IBC meets the accessibility requirements of the Act.

The Task Force was provided with a matrix and a briefing by ICC representatives concerning the changes to the accessibility provisions reflected in the 2003 IBC. The Task Force did not review any other sections of the 2003 IBC except as necessary to analyze the changed provisions identified by the ICC. The Task Force consulted only with the ICC during its preliminary review, because that organization is the official interpreter of the code. However, in order to ensure the possibility of receiving input from the broadest range of interested individuals and groups, the Department published a draft report in the **Federal Register** on August 6, 2004 (69 FR 47947) with a request for comments on the recommendations as well as on any other sections of the 2003 IBC that may be of concern to members of the public.

HUD received comments from forty-six individuals and organizations. Those comments are discussed in the section-by-section analysis of this Final Report. The ICC, the National Association of Homebuilders (NAHB), and the United Spinal Association commented on all of the issues that the Department had identified as problematic in granting safe harbor status to the 2003 IBC. Other organizations, including Paralyzed Veterans of America and R. C. Quinn Consulting, Inc., commented on some of the provisions.

In addition, HUD received a number of comments that did not specifically relate to the recommendations in the Draft Report, but which related to the enforcement of the Act and the Guidelines in general. Since the Task Force's charge was only to address whether the 2003 IBC could qualify as a safe harbor, a response to those comments is beyond the scope of this Final Report.

IV. Overview of Comments, Final Analysis, and Conclusions

HUD's draft report identified eight sections of the 2003 IBC that the Department's Task Force determined may not be consistent with the requirements of the Act and the Guidelines. In addition, the draft report identified certain issues of concern to the Task Force that did not directly affect safe harbor status of the 2003 IBC. All of these issues are individually discussed in the section-by-section analysis under Part V, below.

Several organizations, including the ICC, submitted comments referring the Department to Section 102.1 of the 2003 IBC. That provision reads:

> *102.1 General.* Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

As the section-by-section analysis that follows demonstrates, the Department understands that Section 102.1 of the 2003 IBC requires code officials to interpret the accessibility sections in Chapters 10 and 11 of the 2003 IBC in a manner that ensures that the code section with the highest level of accessibility applies in any given circumstance. With that understanding,

the Department has withdrawn many of the concerns contained in the draft report.

In addition, many of the comments the Department received pointed out that the code changes to the 2003 IBC were the result of the ICC's efforts to incorporate the accessibility requirements of the Americans with Disabilities Act of 1990 and the ADA Accessibility Guidelines. The Department understands the importance of taking steps to harmonize the federal government's requirements for facilities that are subject to the ADA with accessibility requirements used by the private sector and supports the ICC's efforts in that regard. In those instances where such efforts had the unintended consequence of apparently conflicting with the accessible design and construction requirements of the Act, the Department's comments focused on clarifications that would achieve consistency with Act's design and construction requirements without undermining the provisions in the code addressing ADA requirements. The Department has concluded that, with one exception, any perceived conflicts between 2003 IBC language intended to incorporate ADA standards and the Act's requirements are resolved by the application of Section 102.1 of the 2003 IBC.

V. Analysis

A. General—Use of the Term ICC/ICC/ANSI A117.1–1998

In the draft report, HUD had noted that the 2003 IBC does not use the full acronym ICC/ANSI A117.1–1998 throughout the code, and instead uses ''ICC A117.1.'' Because the Act and the Guidelines reference the ''ANSI'' standard, the Department had recommended that the next edition of the IBC be revised to include ''ANSI'' in the abbreviation that is used in the text throughout various chapters of the code, as has been done in previous versions.

The Department received two comments in response to this recommendation, both opposing the recommended change and explaining that the American National Standards Institute (ANSI) no longer promulgates standards as it did when the Act and the Guidelines were drafted. Currently the promulgator of the A117.1 standard is the ICC, and ANSI is only the accrediting group for the standard. The commenters explained that the current convention in all ICC codes is to reference the promulgator (development secretary and publisher) of the standards, and not the process or accrediting group.

Based on the comments received and the fact that the 2003 IBC does reference ICC/ANSI A117.1–1998 in Chapter 3, Referenced Standards, page 591, the Department withdraws this recommendation.

B. 2003 IBC Provisions Identified in Draft Report That Were of Concern to the Department as Not Meeting Accessibility Requirements

1. Chapter 10: Means of Egress; Section 1008.1.4, Floor Elevation: Exception 3

The draft report concluded that Exception 3 to Section 1008.1.4 of the 2003 IBC did not meet the accessibility requirements of the Act and the Guidelines and recommended that it be revised to add clarifying language such as that in the 2003 IBC Commentary (Commentary). Based upon the Task Force analysis of the comments received about this issue, the Department has concluded that this section of the 2003 IBC does not preclude recognition of the Code as a safe harbor.

Section 1008.1.4, entitled ''Floor elevation,'' specifies the general requirement that there be a level landing on each side of a door. Exception 3 exempts Group R–3 occupancies from this requirement, permitting a landing at an exterior door of up to 7¾ inches. Since Group R–3 occupancies include multilevel townhouses with interior elevators and group homes that do not operate as a single-family residence, the Department concluded that Exception 3 permits these structures to have a step of up to 7¾ inches at their exterior doors, thus leading to less accessibility than is required by the Act and the Guidelines. Although the Commentary for Exception 3 explains that the exception does not apply to the primary entrance door or to exterior doors that open to decks, patios or balconies in Type B dwelling or sleeping units. *See* Commentary, p. 10–39. Exception 3 itself does not contain similar limiting language.

The commenters, including the ICC, generally did not agree with the draft report's conclusion that Exception 3 to Section 1008.1.4 is inconsistent with the Act and HUD's Guidelines. They stated that Exception 3 is not applicable to covered multifamily dwellings under the Act. To support this conclusion, they first noted that Section 102.1 of the IBC provides that if different sections of the IBC specify different requirements, ''the most restrictive shall govern.'' They note further that because other provisions in the IBC require accessible entrances and accessible routes to Type B units, and thus are more restrictive than Section 1008.1.4 Exception 3, the more restrictive provisions apply and nullify Exception 3. As one example, the commenters, including the ICC, pointed to Section 1107.4, which by virtue of Section 102.1, mandates an accessible route at the primary entrance of all Type B units. Thus, Group R–3 occupancies that are required to be designed and constructed as Type B accessible dwellings, including a multilevel townhouse with an interior elevator and a group home that does not operate as a single-family residence, must have primary entrances on an accessible route. In other words, these dwellings are not permitted to have a landing of up to 7¾ inches at their exterior doors.

The commenters provided the following additional examples of other provisions that supersede Exception 3: (1) Section 1107.2, because it mandates that Type B units comply with the applicable portions of ICC A117.1, Chapter 10, which requires, *inter alia*, an accessible primary entrance on an accessible route from public and common areas (*see* ICC A117.1 Section 1003.2, 1998 Edition); (2) Section 1104.3, which mandates when a building or portion thereof is required to be accessible, an accessible route must be provided to each portion of the building, to accessible building entrances connecting accessible pedestrian walkways, and to the public way; (3) Section 1107.3, because it specifies that rooms and spaces available for use by residents, including ''any exterior spaces, including patios, terraces and balconies'' must be accessible; and (4) Section 1008.1.4 Exception 5, which permits a 4-inch, not a 7¾-inch, landing at exterior decks, patios or balconies made of impervious surfaces.

The Department has carefully considered the above comments and determined that it agrees that the provisions discussed above sufficiently supersede Exception 3 of Section 1008.1.4 with respect to Type B dwelling units in buildings subject to the Act. Therefore, the Department withdraws its earlier finding that the Exception may be problematic.

Some of the commenters stated that they believed that the Act's design and construction requirements do not apply to townhouses with interior elevators in multifamily buildings of four or more dwellings or group homes with four or more units. This is incorrect. It has been the Department's longstanding position that the Act's design and construction requirements include townhouses with interior elevators if those townhouses are part of multifamily buildings of four or more units. HUD's position on this

has been stated in numerous public documents. (*See, e.g.*, 54 FR 3244, 3251 (January 23, 1989) preamble to the Department's regulations implementing the Act; 55 FR 24377 (June 15, 1990) preamble to proposed Guidelines; 56 FR 9481 preamble to Guidelines; 59 FR 33362–68 (June 28, 1994) Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, Question 13.) In addition, this view is acknowledged in ICC's ''Code Requirements for Housing Accessibility,'' Commentary to Section 406.7.2 (IBC 1107.7.2).

In addition, the Act's design and construction requirements apply to group homes that do not operate as single-family residences. This was discussed in detail in the policy statement in the Department's Final Report on IBC 2000. (*See* 65 FR 15745, 15759 (March 23, 2000). The Department also notes that the 2003 IBC is consistent with this approach. Group homes with four or more sleeping units and five or fewer residents are characterized as Group R–3 and are required to meet the Act's design and construction requirements. Such group homes are not, as two commenters asserted, Group R–4 occupancies, *i.e.*, residential care/assisted living facilities with six to sixteen occupants.

2. Section 1008.1.6, Thresholds: Exception

The Department's draft report stated that as drafted, the new Exception to Section 1008.1.6 could be confusing. Section 1008.1.6 sets forth the general requirement that a doorway threshold cannot exceed ¾ inch for a sliding glass door and ½ inch for other doors. The new exception allows for a threshold of 7¾ inches in Group R–2 and Group R–3 housing if the door is an exterior door that is not a component of the required means of egress and is not on an accessible route. HUD noted that while the ''means of egress'' and ''accessible route'' limitations would appear to ensure that the 7¾ inch threshold is not permitted in Group R–2 and Group R–3 housing that is subject to the Act, there might be confusion regarding patio doors and other exterior doors that are not a means of egress.

Two commenters, including the ICC, wrote that they did not believe the new Exception could lead to confusion. They stated that the Exception's language is clear that it does not apply to doors that are part of the route required to be accessible, including patio doors and any other exterior doors that are part of the accessible route.

After carefully considering these comments and reviewing the plain language of the code, the Department has now concluded that the language of the Exception is sufficiently clear and does not require revision.

3. Chapter 11: Accessibility: Section 1104.1, Site Arrival Points: Exception

The Department's draft report concluded that the new exception to Section 1104.1, Site arrival points, does not meet the requirements in the Act for an accessible entrance on an accessible route, or for accessible routes within the boundary of the site, such as routes from public transportation stops (where applicable), and public streets and sidewalks (hereinafter identified as vehicular or pedestrian arrival points). As the Department's draft report indicated, the 2003 IBC adds a new exception to Section 1104.1, Site Arrival points. The 2003 IBC text states:

1104.1 Site arrival points. Accessible routes within the site shall be provided from public transportation stops, accessible parking and accessible passenger loading zones and public streets or sidewalks to the accessible building entrance served.

Exception: An accessible route shall not be required between site arrival points and the building or facility entrance if the only means of access between them is a vehicular way not providing for pedestrian access.

It is the Department's view that the language of this section allows the builder much greater latitude to decide whether to provide a pedestrian route than the Guidelines and other current HUD recognized safe harbors allow.

The Department's draft report explained that the Guidelines' Requirements 1 and 2 require an accessible pedestrian route, within the boundary of the site, from vehicular and pedestrian arrival points to the entrances of covered buildings and dwelling units, except in very limited circumstances where a site is impractical due to steep terrain or unusual characteristics. However, the new Exception at Section 1104.1 apparently could allow a developer to provide only a vehicular route from a public street or sidewalk at the entry point of the site to the covered dwellings, regardless of the conditions of the site. Application of this Exception could lead to development of housing which would have had an accessible pedestrian route from site arrival points if any of the current HUD recognized safe harbors were followed, but would not have an accessible pedestrian route from site arrival points if the 2003 IBC Exception to Section 1104.1 were followed.

The Department's draft report recommended that the 2003 IBC be amended to include a new provision under Section 1107 to address site arrival points and that this new provision be worded in a manner that is similar to Section 1104.1, but without the Exception. The Department has carefully reviewed the comments received on this issue.

After considering the comments, the Department now believes that Sections 1104.1 and 1107.4, properly interpreted, require an accessible pedestrian route to the same extent as other HUD recognized safe harbors. As explained in the discussion below, however, the Department continues to believe that the language of the Exception to Section 1104.1 could lead to less accessibility than that required by the Act and the Guidelines unless ICC informs jurisdictions and past and future purchasers of the 2003 IBC that such an interpretation is inconsistent with the intent of the 2003 IBC. Therefore, in order to have safe harbor status for this Section, ICC must publish and distribute a statement to jurisdictions and past and future purchasers of the 2003 IBC stating that: ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7.

The Department expects that ICC will publish and disseminate this statement in the following ways:

1. Placement on its Web site, especially on pages where technical aspects of 2003 IBC are described;

2. Including the statement with all versions of 2003 IBC that are distributed 30 days after publication of HUD's final report;

3. Within 45 days of the publication of HUD's final report, sending the statement by U.S. Mail and/or e-mail to jurisdictions and individuals on ICC's marketing lists for code materials, and

4. Providing the statement orally or in writing whenever technical assistance is provided concerning the 2003 IBC requirements for accessible routes between site arrival points and accessible building entrances.

This statement of intent is consistent with the interpretation that ICC and NAHB proffered in their comments on the draft report as discussed below.

During the next code change cycle, if ICC seeks to have the 2006 edition of the IBC declared a safe harbor, ICC must modify the IBC to clearly state, in a

manner acceptable to the Department, that an accessible pedestrian route must be provided from site arrival points to accessible building entrances of buildings required to provide Type B dwelling units, unless site impracticality applies.

The Department's regulations implementing the Act require that dwellings subject to the Act's design and construction requirements be designed and constructed to provide an accessible entrance on an accessible route to covered buildings and dwelling units, unless it is impractical due to terrain or unusual site characteristics. The Guidelines describe the conditions that must be met for establishing this site impracticality. *See* 56 FR 9504–9504 (March 6, 1991). The regulations and the Guidelines also require accessible and usable public and common use areas, which includes accessible routes. Specifically, Requirement 2 of the Guidelines requires an accessible route, within the boundary of the site, from public transportation stops, accessible parking spaces, accessible passenger loading zones, and public streets and sidewalks to accessible building entrances, unless site impracticality applies.

Section 2 of the Guidelines defines an ''accessible route'' as a continuous and unobstructed path that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by persons with other disabilities. The definition further states that under the circumstances described in Section 5, Requirements 1 and 2, an accessible route may include a vehicular route. Once again, however, the circumstances that allow a vehicular route are very limited. See discussion under Issue 4.

The Department received a number of comments on this issue. Two of the commenters, ICC and NAHB, acknowledged a potential conflict. However, these commenters were of the opinion that the 2003 IBC provision at Section 1107.4 controls. As support, they cite Section 102.1, which states that where different sections of the code specify different requirements, the most restrictive shall govern; and where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable. These commenters proffered that Section 1107.4 contains more restrictive criteria. Section 1107.4 states:

1107.4 Accessible route. At least one accessible route shall connect accessible building or facility entrances with the primary entrance of each Accessible unit, Type A unit and Type B unit within the building or facility and with those exterior and interior spaces and facilities that serve the units.[4]

Based on the statement in the above text that an accessible route must connect building or facility entrances with the primary entrance of each * * * Type B unit and with exterior and interior spaces and facilities that serve the units, ICC took the position that site arrival points ''do serve units on the site.''

Another commenter expressed a belief that Section 1107.2, which requires compliance with ICC/ANSI A117.1–1998, addresses the Department's concern.

The Department has given careful consideration to these comments. However, the Department does not believe the commenters' interpretation is supported by a plain reading of the code. First, the Department does not agree that the text of Section 1107.4, on its face, effectively cancels out the Exception at Section 1104.1. The text of Section 1107.4 does not address site arrival points; therefore, the text of Exception 1 to Section 1107.4 cannot, on plain reading, be construed to apply to site arrival points. In addition, Exception 1 to Section 1107.4 does not apply to site arrival points because that exception is addressing the narrow circumstances when a vehicular route is allowed between building entrances and public and common use facilities elsewhere on the site. Instead, Section 1107.7 of the 2003 IBC addresses site impracticality.

Moreover, the Department does not believe that the term ''facility'' would be readily construed to include the edge of the public right-of-way where a site arrival point may be located. Further, as Section 1104.1 is entitled ''Site arrival points,'' we do not believe that a local jurisdiction would readily interpret Section 1107.4 as being applicable to site arrival points.

The Department also disagrees with the comment that Section 1107.2 addresses the Department's concern because Section 1107.2 requires Type B dwelling units to comply with Chapter 10 of ICC/ANSI A117.1–1998. The only provision in Chapter 10 that deals with areas exterior to the dwelling unit is Section 1003.2, which simply states that the accessible primary entrance shall be on an accessible route from public and common areas. This text does not specifically refer to site arrival points and the 2003 IBC definitions for the terms ''common use'' and ''public use areas'' do not include all site arrival points. Further, as scoping requirements are contained in the building code itself, it does not appear that a provision in the ICC/ANSI A117.1–1998 would nullify the exception at Section 1104.1 of the 2003 IBC.

None of the commenters addressed the Department's primary concern, which is that the new exception in Section 1104.1 would allow builders to choose to design and construct sites that do not have an accessible pedestrian route and only a road or driveway from site arrival points to accessible dwelling unit entrances, regardless of whether the site meets the criteria for site impracticality established in the Guidelines.

Without ICC's public dissemination of a statement to jurisdictions and past and future purchasers of the 2003 IBC of its interpretation that sites required to provide Type B dwelling units are required to provide an accessible route connecting site arrival points and accessible building entrances (unless site impracticality applies), the Department believes that the new exception at Section 1104.1, in the absence of a specific provision under Section 1107 addressing site arrival points, would be interpreted as creating a conflict with the requirements in the Act and the Guidelines. That conflict is not resolved by the provisions of Section 1107.4. The Department believes that its objection could be resolved, however, and safe harbor status could apply, if ICC publishes and distributes a statement to jurisdictions and past and future purchasers of the 2003 IBC stating that:

ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7.

The Department expects that ICC will publish and disseminate this statement in the following ways:

1. Placement on its Web site, especially on pages where technical aspects of 2003 IBC are described;

2. Including the statement with all versions of 2003 IBC that are distributed 30 days after publication of HUD's final report;

3. Within 45 days of the publication of HUD's final report, sending the statement by U. S. Mail and/or e-mail to

[4] Section 1107.4 includes exceptions, one of which deals with situations when a vehicular route will be allowed between entrances of covered buildings and dwelling units and public and common use facilities elsewhere on the site. This exception is discussed under Issue #4.

jurisdictions and individuals on ICC's marketing lists for code materials, and

4. Providing the statement orally or in writing whenever technical assistance is provided concerning the 2003 IBC requirements for accessible routes between site arrival points and accessible building entrances.

During the next code change cycle, if ICC seeks to have the 2006 edition of the IBC declared a safe harbor, ICC must modify the IBC to clearly state, in a manner acceptable to the Department, that an accessible pedestrian route must be provided from site arrival points to accessible building entrances of buildings required to provide Type B dwelling units, unless site impracticality applies.

The Department offers the following as one possible method to provide the requisite clarity during the next code change cycle: addition of a provision to Section 1107 to address site arrival points, as set forth in 1107.X below. Text in brackets is optional, but included below for consistency with other provisions in 2003 IBC Section 1107.

1107.X Site arrival points. Accessible routes within the site shall be provided from public transportation stops, accessible parking and accessible passenger loading zones, and public streets and sidewalks to the building entrance(s) for each building containing [Accessible units, Type A units, and] Type B dwelling units.

The Department does not believe the above provision will require more than is required by the Act or the Guidelines since the 2003 IBC addresses site impracticality, consistent with the Guidelines, under 2003 IBC Section 1107.7.

4. Section 1104.2 Within a Site

The Department's draft report raised two concerns about the language of the treatment of accessible routes within a site in the 2003 IBC. First, the Department raised the concern that it has had a number of reports that some users of the code had been applying Section 1104.2 to sites having dwelling units that are subject to the Act's requirements, rather than Section 1107.4 which contains more specific accessibility requirements. The report sought comments on how to revise Section 1104.2 to make its applicability clearer. Second, although Section 1107.4 in the 2003 IBC, which describes an accessible route, had not changed from the 2000 IBC as amended by the 2001 Supplement, the Department has had a number of reports that some users of the code are misinterpreting Exception 1 to that section so as to entitle them to an exemption from the obligation to build accessible pedestrian routes by merely planning for or constructing routes with running slopes in excess of 8.33 percent. Such an interpretation would produce a result that is inconsistent with the requirements of the Act and Guidelines. In this respect, the Department sought comments on how to clarify that Section 1107.4, Exception 1, applies *only* to situations where the finished grade of the site exceeds 8.33 percent *due to factors beyond the control of the designer, builder or owner*.

The Act, the Department's regulations implementing the Act, and the Guidelines require that dwellings subject to the Act's design and construction requirements be designed and constructed to provide an accessible entrance on an accessible route and accessible and usable public and common use areas. The requirements for accessible routes are covered under both Requirements 1 and 2 of the Guidelines. The Guidelines allow only a narrow exception. Specifically, paragraph (5) of Requirement 1 states:

(5) Accessible route. An accessible route that complies with ANSI 4.3 would meet section 100.205(a). If the slope of the finished grade between covered multifamily dwellings and a public or common use facility (including parking) exceeds 8.33 percent, or where other physical barriers (natural or manmade) or legal restrictions, *all of which are outside the control of the owner*, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. Emphasis added.

Similarly, under Requirement 2 of the Guidelines, item 1(d) in the chart addressing requirements for accessible public and common use areas, states:

1(d) Where site or legal constraints prevent a route accessible to wheelchair users between covered multifamily dwellings and public or common use facilities elsewhere on the site, an acceptable alternative is the provision of access via a vehicular route so long as there is accessible parking on an accessible route to at least two percent of covered dwelling units, and necessary site provisions such as parking and curb cuts are available at the public or common use facility.

The 2003 IBC includes provisions intended to address accessible routes within a site. Specifically, Section 1104.2 of the 2003 IBC reads as follows:

1104.2 Within a site. At least one accessible route shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site.

Exception: An accessible route is not required between accessible buildings, accessible facilities, accessible elements and accessible spaces that have, as the only means of access between them, a vehicular way not providing for pedestrian access.

However, Section 2003 IBC Section 1107.4 contains language similar to the Guidelines, Requirement 1, Paragraph (5), and Requirement 2, Chart Item 1(d). This language states:

1107.4 Accessible route. At least one accessible route shall connect accessible building or facility entrances with the primary entrance of each Accessible unit, Type A unit and Type B unit within the building or facility and with those exterior and interior spaces and facilities that serve the units.

Exceptions: 1. If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal (1:12), or where physical barriers prevent the installation of an accessible route, a vehicular route with parking that complies with Section 110 at each public or common use facility or building is permitted in place of the accessible route.

2. * * *

The Department's interpretation of the code is that it is 2003 IBC Section 1107.4—and not Section 1104.2—which applies to sites that are subject to the Act. However, as noted above, some users of the code have misinterpreted the code and applied Section 1104.2 to sites that are subject to the Act. In addition, some users are misinterpreting or misapplying Exception 1 of Section 1107.4 so as to entitle them to an exemption from the obligation to build accessible pedestrian routes by merely planning for or constructing routes with slopes in excess of 8.33 percent. This is an incorrect interpretation of the code.

The Department received several comments on HUD Issue #4. These commenters disagreed with the Departments concerns regarding misinterpretations of these two sections of the 2003 IBC. These commenters, including the ICC, again pointed to Section 102.1 of the IBC, which provides that if different sections of the IBC specify different requirements, ''the most restrictive shall govern.'' The commenters stated that Section 1107.4, Exception 1 has more restrictive criteria for an accessible route between all Accessible, Type A and Type B units and exterior and interior spaces and facilities that serve that unit, and that this provision, therefore, would control.

The Department has carefully considered the above comments. In light of these comments, in particular, ICC's assertion that the more restrictive Section 1107.4 applies to sites having dwelling units subject to the Act, and not Section 1104.2, the Department is

withdrawing its concerns regarding Section 1104.2.

The Department also received a number of comments on its concern that Exception 1 to Section 1107.4 was being misinterpreted. The ICC has characterized the Department's concern as with the manipulation of the site to achieve a slope greater 8.33 percent in order to avoid the accessible route requirements. The ICC stated in its comments that the intent of the code was *not* to exempt such situations from the accessible route requirement. While the Department agrees with the ICC that deliberate conduct to avoid the requirements of law does not qualify for an exception, the Department's concern with the misinterpretation of Exception 1 to Section 1107.4 is greater.

Paragraph (5) of Requirement 1 of FHAG does not permit builders and designers to circumvent the requirement of providing an accessible route from accessible building entrances to public and common use facilities by simply planning or building finished grades with slopes in excess of 8.33 percent. It is expected that accessible routes to public and common use facilities will be provided. To receive an exemption from this requirement, builders, designers, and owners must show that factors beyond their control prevent them from providing such routes with finished grades of 8.33 percent or less. Thus, the Guidelines allow use of vehicles only upon a showing that accessible routes cannot be provided, and vehicles or accessible routes are not simply treated as alternatives to builders and designers of covered units. *See also* Requirement 2 of the Guidelines, item 1(d) of the chart.

The Department recognizes that the text, ''all of which are outside the control of the owner,'' which is in the Guidelines, Requirement 1, paragraph (5), does not appear in Exception 1 to Section 1107.4. However, the Department reads Section 1107 as the overarching requirement to provide accessible routes, including to public or common use facilities. Simply electing to design or build slopes in excess of 8.33 percent would make the accessible routes optional, and would not be consistent with the limited circumstances under which the Guidelines would permit vehicles to be used in lieu of accessible routes. Designers and builders who choose not to provide accessible routes based on an interpretation of this provision that differs from the Department's interpretation may not avail themselves of this safe harbor and may, accordingly, be subject to an enforcement action to make those routes accessible after they are built.

Commenters have pointed out that the requirements from any standard or code may be subject to misinterpretation, but believe the best way to address these issues is through additional information provided through commentaries or other educational means. The Department is in agreement with this. Further clarifying commentary by the ICC is recommended to reinforce that Exception 1 to Section 1107.4 is to be interpreted and applied to Type B units consistent with paragraph (5) of Requirement 1. Thus, the Department recommends ICC take steps to modify the commentary to Section 1107.4 consistent with the above discussion, in the next code change cycle.

5. Section 1104.3, Connected Spaces, and Section 1104.4, Multilevel Buildings and Facilities

The Department's draft report concluded that two new Exceptions added to the 2003 IBC, specifically, Exception 2 under Section 1104.3, and Exception 4 under Section 1104.4, did not appear to meet the requirements of the Act and the Guidelines for accessible and usable public and common use areas. The report raised a similar concern regarding Exception 1 of Section 1104.4, even though this Exception was in the 2001 Supplement previously considered by the Department. The draft report recommended that these sections be clarified to ensure compliance with the design and construction requirements of the Act and the Guidelines.

The Act, HUD's regulations implementing the Act, and the Guidelines require that covered multifamily dwellings be designed and constructed in such a manner that the public and common use areas are readily accessible to and usable by persons with disabilities. Requirement 2 of the Guidelines specifically addresses public and common use areas.

Sections 1104.3 and 1104.4 of the 2003 IBC read as follows, with the text of concern emphasized:

1104.3 *Connected spaces.* When a building, or portion of a building, is required to be accessible, an accessible route shall be provided to each portion of the building, to accessible building entrances connecting accessible pedestrian walkways and the public way. Where only one accessible route is provided, the accessible route shall not pass through kitchens, storage rooms, restrooms, closets, or similar spaces.

Exceptions: 1. In assembly areas with fixed seating required to be accessible, an accessible route shall not be required to serve fixed seating where wheelchair spaces or designated aisle seats required to be on an accessible route are not provided.

2. *Accessible routes shall not be required to mezzanines provided that the building or facility has no more than one story, or where multiple stories are not connected by an accessible route as permitted by Section 1104.4.*

3. A single accessible route is permitted to pass through a kitchen or storage room in an accessible dwelling unit.

1104.4 Multilevel buildings and facilities. At least one accessible route shall connect each accessible level, including mezzanines, in multilevel buildings and facilities.

Exceptions: 1. An accessible route is not required to stories and mezzanines above and below accessible levels that have an aggregate area of not more than 3,000 square feet (278.7 m^2). This exception shall not apply to:

1.1. Multiple tenant facilities of Group M occupancies containing five or more tenant spaces;

1.2. Levels containing offices of health care providers (Group B or I); or

1.3. Passenger transportation facilities and airports (Group A–3 or B).

2. In Group A, I, R and S occupancies, levels that do not contain accessible elements or other spaces required by Section 1107 or 1108 are not required to be served by an accessible route from an accessible level.

3. In air traffic control towers, an accessible route is not required to serve the cab and the floor immediately below the cab.

4. Where a two-story building or facility has one story with an occupant load of five or fewer persons that does not contain public use space, that story shall not be required to be connected by an accessible route to the story above or below.

In the draft report, the Department expressed concern that while the second clause of Exception 2 of Section 1104.3 references the accessibility requirements for mezzanines contained in Section 1104.4, the first clause does not. Therefore, it appeared that the first clause of this exception would allow a development subject to the design and construction requirements to construct a one-story clubhouse with a mezzanine that contained a common element, such as an exercise room, that was not also available on an accessible route. This would conflict with the Act's requirements for accessible and usable public and common use facilities, which would not permit the only exercise area available to residents to be placed in a mezzanine of a one-story clubhouse.

In its report, the Department acknowledged that Exception 2 of Section 1104.4 exempts from the requirement for an accessible route only those levels of Group I and Group R occupancies that do not contain accessible elements or other spaces that Sections 1107 or 1108 require to be served by an accessible route. However, the Department raised a concern as to

whether Sections 1107 and 1108 clearly reached all of the types of public and common use areas that typically serve residential sites subject to the Act. The examples given in Section 1107.3 focus on toilet and bathing rooms, kitchen, living and dining areas, patios and terraces, all of which could be spaces interior to a dwelling unit. This raises the concern that spaces exterior to the unit are excluded from Section 1107.3.

The comments the Department received on this issue, including those comments from ICC, reiterated that when applying the code, specific requirements override general requirements (Section 102.1). ICC pointed out that Section 1107.3 of the code is more specific than Sections 1104.3 [5] and 1104.4 In response to the Department's concern that Section 1107.3 did not appear to reach all of the types of public and common use facilities that typically serve residential units that are subject to the Act's accessibility requirements, the ICC expressed the view that no list may reasonably include all possible types of such facilities and that the focus must be placed on the first sentence in this code section, which states, ''Rooms and spaces available to the general public or available for use by residents and serve Accessible Units, Type A units and Type B units shall be accessible.'' This sentence would not limit coverage to interior spaces of dwelling units.

The Department's concern about Exception 4 of Section 1104.4 was that it could be read to allow construction of a 2-story building to include a common use element, *e.g.*, a storage area, which is an element that is not for public use and is provided only for residents on a site with Type B dwelling units, on the inaccessible story. One commenter stated that Exception 4 to Section 1104.4 was added in the effort to coordinate with requirements under the ADA, and there should not be a higher level of access under the Act than that specified for other types of facilities. According to the Commentary, Exception 4 permits small nonpublic second floors to be inaccessible, such as the second floor in a doctor's office that is used only for storage. Commenters also pointed out that the specific requirements of Section 1107.3 would prevent Section 1104.4 Exception 4 from being used to permit the creation of inaccessible common use spaces where they would otherwise be required by the Act.

The Department has carefully considered these public comments and the Sections of the code in question. In light of the public comments, in particular ICC's assertion that Section 1107.3 is more specific and overrides Sections 1104.3 and 1104.4, the Department is withdrawing its concerns.

The Department is also withdrawing its concern about Exception 1 to Section 1104.4 because it was already reviewed and accepted as part of the safe harbor given to the IBC 2000 as amended by the 2001 Supplement. Notwithstanding, some commenters misinterpreted the Department's recommendations in its draft report to mean that all public and common use spaces on all floors, including upper floors of a non-elevator building, must be accessible. The Department wishes to clarify that the Act and the Guidelines' requirement for accessible and usable public and common use spaces does not require such spaces that serve dwelling units on inaccessible stories of a non-elevator building to be accessible as long as comparable public and common use facilities are made available on an accessible route to covered dwelling units in the building.

6. Section 1105 Accessible Entrances: Section 1105.1.3, Restricted Entrances

The draft report concluded that 2003 IBC Section 1105.1.3 did not meet the accessibility requirements of the Act and the Guidelines. The draft report recommended adding clarifying language to that section to ensure that at least one restricted entrance to each common use area serving a covered building be accessible. Based on the Department's review of the public comments, the Department has concluded that this provision is not an obstacle to safe harbor status for the 2003 IBC.

As the draft report noted, 2003 IBC Section 1105 has been revised in its entirety. It is the Department's understanding that the revisions were intended to incorporate and be consistent with the new ADAAG. The revised section requires that in addition to accessible entrances required by six subsections, at least 50 percent of all public entrances must be accessible. Section 1105.1.3 reads as follows:

1105.1.3 Restricted entrances. Where restricted entrances are provided to a building or facility, at least one restricted entrance to the building or facility shall be accessible.

The code definition of ''public entrance'' is an entrance that is not a service entrance or a restricted entrance. The definition of a ''restricted entrance'' is an entrance that is made available for common use on a controlled basis, but not public use, and that is not a service entrance. There is a new code definition of ''common use area,'' which states: ''Interior or exterior circulation paths, rooms, spaces or elements that are not for public use and are made available for the shared use of two or more people.'' A ''public use area'' is defined as ''Interior or exterior rooms or spaces that are made available to the general public.''

The draft report's conclusion was based on the interpretation of Section 1105.1.3 that only one of the common use areas must be accessible in a building which is subject to the Act and has multiple separate common use areas, each having a restricted entrance. The Act, the Department's regulations implementing the Act, and Requirement 2 of the Guidelines require that the public and common use areas that serve covered multifamily dwelling units must be readily accessible to and usable by persons with disabilities.

Three organizations commented on and disagreed with the conclusion in the draft report. They all believed that Section 1105.1.3 complies with the requirements of the Act. However, each commenter had a different rationale. The ICC stated that the correct interpretation of Section 1105.1.3 is that ''if all entrances to a common use space are restricted entrances, then at a minimum, one accessible entrance is required to each common use space serving Accessible, Type A or Type B units.'' The ICC also referenced Section 1107.3 and Section 1107.4 of the 2003 IBC, which require an accessible route from the units to this accessible entrance. A second commenter believed that the examples of common use areas with restricted entrances in a covered building were ''so remote they do not merit consideration.'' Without elaboration, this commenter stated that Section 1105.1.3 does meet the requirements of the Act for entrances even if Sections 1107.3 and 1107.4 were ignored.

The third commenter on this issue acknowledged that the Code provision could be misinterpreted. However, this commenter pointed out that the code definition of ''facility'' is ''All *or any portion* of buildings, structures, site improvements, element and pedestrian or vehicular routes located on a site.'' (Emphasis added by the commenter.) The commenter concluded that based on this definition, particularly the words, ''or any portion of,'' and using the example in the draft report, if there

[5] ICC pointed out in its comments, as a related note, that Exception 2 to Section 1104.3 has since been deleted under changes to the 2003 IBC that appear in the 2004 Supplement, based on the view that Exception 2 was redundant with issues addressed under Section 1104.4.

is controlled access to a building's weight room, laundry room, recreation room, and clubhouse, Section 1105.1.3 would require at least four accessible restricted entrances, that is, at least one for each facility.

The draft report noted that 2003 IBC Section 1107.3 requires that rooms and spaces available to the general public or available for use by residents and serving Type B units shall be accessible. Additionally 2003 IBC Section 1107.4 provides that at least one accessible route must connect the primary entrance of Type B dwelling units within a building or facility ''and with those exterior and interior spaces and facilities that serve the units.''

It is clear from the ICC's unambiguous interpretation of Section 1105.1.3, in response to the draft report, that this section was not intended to pre-empt the requirements of Sections 1107.3 and 1107.4. Additionally, the Department agrees that the inclusion of the term ''facility'' in Section 1105.1.3 may obviate an incorrect interpretation of this code revision. Therefore, the Department withdraws its objections to Section 1105.1.3. However, the Department recommends that ICC modify the language of Section 1105.1.3 in a subsequent code change cycle to add the following clarifying language in response to this concern: ''Section 1105.1.3 Restricted entrances. Where restricted entrances are provided to a building or facility at least one *of each type of restricted entrance* to the building shall be accessible.''

7. Section 1107.7.5 Design Flood Elevation

The Department's draft report concluded that the change in terminology used in Section 1107.7.5 from ''base flood elevation'' to ''design flood elevation'' did not meet the requirements of the Act and the Guidelines. The Department recommended that if the new terminology is retained, that there also be a change in the text of Section 1107.7.5. As discussed below, based on the comments received, and the Department's review of the legislative history of the Act with respect to site impracticality and flooding issues, the Department believes the intent of this section of the 2003 IBC is consistent with the intent of the Act, the Department's regulations and the Guidelines, and therefore, it is withdrawing this issue as an obstacle to safe harbor status for the 2003 IBC.

Requirement 1(2)(b) of the Guidelines states:

Site impracticality due to unusual characteristics. Unusual characteristics include sites located in a federally-designated floodplain or coastal high-hazard area and sites subject to other similar requirements of law or code that *the lowest floor or the lowest structural member of the lowest floor must be raised to a specified level at or above the base flood elevation.* (Emphasis added.) An accessible route to a building entrance is impractical due to unusual characteristics of the site when:

i. The unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches and 10 percent measured between an entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance; or

ii. If there are no vehicular or pedestrian arrival points within 50 feet of the planned entrance, the unusual characteristics result in a difference in finished grade elevation exceeding 30 inches and 10 percent measured between an entrance and the closest vehicular or pedestrian arrival point.

The phrase in the Guidelines ''the lowest floor or the lowest structural member of the lowest floor must be raised to a specified level at or above the base flood elevation'' is the same thing as the ''design flood elevation.'' Therefore, the Guidelines allow using the design flood elevation.

The 2003 IBC changes the term ''base flood elevation'' to ''design flood elevation.'' The 2003 IBC text reads as follows:

1107.7.5 Design flood elevation. The required number of Type A and Type B units shall not apply to a site where the lowest floor or the lowest structural building members of nonelevator buildings are required to be at or above the design flood elevation resulting in:

1. A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm), and

2. A slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm).

According to ICC documents, the change from the term ''base flood elevation'' to ''design flood elevation,'' was done to harmonize terminology with the Federal Emergency Management Agency (FEMA).

FEMA encourages local authorities to establish design flood elevations above the base flood plain. However, the Department's concern was that a local zoning or regulatory authority may impose an additional minimum height above the design flood elevation established by an authority having jurisdiction over the design flood elevation. Therefore, replacing the word ''Base'' with ''Design'' without deleting the words ''or above'' that permit additional height requirements above the design flood elevation established by the governing jurisdiction appeared to permit more site impracticality.

The Department concluded in the draft report that this change does not meet the requirements of the Act and the Guidelines, and recommended that Section 1107.7.5 be revised as follows:

Design flood elevation. The required number of Type A and Type B units shall not apply to a site where the required design flood elevation results in: * * *

Several commenters, including ICC, reminded the Department that the phrase in the Guidelines which states, ''the lowest floor or the lowest structural member of the lowest floor must be raised to a specified level at or above the base flood elevation'' is the same as ''design flood elevation.'' One commenter said that only 5 percent of the communities that participate in the National Flood Insurance Program have established design flood elevations that are above the base flood elevation. Another commenter said that only 3 percent of the incorporated jurisdictions in the U.S. have a design flood elevation above the base flood elevation.

While the Department has given consideration to comments it received on this issue, none of the commenters addressed our concern that a local zoning rule may require an additional height above the design flood elevation established by the governing authority. However, the Department is also cognizant of the fact that both the Department's regulations implementing the Act and the Guidelines recognize the need to adopt site impracticality criteria for sites with unusual characteristics such as floodplains or coastal high hazard areas which require the lowest floor to be raised a certain level at or above the base flood elevation. While the Act itself did not specify an impracticality standard for such situations, the legislative history indicated that Congress was sensitive to the possibility that certain natural terrain may pose unique building problems, and that in some locales, it is common to construct housing on stilts because of flooding problems. The Department believes the intent of this section of the 2003 IBC is consistent with the intent of the Act, HUD's regulations and the Guidelines; therefore, withdrawing the objection. However, ICC may wish to consider, in the future, revising the first sentence of Section 1107.7.5 as follows:

1107.7.5 Design flood elevation. The required number of Type A and Type B units shall not apply to nonelevator buildings on a site where the required design flood elevation results in:

1. A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm), and

2. A slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm).

8. Section 1109.13 Controls, Operating Mechanisms and Hardware: Exception 6

The Department's draft report concluded that Exception 6 to Section 1109.13, ''Controls, operating mechanisms and hardware,'' did not appear to meet the accessibility requirements of the Act since the text of Exception 6 is worded more broadly than the example included in the Commentary, which cited a ceiling fan with both a wall switch and a chain on the fan itself. The Department sought comments on whether the broader text of new Exception 6 for redundant controls should be revised to be more restrictive. Based on the Department's consideration of the comments it received on this issue, the Department is withdrawing this issue and does not consider it an obstacle to safe harbor status for the 2003 IBC.

The 2003 IBC text reads as follows:

1109.13 Controls, operating mechanisms and hardware. Controls, operating mechanisms and hardware intended for operation by the occupant, including switches that control lighting and ventilation, and electrical convenience outlets, in accessible spaces, along accessible routes or as parts of accessible elements shall be accessible.

Exceptions:

* * * * *

6. Except for light switches, where redundant controls are provided for a single element, one control in each space shall not be required to be accessible.

The draft report noted that IBC Resource Handbook (Code Change E81–02, #11 page 442) states that the exceptions to Section 1109.13 are similar to the exceptions already located in ICC/ANSI A117.1 (1998). The Department currently recognizes ICC/ANSI A117.1–1998 as an acceptable means of complying with the Act's technical requirements. Further, the Department is a member of the ANSI A117 Committee and worked with the Committee to draft the text of Section 1003.9 of Chapter 10 of ICC/ANSI. Section 1003.9 of the ICC/ANSI A117.1–1998 specifically exempts ''ceiling fan mounted controls.'' However, 2003 IBC Section 1109.13, Exception 6, contains broader language. In addition, the IBC Commentary Vol. I (page 11–49) gave only one example of how Exception 6 would apply, citing a ceiling fan that could be operated by a wall switch and by the chain on the fan itself.

The Department received three comments on this issue. Two commenters disagreed with the Department's conclusion that the language in Exception 6 is too broad. The ICC specifically said that other than ceiling fans (for which redundant controls are acceptable by the Guidelines), the most common example is range hood controls (which are not required by the Guidelines to be accessible). Another commenter, a proponent of the code text in Exception 6, pointed out that the text of ICC/ANSI A117.1, Section 1003.9, is not related to redundant controls, but rather, to controls mounted on the appliance itself. The commenter added that ceiling fans have a direction switch on ceiling fan housings which change the rotation from clockwise to counterclockwise, and it is impossible to provide an accessible control for this function short of disassembling the unit housing and voiding any warranty. This commenter pointed out that without the text of Exception 6, the concern is that some code officials could demand that inaccessible controls be removed even where redundant accessible controls are provided. Prohibiting any inaccessible controls could lead to requiring removal of fan and light switches on range hoods, which would also void the equipment's warranties.

In light of the public comments, the Department believes its concerns have been sufficiently addressed and is, therefore, withdrawing its earlier finding. Based on the comments received, the Department concludes that Exception 6 is only likely to impact controls on fixtures and appliances which are not required by the Guidelines, *i.e.*, ceiling fan and range hood controls.

9. 2004 IBC Supplement

In its draft report, under HUD Issue 9, the Department outlined two areas of concern with a change to the 2003 IBC, Change E120–03/04, which was approved for the 2004 Supplement to the IBC. These two areas of concern are: (1) A change to Section 1107.7, General Exceptions, that impacts scoping for Type B dwelling units, and whether IBC Section 1107 treats structures made up of buildings separated by firewalls as a single structure (as provided for in the Guidelines), or as separate buildings; and (2) a change to the text affecting the provision of accessibility in situations where there is an elevated walkway between a building entrance and opposing vehicular or pedestrian arrival points: specifically, whether the test for determining practicality will apply to the slope between the building entrance and vehicular or pedestrian arrival points (as provided for in the Guidelines), or between the building entrance and the opposing entrance to the walkway.

The public comments received on Issue 9 have satisfied the Department that it can withdraw its first concern to the extent that concern related to the 2003 IBC. Therefore, the Department is withdrawing these concerns with respect to the 2003 IBC as they have no impact on safe harbor status for the 2003 IBC. However, the Department continues to maintain that the two areas of concern outlined under Issue 9 of the Department's August 6, 2004 draft report, would negatively impact safe harbor status for the 2004 Supplement and any future edition of the code, such as the 2006 IBC, that incorporates those changes.

In the course of their comments on issue nine, the ICC and other organizations suggested that the Department should become more involved in the ICC model code change development process as it occurs, so that potential inconsistencies between future IBC code publications and HUD's interpretation of the accessibility requirements of the Act and the Guidelines can be avoided. The Department agrees that its participation would be beneficial, and if sufficient resources are available in the future, Department representatives will explore ways in which the Department can contribute to the ICC code change development process with respect to those code sections that relate to the accessibility requirements of the Act.

VII. Conclusion

After full consideration of the comments received, the Department has been able to resolve seven of the eight issues that it raised in the draft report which relate specifically to the 2003 IBC. The Department has determined that with respect to the remaining issues, it can grant safe harbor status to the 2003 IBC conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC, stating that:

ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site

impracticality is addressed under Section 1107.7.

The Department expects that ICC will publish and disseminate this statement in the following ways:

1. Placement on its Web site, especially on pages where technical aspects of 2003 IBC are described;

2. Including the statement with all versions of 2003 IBC that are distributed 30 days after publication of HUD's final report;

3. Within 45 days of the publication of HUD's final report, sending the statement by U.S. Mail and/or e-mail to jurisdictions and individuals on ICC's marketing lists for code materials, and

4. Providing the statement orally or in writing whenever technical assistance is provided concerning the 2003 IBC requirements for accessible routes between site arrival points and accessible building entrances.

During the next code change cycle, if ICC seeks to have the 2006 edition of the IBC declared a safe harbor, ICC must modify the IBC to clearly state, in a manner acceptable to the Department, that an accessible pedestrian route must be provided from site arrival points to accessible building entrances of buildings required to provide Type B dwelling units, unless site impracticality applies.

The Department has proffered one option of how ICC could modify the 2003 IBC in the next code change cycle to meet this condition. Furthermore, the Department will explore with ICC ways that the Department can contribute to the ICC code change development process with respect to those code sections that relate to the accessibility requirements of the Act. While its resources are limited, the Department recognizes the importance of the inclusion in building codes of accessibility requirements that are consistent with the Act, the Department's implementing regulations, and Guidelines.

Environmental Impact

This report is a policy document that sets out fair housing and nondiscrimination standards and provides for assistance in promoting fair housing and nondiscrimination. Accordingly, under 24 CFR 50.19(c)(3), this report is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

Dated: February 18, 2005.

Carolyn Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 05–3640 Filed 2–23–05; 10:31 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 23, 25, et. al.

Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, 27, 29, 91, 121, 125, 129, and 135

[Docket No. FAA–2005–20245; Notice No. 23–56, 25–118, 27–41, 29–48, 91–286, 121–308, 125–47, 129–40 and 135–95]

RIN 2120–AH88

Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the cockpit voice recorder (CVR) and digital flight data recorder (DFDR) regulations for certain air carriers, operators, and aircraft manufacturers. This proposed rule would increase the duration of CVR and flight data recorder (FDR) recordings; increase the data recording rate of certain DFDR parameters; require physical separation of the DFDR and CVR; improve the reliability of the power supply to both the CVR and DFDR; and if data-link communication equipment is installed, require that all data-link communications received on an aircraft be recorded. This proposal is based on recommendations issued by the National Transportation Safety Board (NTSB) following the investigations of several accidents and incidents, and includes other revisions that the FAA has determined are necessary. The proposed improvements to the CVR and DFDR systems are intended to improve the quality and quantity of information recorded and increase the potential for retaining important information needed during accident and incident investigations.

DATES: Send your comments on or before April 29, 2005.

ADDRESSES: You may send comments [identified by Docket Number FAA–2005–20245] using any of the following methods:

- 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: 1–202–493–2251.
- 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.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Timothy W. Shaver, Avionics Systems Branch, Aircraft Certification Service, AIR–130, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–4686; facsimile (202) 385–4651; e-mail *tim.shaver@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment 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 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

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) Visiting the Office of Rulemaking's web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

Statement of the Problem

The National Transportation Safety Board (NTSB) has indicated through several recommendations that its investigation of a variety of aircraft accidents and incidents has been hampered by the limited duration of cockpit voice recorder (CVR) recordings and the loss of power to both CVRs and digital flight data recorders (DFDR). These shortcomings have been cited during investigation of the following accidents or incidents: Alaska Airlines, Inc. (Alaska), flight 261 on January 31, 2000; EgyptAir flight 990 on October 31, 1999; Delta Air Lines, Inc. (Delta), flight 2461 on December 15, 1998; Swissair

flight 111 on September 2, 1998; SilkAir flight 185 on December 19, 1997; ValuJet Airlines (ValuJet) flight 592 on May 11, 1996; Trans World Airlines, Inc. (TWA), flight 800 on July 17, 1996; and ValuJet flight 597 on June 8, 1995. The NTSB has stated that measures taken to determine the cause of the above-referenced accidents and incidents have been limited by the lack of data needed to help identify events that occurred.

The NTSB and other investigative authorities have identified areas of concern with CVRs and flight data recorders (FDRs), which are used to record specific information needed by investigative authorities to determine the cause of accidents and incidents. The NTSB issued five safety recommendations for improvements to the flight recorder systems on all aircraft required to carry a CVR and an FDR. The specific NTSB recommendations are discussed later in this notice.

Summary of Accidents and Incidents

Alaska Flight 261

On January 31, 2000, Alaska flight 261, a Boeing MD–83, was on a scheduled international passenger flight from Puerto Vallarta, Mexico, to San Francisco, CA. The airplane crashed into the Pacific Ocean near Point Mugu, CA, and was destroyed. None of the 5 crewmembers or 83 passengers survived. The FDR captured the entire 2 hours and 43 minutes of the flight, as well as information from previous flights; the CVR captured approximately 31 minutes of flightcrew member conversations. At the beginning of the CVR recording, the flightcrew were already discussing an existing problem with the airplane's stabilizer trim.

EgyptAir Flight 990

On October 31, 1999, EgyptAir flight 990, a Boeing 767–366–ER, was on a scheduled international flight from New York, NY, to Cairo, Egypt. At about 1:50 a.m. Eastern Standard Time, the airplane crashed into the Atlantic Ocean approximately 60 miles south of Nantucket Island, MA. The airplane was destroyed and none of the 217 passengers or crewmembers survived. Power to the CVR and DFDR was lost when the engines were shut down.

Delta Flight 2461

On December 15, 1998, Delta flight 2461, a Boeing 737–232, was on a scheduled domestic passenger/cargo flight from Boston, MA, to Orlando, FL. On approach for landing at Orlando International Airport, the airplane experienced a total loss of electrical power. The airplane sustained minor damage and none of the 5 crewmembers or 51 passengers reported any injuries. The CVR and DFDR stopped recording when electrical power was lost. The FDR indicated the airplane was descending through 2,700 feet when the data stopped. The next recorded data showed the airplane on the ground. The time gap between the data recorded during the descent and the data recorded on the ground is unknown. The NTSB determined that (1) the No. 1 and No. 2 generator control units experienced identical failures (the point-of-regulation fuses had blown, and the automatic test equipment revealed a blocking diode had shorted in the battery power supply input circuit); (2) the battery electrolyte levels were low or nonexistent in all cells and the battery voltage was below minimum serviceable limits; and (3) the cockpit direct current voltmeter indicated approximately 2.0 volts over its full scale deflection.

Swissair Flight 111

On September 2, 1998, Swissair flight 111, a McDonnell Douglas MD–11, was on a scheduled international flight from New York, NY, to Geneva, Switzerland. Approximately 53 minutes after takeoff, as the airplane was cruising at 33,000 feet, the flightcrew noticed an unusual smell in the cockpit. Within 3½ minutes, the flightcrew noticed visible smoke in the cockpit, declared an emergency, and was cleared to proceed to Halifax, Nova Scotia. Approximately 20 minutes after the flightcrew first noticed the unusual smell and approximately 7 minutes after the emergency declaration, the airplane struck the water near Peggy's Cove, Nova Scotia. The airplane was destroyed and none of the 215 passengers or 14 crewmembers survived. The Transportation Safety Board of Canada investigated the accident; the NTSB assisted under the provisions of Annex 13 to the International Civil Aviation Organization (ICAO) as the investigative authority of the state of manufacture of the airplane. The investigation revealed heat damage consistent with a fire in the ceiling area forward and aft of the cockpit bulkhead. The CVR and the DFDR stopped recording while the airplane was at approximately 10,000 feet, about 6 minutes before the airplane hit the water.

SilkAir Flight 185

On December 19, 1997, SilkAir flight 185, a Boeing 737 (B–737), entered a rapid descent from 35,000 feet that ended with a high-speed impact in the Sumatran River near Palembang, Indonesia. The airplane was destroyed and none of the 104 passengers or crewmembers survived. The Government of Indonesia conducted the investigation, and the NTSB participated. The investigation determined that both recorders stopped before the airplane entered the rapid descent.

TWA Flight 800

On July 17, 1996, TWA flight 800, a Boeing 747–100, was on a scheduled passenger flight from New York, NY, to Paris, France. At 8:45 p.m. Eastern Standard Time, approximately 13 minutes into the flight, the airplane exploded as it was climbing through 13,700 feet. The airplane was destroyed and none of the 212 passengers or 18 crewmembers survived. The NTSB determined the CVR and FDR stopped working at the time of the explosion, which was 40 to 50 seconds before the airplane hit the water. The NTSB has determined that the probable cause of the TWA flight 800 accident was an explosion of the center wing fuel tank (CWT) resulting from ignition of the flammable fuel/air mixture in the tank. The source of ignition energy for the explosion could not be determined with certainty, but of the sources evaluated by the investigation, the most likely was a short circuit outside the CWT that allowed excessive voltage to enter the tank through electrical wiring associated with the fuel quantity indication system.

ValuJet Flight 592

On May 11, 1996, ValuJet flight 592, a DC–9–32, was on a scheduled flight from Miami, FL, to Atlanta, GA. Shortly after departing Miami, the flightcrew reported smoke and fire and began a return to Miami. The airplane crashed into the Everglades approximately 10 minutes after takeoff from Miami. The airplane was destroyed and none of the 111 passengers or crewmembers survived. The CVR and FDR stopped working approximately 40 to 50 seconds before the airplane crashed.

ValuJet Flight 597

On June 8, 1995, as ValuJet flight 597, a DC–9–32, began its takeoff roll at Hartsfield Atlanta International Airport, a loud bang was heard by the occupants and the right engine fire warning light illuminated. The crewmembers of another airplane informed ValuJet flight 597 that its right engine was on fire and the takeoff was rejected. Shrapnel from the right engine penetrated the fuselage and the right engine main fuel line and a cabin fire erupted. Two flight

attendants and 5 passengers were injured; none of the remaining 55 passengers or flightcrew were injured. The NTSB determined that the probable cause was the failure of maintenance and inspection personnel to perform a proper inspection of a 7th stage high compressor disc in the engine, thus allowing a detectable crack to grow to a length at which the disc ruptured. The noise level in the cockpit was so high that the voices of the flightcrew could not be heard on the CVR.

Summary of Revisions to the Flight Data Recorder Regulations

The NTSB issued three safety recommendations (Nos. A–95–25, A–95–26, and A–95–27) during the investigation into the crash of US Air, Inc. (US Air), flight 427 that dealt specifically with upgrades to the FDRs for B–727s, B–737s, Lockheed L–1011s, and all airplanes operating under Title 14, Code of Federal Regulations (14 CFR) part 121, 125, or 135. In response to these recommendations, the FAA revised the DFDR requirements for all airplanes (Revisions to Digital Flight Data Recorder Rules; Final Rule (62 FR 38362, July 17, 1997)). The 1997 rule requires upgrades to the FDR capabilities in most transport airplanes, and requires additional information to be recorded that is intended to enable more thorough accident and incident investigations and to enable the industry to predict certain trends and make necessary modifications before an accident or incident occurs. The revised 1997 DFDR regulations specify that up to 88 parameters be recorded on FDRs, with the exact number depending on the date of airplane manufacture. For turbine-powered transport category airplanes manufactured on or before October 11, 1991, and not equipped with a flight data acquisition unit (FDAU), the regulations require 18 specified parameters to be recorded by August 20, 2001. For airplanes manufactured on or before October 11, 1991, equipped with a FDAU, the regulations require 22 parameters to be recorded by August 20, 2001. For airplanes manufactured after October 11, 1991, the regulations require 34 parameters to be recorded by August 20, 2001; for airplanes manufactured after August 18, 2000, the regulations require 57 parameters to be recorded; and for airplanes manufactured after August 19, 2002, the regulations require 88 parameters to be recorded.

In its March 1999 final report on the crash of US Air flight 427, the NTSB concluded that the 1997 rule for upgrading the DFDRs on existing airplanes is not sufficient because it does not require specific flight control information to be recorded. The NTSB issued recommendation Nos. A–99–28 and A–99–29 specific to B–737 model airplanes. The recommendations require all B–737s to record pitch trim, trailing and leading edge flap positions, thrust reverser position, yaw damper command, yaw damper status (on/off), standby rudder status (on/off), and control wheel, control column, and rudder pedal forces. In response to these recommendations, the FAA proposed further revisions to the DFDR regulations in notice No. 99–19, Revisions to Digital Flight Data Recorder Regulations for Boeing 737 Airplanes and for Part 145 Operations; Notice of Proposed Rulemaking (64 FR 63140, November 18, 1999). In addition to the requirements under the 1997 rule, the B–737 rule would require all B–737 airplanes manufactured after the date of the B–737 final rule to record parameters (a)(1) through (a)(22) and (a)(88) and new parameters (a)(89), (a)(90), and (a)(91) (yaw damper status, yaw damper command, and standby rudder status, respectively). All B–737 airplanes manufactured on or before the date of the B–737 final rule would be required to record the applicable parameters based on the 1997 rule and parameters (a)(1) through (a)(22) and (a)(88) through (a)(91) at the first heavy maintenance check after 2 years after the date of the B–737 final rule, but no later than 4 years after the date of the B–737 final rule.

NTSB Recommendations

In response to the 1995 ValuJet flight 597 incident, the 1996 crashes of ValuJet flight 592 and TWA flight 800, the 1997 crash of SilkAir flight 185, and the 1998 crash of Swissair flight 111, the NTSB submitted the following recommendations to the FAA regarding further upgrades to the CVR and FDR.

Recommendation No. A–96–89. Within two years, require all aircraft required to have a CVR to be retrofitted with a CVR that receives, on dedicated channels, (1) uninterrupted input from the boom or mask microphone and headphones of each crewmember; and (2) uninterrupted input from an area microphone. During these recordings, a sidetone must be produced only when the transmitter or interphone is selected. Finally, all audio signals received by hand-held microphones must be recorded on the respective flight crewmember's channel when keyed to the ''ON'' position.

Recommendation No. A–96–171. Require that all newly manufactured CVRs intended for use on airplanes have a minimum recording duration of 2 hours.

Recommendation No. A–99–16. By January 1, 2005, retrofit all airplanes that are required to carry a CVR and an FDR with a CVR that (1) meets the standards of the Technical Standard Order on Cockpit Voice Recorder Systems, TSO–C123a,[1] or later revision; (2) is capable of recording the last 2 hours of audio; and (3) is fitted with a 10-minute independent power source that is located with the CVR and that automatically engages and provides 10 minutes of operation whenever power to the recorder ceases, either by normal shutdown or by a loss of power to the bus.

Recommendation No. A–99–17. Require all aircraft manufactured after January 1, 2003, that are required to carry a CVR and a DFDR, to be equipped with two combination (CVR/DFDR) recording systems. One system should be located as close to the cockpit as practicable and the other as far aft as practicable. Both recording systems should be capable of recording all mandatory data parameters covering the previous 25 hours of operation and all cockpit audio and controller-pilot data-link communications for the previous 2 hours of operation. The system located near the cockpit should be provided with an independent power source that engages automatically and provides 10 minutes of operation whenever normal aircraft power ceases. The aft system should be powered by the bus that provides the maximum reliability for operation without jeopardizing service to essential or emergency loads. The system near the cockpit should be powered by the bus that provides the second highest reliability for operation without jeopardizing service to essential or emergency loads.

Recommendation No. A–99–18. Amend § 25.1457 (CVR) and § 25.1459 (FDR) to require that CVRs, FDRs, and redundant combination CVR/DFDR units be powered from separate generator buses with the highest reliability.

FAA Response to NTSB Recommendations

The FAA agrees with recommendation Nos. A–96–89, A–96–171, A–99–18, and parts of A–99–16 and A–99–17, and has initiated this proposed rulemaking in response to those recommendations. In the NTSB's March 9, 1999, Safety Recommendation letter to the FAA regarding

[1] The TSO for CVR systems provides, for example, test procedures, fire test requirements, and software development and design standards.

recommendation Nos. A–99–16, A–99–17, and A–99–18, it stated that the Swissair flight 111 and SilkAir flight 185 accident investigations were two in a long history of accident and incident investigations that were hindered by the loss of flight recorder data. The FAA concludes that although the airplanes involved in those accidents, and EgyptAir flight 990, were not U.S.-registered airplanes and the proposed rule would not apply to them, the circumstances surrounding those accidents were unrelated to the registry of the airplanes, and that many of the same model airplanes are U.S. registered and could experience similar problems. The FAA also notes that the same issues are of interest to ICAO, and the FAA anticipates that these proposed changes would be incorporated into ICAO standards, making them applicable to airplanes registered worldwide.

General Discussion of the Proposal

The usual format for discussing proposed changes was found to be confusing because this proposal includes revisions to the certification rules and the operating rules. Accordingly, this preamble will discuss the proposed changes by topic, and then by the certification rules and the operating rules. In this way, the operators of specific aircraft can more readily reference the proposed changes that affect them. In addition, we will not repeat these discussions of the proposals in each section.

Each proposed change is applicable to aircraft currently operating (a retrofit) or to newly manufactured aircraft. The aircraft retrofits apply to all aircraft currently operating or that are manufactured before [insert date 2 years from the effective date of the final rule]. These aircraft would have 4 years from the date of the final rule to comply. Aircraft that are manufactured on or after [insert date 2 years from the effective date of the final rule], would have to comply at the time of manufacture. Any differences from these time periods will be noted.

Cockpit Voice Recorder Duration

The FAA is proposing that all CVRs be able to retain the last 2 hours of cockpit audio. As stated by the NTSB, the need for this information has made itself evident several times when CVR recordings begin while the flightcrew is already discussing a problem that arose before the 30 minutes now required to be recorded. The FAA notes that in part 91, the current CVR recording requirement is only 15 minutes. The Transportation Safety Board of Canada also cited the short duration of CVR recordings as a hindrance to the investigation of Swissair flight 111 and stated that the recording length is predicated on 1960s technology.

In addition to the 2-hour recording length, the proposed rule would require this information be retained using a recorder that meets the standards of TSO–C123a, or later revision. It is the FAA's intent to eliminate magnetic tape recorders because of their vulnerability to damage and decreased reliability given the state of current voice recording technology. The FAA notes that some operators are voluntarily replacing older magnetic tape CVRs with those that use a solid-state recording mechanism because of the high costs and technical problems associated with maintaining outdated equipment, including the difficulties in finding replacement magnetic tape.

The changes to the CVR recording duration are proposed as amendments to the operating rules, where the requirements currently are found. These changes are proposed as a retrofit and a new manufacture requirement.

Cockpit Voice Recorder Backup Power

Power interruptions have resulted in CVR information not being captured during the last minutes of several recent accidents, including Swissair flight 111, ValuJet flight 592, TWA flight 800, Delta flight 2461, and EgyptAir flight 990. The NTSB noted that power failures may have resulted in the loss of significant information that may have been recordable and retrievable.

The proposed rule would require a 10-minute independent backup power source for the CVR. The CVR would automatically be switched to this 10-minute independent power source in the event all power to the CVR is interrupted. The FAA notes that this interruption may be from normal shutdown or any other loss of power to the electrical power bus. No specific power source—such as a battery or a capacitor—is identified in this notice. Manufacturers may develop the 10-minute independent power source as best suits the needs of an individual aircraft installation and issues of safety and reliability. This 10-minute independent power source is proposed as a new manufacture requirement for airplanes and rotorcraft.

Cockpit Voice Recorder and Flight Data Recorder Wiring

The NTSB noted in its investigation of the Swissair flight 111 accident that in an effort to locate the source of smoke in the cockpit, the flightcrew disabled the electrical bus that powered both the CVR and the DFDR on the airplane. The FAA notes that disabling the bus was part of the emergency checklist procedures. The NTSB is concerned that both recorders were powered by the same bus.

The FAA considered several wiring options before proposing the one included in this notice. One option the FAA considered was whether the flightcrew should have the ability to disable the recorders during emergency checklist procedures. The FAA also gave lengthy consideration to the various wiring schemes and numerous emergency procedures already in place on airplanes of varying types in the fleet.

The proposed rule would require that all newly manufactured aircraft have a CVR and an FDR installed that receives its electrical power from the bus that provides the maximum reliability for operation of the recorder without jeopardizing service to essential or emergency loads. The recorder also must remain powered for as long as possible without jeopardizing emergency operation of the aircraft.

The FAA notes that the current regulations are performance-based; they do not specify which bus must power which equipment. The FAA chose the new proposed language to indicate that it is still up to the manufacturer to determine the wiring pattern that is best to fulfill the goal of the recorders being the last items to lose power before only emergency or essential equipment is powered. The FAA understands that, in some cases, the buses that power essential or emergency loads have sufficient power to also power the recording systems. The FAA considers this the ideal situation; however, the safety of the aircraft is paramount, and the electrical circuitry for essential loads should not be compromised. The requirement for this wiring change is found in the proposed revisions to the certification rules.

The FAA points out that the NTSB's recommendation requiring the power supply for specific equipment was predicated on its companion recommendation regarding the installation of two complete recording systems. Because the FAA is not proposing a dual recorder system (see the discussion below under Dual Recording Systems), the wiring patterns suggested by the NTSB are not readily adaptable. In addition, because the FAA finds that the CVR wiring requirement is best served by a performance-based rule, the proposal does not specify that any equipment gets wired to the essential bus, battery bus, or first or second most essential bus. The FAA notes that it considered all of these

possibilities in deciding to continue using a performance-based rule.

The FAA specifically requests comments on the clarity of the proposed rule language. The FAA encourages commenters to submit alternative language that meets the goals specified if it would be more readily understood by the industry.

A related wiring issue for the CVRs and DFDRs concerns the possibility of a single electrical failure disabling both recorder systems. Accordingly, the proposed changes to the certification rules specify that the aircraft must be designed so that no single electrical failure will disable both the CVR and DFDR. This requirement is proposed for newly manufactured aircraft only.

Separate Containers

The current CVR and DFDR regulations do not specify that the two recorders must be in separate containers. The FAA has always maintained this position and has not approved any installation that replaces two recorders in separate boxes with a single unit that has combined recorder functions. To codify this policy, the FAA is proposing that, for airplanes, the CVR and DFDR must be installed in separate containers, each meeting the crashworthiness requirements already in the regulations. This proposal is not expected to result in any change or cost to operators or manufacturers. Since there is no cost or change in policy, this requirement is proposed to be effective at the time of the final rule.

If developed, the FAA will allow combination units to be installed in rotorcraft because of weight and size constraints in these aircraft. If a single combination unit is installed, however, it would still be required to meet the proposed airworthiness requirements for reliability, single electrical failures, and an independent power source for CVRs. This language is included in the proposed certification rules for rotorcraft and states that if a single combination unit is installed, it must meet all of the requirements of that section. An operator that wishes to change to a single unit installation would be required to retrofit its rotorcraft to include the new power and wiring requirements as well. No single unit installation will be approved without meeting these requirements regardless of the age of the aircraft or its original date of certification.

Increased DFDR Recording Rates

The quality of data recovered from FDRs is critical to determining the cause of aircraft accidents. Recent advances in flight data recorder technology have centered around increasing the number of parameters recorded, improving the recording medium, and improving the reliability, maintainability, survivability, and recoverability of recorded data; however, the required data recording rates have lagged behind available technology. A number of parameters currently are required to be recorded at a rate of 1 or 2 Hertz (Hz), but flight tests demonstrate that sensing and recording equipment can support data rates ranging from 20 Hz to 100 Hz. Therefore, based on recommendations by the National Research Council (recommendation 3–3, ''Aviation Safety and Pilot Control; Understanding and Preventing Unfavorable Pilot-Vehicle Interactions,'' 1997) and the NTSB, the FAA is proposing that certain parameters of force and displacement inputs to the primary flight controls by the pilots and associated primary flight control surface deflections be recorded at a rate of at least 16 Hz.

Similarly, higher data rates are considered feasible for rotorcraft flight controls. In accordance with European Organisation for Civil Aviation Equipment (EUROCAE) document ED–112 (Minimum Operational Performance Specification for Crash Protected Airborne Recorder Systems) dated March 2003, the FAA is proposing increased recording rates for newly manufactured rotorcraft.

Data-Link Communication

Traditional communication in the U.S. national airspace system is by voice. As the aeronautical community works to provide communication systems that enhance safety, efficiency, and capacity, a key element is the introduction of data-link communication. Data-link communication provides text message exchanges between aircraft, air traffic service facilities, air traffic controllers, and pilots. Data-link communication can act as an alternative to voice communication, and as a replacement when voice communication is not adequate to meet the performance needed for the information exchanged.

Data-link communication is playing an increasing role in attaining such objectives as reduced separation and user-preferred routings, and is being integrated into aircraft flight management equipment. As the scope of data-link communication use increases, it becomes more crucial that accident and incident investigators be given a full picture of the flight deck dynamics, flightcrew workload, and flightcrew use of avionics that are initiated by the actual data transmitted to and received by the flightcrew.

Using data-link communication, an air traffic controller can directly transmit textual instructions, clearances, and other safety related information to an aircraft. As text communication replaces voice communication, the need arises to define the text message sets being used and to record the actual text messages received on an aircraft that provide instructions to or simply increase the workload of the flightcrew.

The proposed rule would require that, if data-link communication equipment is installed, all data-link communication messages received on an aircraft be recorded. The FAA considered proposing the recording of only those messages that affect the speed, heading, and altitude of an aircraft, but was unable to clearly describe this smaller set of data messages. Although not every data-link communication received may be critical to accident investigation, the FAA's assessment of data-link communication equipment indicates that the burden is almost the same whether 25 percent or 100 percent of incoming messages are recorded. The bulk of the cost of recording comes from the requirement to record at least one message, because that requirement forces the equipment and wiring to be established. Selecting certain messages to be recorded merely makes the recordation more complicated and could result in extensive, inconsistent review of text message sets during certification. The NTSB also has suggested to the FAA that the recordation of all data-link communication would give it a better picture of the flightcrew workload during the time leading up to an accident or incident.

The FAA is requesting specific comments concerning the number of data-link communication messages that are required to be recorded. Commenters are requested to propose clearly defined sets of messages that they believe will satisfy the goal of recording important flight deck communications, and an indication of the cost comparison between the recordation requirement proposed here and any suggested by the commenters.

The proposed rule indicates that the data-link communications are to be sent using an approved message set. No specific data-link communication message set is proposed in order to avoid unnecessary restriction of future systems. The FAA intends to approve standardized message sets such as those found in ICAO Annex 10, volume III, section 3, document 9705, ''Manual of Technical Provisions for the Aeronautical Telecommunications Network (ATN),'' section 2.3.4,

Controller Pilot Data Link Communication Application: Formal Definitions of Messages; or those established using RTCA, Inc., Document No. RTCA/DO–219, ''Minimum Operational Performance Standards for ATC Two-Way Data Link Communications,'' appendix A (August 27, 1993). The FAA does not intend to encourage the creation of individualized data message sets. The proliferation of individual message sets would most likely complicate accident investigation unnecessarily. As newer systems develop and the current standards are modified and improved, the FAA does not want the rule to become quickly outdated by defining a current standard. Accordingly, the notice is written as a performance standard for recording, with the individual message set to be approved at certification to allow the most recent developments to be included. Further discussion of allowable message sets would be presented in advisory material that would be issued at the time of the final rule.

The proposed rule also requires that the data-link communication messages be sent to the recorder from the communications unit that translates the signal into a usable format. In most cases, this is the flight management system or communications management unit. No specific term is being used because no particular system is being required. The FAA anticipates that this recorded signal would be the same as the one sent to the cockpit display.

The FAA understands that there are three places that data-link communication messages could be picked up for recording—as the incoming radio signal enters the aircraft, as the data is transmitted from the communications unit to the cockpit display, or as the data is displayed on the cockpit display. The FAA chose the second option for several reasons. First, radio signals entering the aircraft contain extraneous information that is not relevant to accident or incident investigation. Moreover, these signals need to be translated from a radio signal to a text message. Second, the FAA is unable to propose a practical, feasible method of capturing ''what the pilot sees'' off of the actual cockpit display. Last, there is no developed technology for reliable recording of this information. In short, the FAA is trying to minimize the burden on manufacturers in wiring and additional equipment, and to minimize the burden on the FAA and any eventual investigators by not capturing more data than is needed. The communications unit signal is already being generated and would allow investigators to see the incoming data message and any acknowledgement or response by the flightcrew. If the proposed rule language is not clear, the FAA requests comments as to the best way to describe this signal and its relationship to generic communications equipment.

The goal of data-link communication recording is to record enough of the information to enable the following items to be determined, either by direct recordation or formal deduction of the recorded information:

- The content of data-link communication messages as displayed on the flight deck. The precise content need not be recorded if the content can be deduced, such as the message element number, any variable of that message element, and timing information.
- The message priority assignment.
- The number of messages in uplink/downlink queues.
- The content of all messages generated by the flightcrew.
- The time each downlink message is generated, that is, when the flightcrew selects ''send.''
- The time any message was available for display to the flightcrew.
- The time any message was actually displayed by the flightcrew.

Two hours of data-link communications would be required to be recorded, as is proposed for all cockpit voice communications. Weather radar is not considered part of a data-link communication message set and need not be recorded.

Data-Link Communication Recording Applicability

The proposed data-link communication recording requirements would apply to all aircraft manufactured on or after [insert date 2 years from the effective date of the final rule], on which data-link communication equipment is installed. The FAA is not proposing that data-link communication equipment be required on any aircraft; the requirement is to record it if the equipment is installed. Similarly, any aircraft on which data-link communication equipment is voluntarily installed on or after [insert date 2 years from the effective date of the final rule], as a retrofit would also be required to record all data-link communications as of the date of installation.

These proposed effective dates were recommended by the NTSB. The current data-link communication equipment being used does not use the same message sets, and often includes information extraneous to the operation of the aircraft. The FAA anticipates that both the means and the messages that are to be recorded will be better defined once this rule is in place and data message sets are approved.

Dual Recording Systems

The FAA is not proposing the installation of two complete recording systems (two CVRs and two DFDRs) in each aircraft, as recommended by the NTSB. After a careful analysis of the benefits of having two systems, the FAA is unable to justify the excessive cost that would be incurred in the installation of two complete systems. The NTSB has not cited any instance in which at least one of the two recorders present has not been recovered. In addition, the FAA finds that in the case of an accident so catastrophic that neither recorder survives, a second set of recorders located in the front of the aircraft would probably not survive either. The FAA specifically requests commenters to present any arguments and cost data on the desirability of requiring two combination CVR/DFDR recording systems. The FAA does not anticipate that dual recording systems would be implemented in a final rule, but that any information provided may be considered for future rulemaking action.

The FAA finds much greater evidence of benefit in changes to wiring systems that could prevent inadvertent shutdown of power sources, and for an independent power supply for CVRs, and has included those provisions in this proposed rule for newly manufactured airplanes and rotorcraft. Accident investigations indicate that in some instances (Swissair flight 111, ValuJet flight 592, Delta flight 2461, and Egyptair flight 990), valuable voice and background sounds may have been recorded if the CVR had remained powered. Because the airplane involved in TWA flight 800 broke up in flight and there was no electrical connection between the cockpit and the CVR installed in the tail section, it is doubtful that useful information would have been obtained even if there had been a 10-minute independent power source installed.

The FAA is not proposing a retrofit of a 10-minute independent power supply for CVRs. We are not able to justify the significant costs of the development and installation of such equipment for in-service aircraft. The FAA is also not proposing a 10-minute independent power source for FDRs. The FAA has found that in the event of a substantial loss of power to the aircraft, there would be no data coming from unpowered

sensors; therefore, there would be nothing for a powered FDR to record.

The FAA has recently become aware of potential security benefits of a deployable flight recorder system (one that can be jettisoned from the aircraft). We envision that such a system would be an additional set of recorders (flight data and cockpit voice recorders) that could be ejected from the airplane in the event of an emergency. The FAA does not anticipate that a deployable system would be implemented in a final rule, but information provided by commenters may be considered for future rulemaking action.

This proposed rule does not include any provisions for such a deployable system. Significant information regarding such a system would be needed before the agency could assess the costs and benefits of such devices. The agency is interested in receiving such information, including the benefits of a deployable recorder system, how it might work, how it would be installed on an aircraft for deployment, the deployment methodology (manual or automatic), changes to aircraft design and certification, and especially the costs for development, installation and maintenance of a hardened, crash survivable, and easily recoverable system.

Please submit all comments and information regarding the feasibility and specifications for a deployable recording system to the docket for this rulemaking.

Recordation of Cockpit Communication or Audio Signals

The FAA is proposing to require certain aircraft required to have a cockpit voice recorder and a flight data recorder to include the interphone requirements of § 23.1457(a)(3) through (a)(5) or § 25.1457(a)(3) through (a)(5), as applicable. Transport category airplanes would be required to be retrofit and all airplanes and rotorcraft manufactured on or after [insert date 2 years from the effective date of the final rule], would be required to comply at the time of manufacture.

Changes to the Aircraft Certification Regulations

Part 23 Airplanes

Cockpit Voice Recorders

All airplanes certificated under part 23 that are required to have a CVR and an FDR would be required to have their CVRs in a box separate from the FDR. This requirement merely codifies the current policy of the FAA and would be effective at adoption of the final rule. This would be added in proposed § 23.1457(d)(6).

For all part 23 airplanes manufactured on or after [insert date 2 years from the effective date of the final rule], four new proposed requirements would be added to § 23.1457. First, the CVR would be required to record data-link communications when such equipment is installed on the airplane (proposed § 23.1457(a)(6)). Second, the CVR would be required to receive its electrical power from the bus that provides the maximum reliability for operation without jeopardizing service to essential or emergency loads (proposed § 23.1457(d)(1)). Third, the CVR would be required to be installed so that no single electrical failure could disable both the CVR and the DFDR (proposed § 23.1457(d)(4)). Last, for all airplanes required to have a CVR and an FDR, a 10-minute independent power source would be required to which the CVR is switched automatically. Based on the NTSB recommendation, the independent power source is not proposed for aircraft that are required to have only a cockpit voice recorder under § 135.151.

Digital Flight Data Recorders

For part 23 airplanes, the DFDR requirements of § 23.1459 would be changed as follows. All airplanes certificated under part 23 would be required to have their DFDRs in a box separate from the CVR (proposed § 23.1459(a)(7)). This requirement merely codifies the current FAA policy and would be effective at adoption of the final rule.

For all part 23 airplanes manufactured on or after [insert date 2 years from the effective date of the final rule], there are two new requirements being proposed as additions to § 23.1459. First, the DFDR would be required to receive its electrical power from the bus that provides the maximum reliability for operation without jeopardizing service to essential or emergency loads (proposed § 23.1459(a)(3)). Second, the DFDR would be required to be installed so that no single electrical failure could disable both the CVR and the DFDR, (proposed § 23.1459(a)(6)). These requirements are discussed separately in this preamble.

Part 25 Airplanes

Cockpit Voice Recorder

For part 25 airplanes, the CVR requirements of § 25.1457 will be changed as follows. All airplanes certificated under part 25 that are required to have a CVR and an FDR would be required to have their CVRs in a box separate from the FDR (proposed § 25.1457(d)(6)). This requirement merely codifies the current FAA policy and would be effective at adoption of the final rule.

For all part 25 airplanes manufactured on or after [insert date 2 years from the effective date of the final rule], there are four new requirements being proposed as additions to § 25.1457. First, the CVR would be required to record data-link communications when such equipment is installed on the airplane (proposed § 25.1457(a)(6)). Second, the CVR would be required to receive its electrical power from the bus that provides the maximum reliability for operation without jeopardizing service to essential or emergency loads (proposed § 25.1457(d)(1)). Third, the CVR would be required to be installed so that no single electrical failure could disable both the CVR and the DFDR (proposed § 25.1457(d)(4)). Last, for all airplanes required to have a CVR and an FDR, a 10-minute independent power source would be required, to which the CVR is switched automatically. These requirements are discussed separately in this preamble.

Digital Flight Data Recorders

For part 25 airplanes, the DFDR requirements of § 25.1459 would be changed as follows. All airplanes certificated under part 25 would be required to have their DFDRs in a box separate from the CVR (proposed § 25.1459(a)(8)). This requirement merely codifies the current FAA policy and would be effective at adoption of the final rule.

For all part 25 airplanes manufactured on or after [insert date 2 years from the effective date of the final rule], two new proposed requirements would be added to § 25.1459. First, the DFDR would be required to receive its electrical power from the bus that provides the maximum reliability for operation without jeopardizing service to essential or emergency loads (proposed § 25.1459(a)(3)). Second, the DFDR would be required to be installed so that no single electrical failure could disable both the CVR and the DFDR (proposed § 25.1459(a)(7)). These requirements are discussed separately in this preamble.

Part 27 or Part 29 Rotorcraft

Cockpit Voice Recorder

For part 27 or part 29 rotorcraft, the CVR requirements of §§ 27.1457 and 29.1457 would be changed as follows. For all rotorcraft certificated under part 27 or part 29 required to have a CVR and an FDR, one combination unit could be installed (proposed

§§ 27.1457(h) and 29.1457(h)). This requirement codifies the current FAA policy and would be effective at adoption of the final rule.

For all part 27 or part 29 rotorcraft manufactured on or after [insert date 2 years from the effective date of the final rule], four new proposed requirements would be added to §§ 27.1457 and 29.1457. First, the CVR would be required to have the ability to record data-link communications when such equipment is installed on the rotorcraft (proposed §§ 27.1457(a)(6) and 29.1457(a)(6)). Second, the CVR would be required to receive its electrical power from the bus that provides the maximum reliability for operation without jeopardizing service to essential or emergency loads (proposed §§ 27.1457(d)(1) and 29.1457(d)(1)). Third, if the CVR and DFDR are installed in separate boxes, then the CVR would be required to be installed so that no single electrical failure could disable both the CVR and the DFDR when both are installed (proposed §§ 27.1457(d)(4) and 29.1457(d)(4)). Fourth, all rotorcraft certificated under part 27 or part 29 required to have a CVR and an FDR would be required to include a 10-minute independent power source for the CVR to which it is switched automatically (proposed §§ 27.1457(d)(5) and 29.1457(d)(5)). These requirements are discussed separately in this preamble.

Digital Flight Data Recorders

For part 27 or part 29 rotorcraft, the DFDR requirements of §§ 27.1459 and 29.1459 would be changed as follows. For all rotorcraft certificated under part 27 or part 29 that must have both a CVR and a DFDR, one combination unit could be installed (proposed §§ 27.1459(e) and 29.1459(e)). This requirement codifies the current FAA policy and would be effective at adoption of the final rule.

For all part 27 and part 29 rotorcraft manufactured on or after [insert date 2 years from the effective date of the final rule], two new proposed requirements would be added to §§ 27.1459 and 29.1459. First, the DFDR would be required to receive its electrical power from the bus that provides the maximum reliability for operation without jeopardizing service to essential or emergency loads (proposed §§ 27.1459(a)(3) and 29.1459(a)(3)). These requirements are discussed separately in this preamble. Second, if the CVR and the DFDR are installed in separate boxes, then the DFDR would be required to be installed so that no single electrical failure could disable both the CVR and the DFDR (proposed §§ 27.1459(a)(6) and 29.1459(a)(6)).

Changes to the Aircraft Operating Regulations

Cockpit Voice Recorders—Aircraft Retrofit Requirements

Each of the following proposed requirements would be in addition to all current regulations. The proposed language uses the word ''also'' to indicate that the current regulations for the CVR are not eliminated.

The retrofit proposal would require, for all airplanes, 2 hours of cockpit voice communication to be recorded using a CVR that meets the standards of TSO–C123a, or later revision. Current regulations require that 15 minutes to 30 minutes of cockpit voice communication be recorded and do not specify the recording medium. The new operating requirements are proposed in §§ 91.609(i)(2), 121.359(i)(2), 125.227(g)(2), and 135.151(f)(2).

For all airplanes currently in service that are required to have both a CVR nd an FDR, this proposal would be a retrofit requirement and would require compliance no later than [insert date 4 years from the effective date of the final rule].

These enhancements would also be required on all aircraft (including rotorcraft) manufactured on or after [insert date 2 years from the effective date of the final rule].

The proposal also would require that the CVR be operated continuously from the start of the use of the checklist before starting the engines for the purpose of flight, to completion of the final checklist at the termination of the flight. The current operating rules contain a mixture of requirements concerning the time the CVR must be operated. This language would be adopted in each of the operating parts to make the requirement the same, regardless of the operating rules under which an aircraft is operated.

This ''checklist-to-checklist'' requirement would be effective at adoption of the final rule. The FAA finds that this requirement can easily be incorporated into aircraft operations without a time for retrofit, because it requires only a new checklist be used. This requirement would be added in §§ 91.609(e)(2), 121.359(i)(3) and (j)(3), 125.227(g)(3) and (h)(3), and 135.151(a)(2), (b)(2), and (g)(1)(ii).

For transport category airplanes, these proposed retrofit times also would apply to the inclusion of current § 25.1457(a)(3), (a)(4), and (a)(5), which address the recording of cockpit interphone communications. These three paragraphs already exist in part 25 and concern which voice communications must be recorded. This requirement would make the rule the same for all transport category airplanes, regardless of the part under which they operate. The proposed requirements would be added to §§ 91.609(i)(3), 121.359(i)(4), 125.227(g)(1), and 135.151(f)(3).

Part 129 airplanes registered in the United States currently do not have a cockpit voice recorder requirement. These requirements would be added in proposed new § 129.22. In addition, § 129.1 would be amended to add new § 129.22 as a requirement.

Cockpit Voice Recorders—Newly Manufactured Aircraft Requirements

The CVR requirements would be upgraded for all aircraft manufactured on or after [insert date 2 years from the effective date of the final rule]. The operating rules differ in their CVR requirements and require different amendment language to account for the current requirements. The intent is to have the same requirements across the board for all newly manufactured aircraft. In some cases, proposed changes to the rule appear less detailed because certain parts of the current regulations already contain some of the requirements. Accordingly, the following discussion explains the proposed changes by operating rule part. Each of the following proposed requirements is in addition to all current regulations. The proposed language uses the word ''also'' to indicate that the current regulations for the CVR are not eliminated.

Proposed § 91.609(j) would require that CVRs in newly manufactured aircraft (aircraft manufactured on or after [insert date 2 years from the effective date of the final rule]) meet all of the requirements of §§ 23.1457, 25.1457, 27.1457, or 29.1457, depending on the type of aircraft. This proposed section would incorporate all of the current and proposed requirements for CVRs, including the recording of 2 hours of cockpit voice communications using a recorder that meets the standards of TSO–C123a, or later revision.

Proposed § 121.359(j) would require that the CVRs in all newly manufactured turbine engine-powered airplanes meet the requirements of §§ 23.1457 or 25.1457. These are the provisions for data-link communication recording, electrical power source, single electrical failure, 10-minute independent power source, and separate containers that were discussed previously. Cockpit voice recorders also

would have to record for 2 hours using a recorder that meets the standards of TSO–C123a, or later revision. The interphone requirements, previously applicable only to transport category airplanes and the checklist-to-checklist requirement, would also be required.

Proposed § 125.227(h) would require that all CVRs in all newly manufactured turbine engine-powered airplanes meet all of the requirements of § 25.1457(a)(3) through (a)(6), (d)(1), (d)(4), (d)(5), and (d)(6), as proposed. These are the provisions for interphone recording, data-link communications recording, electrical power source, single electrical failure, 10-minute independent power source, and separate containers. New paragraph (h) also proposes the requirement for 2 hours of recording using a CVR that meets the standards of TSO–C123a, or later revision, and the checklist-to-checklist requirement as discussed previously.

Proposed § 129.22 would apply all to all U.S.-registered aircraft operated in common carriage by a foreign person or air carrier. These aircraft would be required to have a cockpit voice recorder installed that meets the standards of TSO–C123a, or later revision. The cockpit voice recorders would also be required to record the information that would be required to be recorded if that aircraft were operated under part 121, 125, or 135 and be installed by the compliance times for those parts, as applicable to the aircraft.

Proposed § 135.151(g)(1) would apply to newly manufactured multiengine turbine-powered airplanes or rotorcraft that have a passenger seating configuration of six or more seats, for which two pilots are required, and that is required to have a FDR. This paragraph contains the proposed new manufacture requirement for aircraft that would otherwise be covered by § 135.151(a). The proposed requirements are broken down as follows:

For part 23 airplanes, the CVRs would be required to meet all of the requirements of § 23.1457, as proposed. These are the provisions for data-link communications recording, electrical power source, single electrical failure, 10-minute independent power source, and separate containers. The interphone requirements of § 23.1457(a)(3) through (a)(5) would also be included.

For part 25 airplanes, the CVRs would be required to meet all of the requirements of § 25.1457, as proposed. These are the provisions for interphone recording, data-link communications recording, electrical power source, single electrical failure, 10-minute independent power source, and separate containers.

For part 27 rotorcraft, the CVRs would be required to meet the requirements of § 27.1457(a)(6), (d)(1), (d)(4), (d)(5), and (h). These are the provisions for data-link communications recording, electrical power source, single electrical failure, 10-minute independent power source, and combination units.

For part 29 rotorcraft, the CVRs would be required to meet the requirements of § 29.1457(a)(6), (d)(1), (d)(4), (d)(5), and (h). These are the provisions for data-link communications recording, electrical power source, single electrical failure, 10-minute independent power source, and combination units.

Proposed § 135.151(g)(1) also includes the proposed requirement for 2 hours of recording using a CVR that meets the standards of TSO–C123a, or later revision, and the proposed checklist-to-checklist requirement as discussed above, for all aircraft required to have a CVR regardless of certification basis.

Proposed § 135.151(g)(2) would apply to newly manufactured multiengine turbine-powered airplanes or rotorcraft that have a passenger seating configuration of 20 or more seats and that are required to have an FDR under § 135.152. This paragraph contains the proposed new manufacture requirement for aircraft that would otherwise be covered by § 135.151(b), with the addition of rotorcraft of this size. The proposed requirements are broken down as follows:

For part 23 airplanes, the CVRs would be required to meet all of the requirements of § 23.1457, as proposed. These are the provisions for interphone recording, data-link communications recording, electrical power source, single electrical failure, 10-minute independent power source, and separate containers.

For part 25 airplanes, the CVRs would be required to meet all of the requirements of § 25.1457. These are the provisions for interphone recording, data-link communications recording, electrical power source, single electrical failure, 10-minute independent power source, and separate containers.

For part 27 rotorcraft, the CVRs would be required to meet the requirements of § 27.1457(a)(6), (d)(1), (d)(4), (d)(5), and (h). These are the provisions for data-link communications recording, electrical power source, single electrical failure, 10-minute independent power source, and combination units.

For part 29 rotorcraft, the CVRs would be required to meet the requirements of § 29.1457(a)(6), (d)(1), (d)(4), (d)(5), and (h). These are the provisions for data-link communications recording, electrical power source, single electrical failure, 10-minute independent power source, and combination units.

Proposed § 135.151(g)(2) also includes the proposed requirement for 2 hours of recording using a CVR that meets the standards of TSO–C123a, or later revision, and the proposed checklist-to-checklist requirement as discussed above, for all aircraft regardless of certification basis.

Proposed §§ 91.609(j), 121.359(j), 125.227(h), and 135.151(g) would include the requirement for all newly manufactured airplanes or rotorcraft that are required to have a cockpit voice recorder and a flight data recorder, and that have data-link communication equipment installed, to record the data-link communication in accordance with the proposed changes to the certification rules. These proposed changes are found in §§ 23.1457(a)(6), 25.1457(a)(6), 27.1457(a)(6), and 29.1457(a)(6).

In addition, proposed §§ 91.609(k), 121.359(k), 125.227(i), and 135.151(h) would include the proposed requirement that if data-link communication equipment is installed on any aircraft 2 years after the effective date of the final rule, those aircraft must record all data-link communications in accordance with the proposed certification rule as of the time of equipment installation.

Digital Flight Data Recorders—Aircraft Retrofit Requirements

Each of the following proposed requirements is in addition to all current regulations. The proposed language uses the word ''also'' to indicate that the current regulations for the FDR are not eliminated.

Part 91 Operations

The proposed rule would require that all airplanes subject to § 91.609(c)(1) be retrofitted with a DFDR that retains the last 25 hours of recorded data. The rule also would require that the DFDR be in a separate box from the CVR. This latter proposal is a codification of current policy and is not expected to require any equipment changes. These requirements would be added in § 91.609(c)(2).

Part 121 Operations

The proposed rule would amend § 121.343 by changing a typographical error in the date in paragraph (c). The rule also would add a new paragraph (m) to that section to indicate that it applies only to airplanes listed in § 121.344(l)(2), which are the airplanes excepted from the 1997 upgrade requirements. No change in status is expected by this proposed revision. The

FAA has received numerous inquiries regarding the applicability of §§ 121.343 and 121.344; this change is meant to clarify the applicability of these two sections.

Part 125 Operations

The proposed rule would add a new paragraph (j) to § 125.225 to indicate that that section applies only to airplanes listed in § 125.226(l)(2), which are the airplanes excepted from the 1997 upgrade requirements. No change in status is expected by this proposed revision. The FAA has received numerous inquiries regarding the applicability of §§ 125.225 and 125.226; this change is meant to clarify the applicability of these two sections.

Part 135 Operations

The proposed rule would require that the DFDR be in a separate box from the CVR in airplanes. In rotorcraft, when both a CVR and an FDR are required, one combination unit could be installed. This proposal is a codification of current policy and is not expected to require any equipment changes. This requirement would be added in § 135.152(l), including references to four parts of the certification rules applicable to the particular aircraft being operated.

Digital Flight Data Recorders—Newly Manufactured Aircraft Requirements

The digital flight data recorders in all newly manufactured aircraft would be required to meet the standards of the Technical Standard Order on Flight Data Recorder Systems, TSO–C124a[2], or later revision. The following are additional proposed requirements by operating part.

Part 91 Operations

The proposed rule would require that all airplanes and rotorcraft subject to § 91.609(c)(1) that are manufactured on or after [insert date 2 years from the effective date of the final rule] would be required to have an FDR that retains the last 25 hours of recorded data using an FDR that meets the standards of TSO–C124a, or later revision. In addition, all aircraft manufactured after that date would have to comply with all of the requirements of §§ 23.1459, 25.1459, 27.1459, or 29.1459, as applicable.

The proposed rule would also add a footnote to appendix E to part 91 and appendix F to part 91 that would change the sampling interval for the Stabilizer Trim Position or Pitch Control Position parameter in appendix E and the Collective, Pedal Position, Lat. Cyclic, Long. Cyclic, and Controllable Stabilator parameters in appendix F for aircraft manufactured 2 years after the effective date of the final rule.

Part 121 Operations

Turbine engine-powered transport category airplanes that are subject to § 121.344, and are manufactured on or after [insert date 2 years from the effective date of the final rule], would be required to have a DFDR that retains the last 25 hours of recorded data using an FDR that meets the standards of TSO–C124a and receives its power from the bus that provides the maximum reliability for operation without jeopardizing service to essential or emergency loads. The aircraft would also be required to be configured so that a single electrical failure would not disable the CVR and the FDR. These airplanes would also be required to have their FDR in a box separate from the CVRs, a codification of current FAA policy that is not expected to require any changes to current equipment. These requirements would be added in § 121.344(n), which includes the reference to the appropriate section of the certification regulations of part 25.

Turbine engine-powered airplanes that have 10 to 19 passenger seats, that are subject to § 121.344a(a), and are manufactured on or after [insert date 2 years from the effective date of the final rule], would be required to have a DFDR that retains the last 25 hours of recorded data using an FDR that meets the standards of TSO–C124a and that receives its power from the bus that provides the maximum reliability for operation without jeopardizing service to essential or emergency loads. The aircraft would also be required to be configured so that a single electrical failure would not disable the CVR and the FDR (except for rotorcraft that have both recorders in a single unit). Airplanes would also be required to have their FDRs in a box separate from the CVRs, a codification of current FAA policy that is not expected to require any changes to current equipment. These requirements would be added in § 121.344a(g), which contains the references to the certification requirements of part 23 and part 25, as applicable to the airplane.

The proposed rule also would correct minor errors in appendix M and add a footnote to change the sampling interval for parameters (12) through (17) and parameter (88) for aircraft manufactured on or after [insert date 2 years from the effective date of the final rule].

Part 125 Operations

Turbine engine-powered transport category airplanes that are subject to § 125.226 and are manufactured on or after [insert date 2 years from the effective date of the final rule], would be required to have a FDR that retains the last 25 hours of recorded data using an FDR that meets the standards of TSO–C124a and that receives its power from the bus that provides the maximum reliability for operation without jeopardizing service to essential or emergency loads. The aircraft would also be required to be configured so that a single electrical failure would not disable the CVR and the FDR. These airplanes would also be required to have their FDRs in a box separate from the CVRs, a codification of current FAA policy that is not expected to require any changes to current equipment. These requirements would be added in § 125.226(m), which includes the reference to the appropriate section of the certification regulations of part 25.

The proposed rule would add a footnote to the Pilot Input and /or Surface Position—Primary Controls (Pitch, Roll, Yaw) parameter of appendix D to part 125 for airplanes manufactured on or after [insert date 2 years from the effective date of the final rule]. The proposed rule would also correct minor errors in appendix E to part 125 and add a footnote to change the sampling interval for parameters (12) through (17) and parameter (88) for airplanes manufactured on or after [insert date 2 years from the effective date of the final rule].

Part 135 Operations

All aircraft operated under part 135 that are manufactured on or after [insert date 2 years from the effective date of the final rule], would be required to have a DFDR that retains the last 25 hours of recorded data using an FDR that meets the standards of TSO–C124a and that receives its power from the bus that provides the maximum reliability for operation without jeopardizing service to essential or emergency loads. The aircraft would also be required to be configured so that a single electrical failure would not disable the CVR and the FDR. Airplanes would be required to have their DFDRs in a box separate from the CVRs, a codification of current FAA policy that is not expected to require any changes to current equipment. For rotorcraft, when both a CVR and an FDR are required, one combination unit could be installed. These proposed requirements would be added in § 135.152(m), which includes the reference to the appropriate paragraphs

[2] The TSO for FDR systems provides, for example, test procedures, fire test requirements, and software development and design standards.

of the various certification regulations applicable to the aircraft.

Appendix C to part 135 would be amended by adding a footnote to change the sampling interval for the Collective, Pedal Position, Lat. Cyclic, Long. Cyclic, and Controllable Stabilator Position parameters for helicopters manufactured on or after [insert date 2 years from the effective date of the final rule].

Appendix E to part 135 would be amended by adding a footnote to change the sampling interval for the Pilot Input—Primary Controls (Collective, Longitudinal Cyclic, Lateral Cyclic, Pedal) parameter for rotorcraft manufactured on or after [insert date 2 years from the effective date of the final rule].

Appendix F to part 135 would be amended by correcting minor typographical errors and by adding a footnote to change the sampling intervals for parameters (12) through (17) and parameter (88) for airplanes manufactured on or after [insert date 2 years from the effective date of the final rule].

Paperwork Reduction Act

This proposal contains a new information collection requirement to record data-link communications. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information collection requirements associated with this proposal to the Office of Management and Budget (OMB) for its review.

Title: Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations.

Summary: This notice proposes to amend the regulations to add a requirement for all aircraft manufactured on or after [insert date 2 years from the effective date of the final rule], that have data-link communication equipment installed to record all data-link communications. In addition, any aircraft on which data-link communication equipment is voluntarily installed on or after [insert date 2 years from the effective date of the final rule], would also be required to record all data-link communications.

Use of: Such a record would provide additional information to accident and incident investigators for use in determining the content of these messages and resultant pilot actions.

Respondents: The respondents would be all certificate holders operating the above-referenced U.S.-registered aircraft under parts 91, 121, 125, 129, and 135.

Frequency: The required information would be electronically or visually recorded when the message is transmitted from the communications unit to the cockpit display and must be kept until the aircraft has been operated for 2 hours. The recorded data would be overwritten on a continuing basis and would only be accessed following an accident or incident.

Annual Burden Estimate: This proposed requirement would be a nominal addition to a passive information collection activity; therefore, it does not contain a measurable hour burden. The cost to install the additional data-link communication recording equipment can be found in the regulatory evaluation summary.

The agency is soliciting comments to—

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by April 29 2005, and should direct them to the address listed in the **ADDRESSES** section of this document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences with these proposed regulations. ICAO Annex 6, section 6.3.1.5.1, calls for recording all data-link communication messages, including controller-pilot data-link communications, on all aircraft by January 1, 2007. The FAA is not proposing to require retrofit of data-link communication recording equipment on aircraft. If this proposal is adopted, the FAA intends to file a difference with ICAO.

Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

This portion of the preamble summarizes the FAA's analysis of the economic impacts of this NPRM, consistent with various Federal directives and orders. Each Federal agency proposing a regulation must make a reasoned determination that the benefits justify the costs, and, separately, assess the effects on small entities, international trade, and whether or not the proposal imposes a Federal mandate resulting in a total expenditure of $100 million or more in any one year (an ''unfunded mandate assessment''). After conducting these analyses, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs; (2) is a significant regulatory action; (3) would have a significant impact on a substantial number of small entities; (4) is in compliance with the Trade Agreement Act; and (5) would not impose an unfunded mandate of $100 million or more, in any one year, on state, local, or tribal governments, or on the private sector. The FAA has placed these analyses in the docket and summarizes them as following.

Estimated Costs (20-Year Period)

The FAA summarizes its estimated compliance costs in Table 1 using both a 7 percent discount rate and a 3 percent discount rate.

TABLE 1.—SUMMARY OF THE TOTAL COSTS OF THE PROPOSAL AND THE PRESENT VALUE OF THE TOTAL COSTS

[In millions 2003 $, discounted to 2003]

Type of cost	Undiscounted total costs	Present value of the total costs using a 7 percent discount rate	Present value of the total costs using a 3 percent discount rate
AIRPLANES			
20 Year One-Time Costs:			
Re-Engineer CVR and FDR Systems	$37	$35	$36
Retrofit CVR Systems	164	133	140
One-Time Costs	201	168	176
20 Year Total Annual Costs:			
CVR and FDR System Costs for Future Airplanes	164	75	114
Annual Operating and Maintenance Costs	35	2	18
Total Annual Costs	199	77	132
20 Year Total Airplane Costs	400	245	308
HELICOPTERS			
20 Year One-Time Costs:			
Re-Engineer CVR and FDR Systems	5	4	4
One-Time Costs	5	4	4
20 Year Total Annual Costs:			
CVR System Costs for Future Helicopters	10	5	7
Annual Operating and Maintenance Costs	6	2	4
Total Annual Costs	16	7	11
20 Year Total Helicopter Costs	21	11	15
20 Year Total Aircraft Costs	421	256	323

Estimated Incremental Benefits

The proposed rule would increase the amount and quality of the information being recorded. This additional and improved information may result in time and cost savings for future accident investigations. It may also generate new or revised safety rules (for airplane manufacturing or operations) or in voluntary changes to airline and pilot procedures that would not otherwise have resulted in the absence of this additional information. As a result, the proposed rule may produce a safer fleet and safer airplane operations. Although the FAA does not propose all of the NTSB recommendations concerning CVR and FDR modifications, the FAA believes that it has chosen the course of action that maximizes safety benefits relative to compliance costs.

Who Is Affected by This Rulemaking

Manufacturers of airplanes and helicopters certificated for 10 or more seats, scheduled service airlines, non-scheduled service airlines, and other operators of airplanes and helicopters with 10 or more seats.

Assumptions and Standard Values

- Period of analysis is 2004–2023.
- Discount rate is 7 percent.
- Burdened labor rate for an aviation engineer is $125 an hour.
- Burdened labor rate for an aviation mechanic is $85 an hour.
- Number of airplanes to be retrofitted is 9,644.
- To retrofit a 2-hour memory CVR to replace a magnetic tape CVR costs $17,500 in equipment plus $2,400 for labor.
- To retrofit a 2-hour memory CVR to replace a 30-minute memory solid state CVR costs $7,500 in equipment plus $640 in labor.
- Cost to retrofit a 10-minute RIPS is $6,500.
- As the proposed rule would allow sufficient time for a retrofit to be completed during a regularly scheduled maintenance check, there would be no additional out-of-service time for these retrofits.
- The cost for a future production airplane is $10,640; $3,500 for the CVR, $2,820 for the RIPS, $3,000 to upgrade the FDR, and $1,320 to record data link communications.
- Cost of aviation fuel is $0.75 per gallon.
- The primary sources for this information are industry responses to a 2002 FAA survey concerning the costs of meeting the previously described NTSB CVR and FDR recommendations.

Alternatives Considered

The FAA considered 3 alternatives to the proposed rule in order to address the NTSB recommendations that were not adopted. The FAA also considered a fourth alternative of exempting helicopters.

Alternative 1: This alternative would adopt the NTSB recommendation that aircraft manufactured 6 months after the final rule publication date (*i.e.,* July 1, 2004) have duplicate CVR and FDR systems—one of each located fore and one of each located aft in the airplane (or to have two combination units, one located fore and the other located aft in the airplane). However, only one voice recorder would be required to have a 10-minute RIPS.

Alternative 2: In this alternative, the proposed rule's requirements would remain the same, but the compliance date for all airplanes would be the

NTSB recommended 18 months after the publication of the final rule (*i.e.,* July 1, 2005, rather than January 1, 2007).

Alternative 3: In addition to the proposed rule's requirements, all existing airplanes would be required to have a 10-minute RIPS retrofitted into their CVR systems.

Alternative 4: Future production helicopters would not be covered by the proposed rule.

Table 2 presents the FAA's estimated costs of these alternatives.

TABLE 2.—SUMMARY OF THE COSTS OF THE PROPOSAL AND THE 4 ALTERNATIVES

[In millions 2003 $, discounted to 2003]

Alternative	Undiscounted total cost	Total cost difference from the proposal	Present value of the total cost	Total present value of the cost difference from the proposal
Proposed Rule	$ 420	.....	$256	.....
Alternative 1 (Duplicate CVR and FDR—new production)	1,213	$793	603	$347
Alternative 2 (Accelerated compliance dates)	520	100	353	97
Alternative 3 (Retrofit RIPS)	582	162	374	118
Alternative 4 (Exempt Helicopters)	400	−20	244	−12

The FAA determined that the potential benefits of alternatives 1, 2, and 3 would not be commensurate with their costs while the potential benefits from including helicopters was worth the increased cost.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) requires agencies to perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. The proposed rule would affect manufacturers of part 25 and part 29 airplanes. For manufacturers, a small entity is one with 1,500 or fewer employees. No part 25 or part 29 manufacturer has fewer than 1,500 employees.

The proposed rule would also affect all operators of airplanes with 10 or more seats, which includes several small entities, to retrofit their airplanes. The per airplane retrofit cost is between $8,140 and $19,900. The average value of these airplanes ranges from $1.5 million for a pre-1996 small turboprop (10–30 seats) to $85 million for a post-1995 large turbojet (275 plus seats). Taking the most burdensome scenario (a $19,900 retrofit of an airplane worth $1.5 million), the proposed rule would impose costs that would equal 1.3 percent of the airplane's value, which the FAA determined could have a significant impact.

Based on that analysis, the FAA believes this rule could have a significant impact on a substantial number of small entities. A full analysis is separately included in the complete Initial Regulatory Evaluation. The FAA invites comments from interested and affected parties.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA assessed the potential effect of this proposed rule on airplanes operated in the United States. The proposed rule would affect all airplanes with 10 or more seats operating in the United States regardless of ownership. Thus, the FAA determined that it would have a minimal impact on international trade.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act) requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The FAA determined that this proposed rule would not contain a significant intergovernmental mandate. The FAA also determined that the proposed rule would not contain a significant private sector mandate, as the estimated cost would be about $70 million during each of the years 2005, 2006, and 2007.

Request for Comments

The FAA requests comments on any and all of its assumptions, methodology, data, and cost estimates in the Regulatory Evaluation. The FAA also requests that commenters provide supporting data for their comments.

In addition to the general request for comments, the FAA specifically requests information on the following subject areas:

- The values reported in the assumptions and values section of the preamble.
- The amount of engineering time to obtain CVR STCs.
- The number of CVR STCs that would be needed.
- The cost to retrofit a switch for the flight crew to activate the FDR to record at the start of the checklist.
- The number of future production airplanes with CPDLC capabilities.
- The cost for future production helicopters.
- The number of affected future production helicopters.
- The potential costs due to weight and balance issues for helicopters.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice of proposed rulemaking would not have federalism implications.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the use of plain language, the FAA reexamined the writing style currently used to develop regulations. The memorandum requires Federal agencies

to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 23

Aircraft, Aviation safety.

14 CFR Part 25

Aircraft, Aviation safety.

14 CFR Part 27

Aircraft, Aviation safety.

14 CFR Part 29

Aircraft, Aviation safety.

14 CFR Part 91

Aircraft, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 23, 25, 27, 29, 91, 121, 129, 125, and 135 of Title 14, Code of Federal Regulations, as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Amend § 23.1457 by amending paragraph (d)(2) to remove the ''and'' at the end of the sentence and paragraph (d)(3) to change the period at the end of the sentence to a semicolon, and by adding new paragraphs (a)(6), (d)(4), (d)(5), and (d)(6) and by amending paragraph (d)(1) to read as follows:

§ 23.1457 Cockpit voice recorders.

(a) * * *

(6) If data-link communication equipment is installed, all data-link communications, using an approved data message set. Data-link messages must be recorded as the output signal from the communications unit that translates the signal into usable data.

* * * * *

(d) * * *

(1) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads. The cockpit voice recorder must remain powered for as long as possible without jeopardizing emergency operation of the airplane;

* * * * *

(4) Any single electrical failure does not disable both the cockpit voice recorder and the digital flight data recorder;

(5) It has an independent power source—

(i) That provides 10 minutes of electrical power to the cockpit voice recorder, and

(ii) To which the cockpit voice recorder is switched automatically in the event that all other power to the cockpit voice recorder is interrupted either by normal shutdown or by any other loss of power to the electrical power bus; and

(6) It is in a separate container from the flight data recorder when both are required. If used to comply with only the cockpit voice recorder requirements, a combination unit may be installed.

* * * * *

3. Amend § 23.1459 by amending paragraph (a)(4) to change the period at the end of the sentence to a semicolon and paragraph (a)(5) to remove the ''and'' at the end of the sentence and by revising the section heading and paragraph (a)(3) and by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 23.1459 Flight data recorders.

(a) * * *

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight data recorder without jeopardizing service to essential or emergency loads. The flight data recorder must remain powered for as long as possible without jeopardizing emergency operation of the airplane;

* * * * *

(6) Any single electrical failure does not disable both the cockpit voice recorder and the flight data recorder; and

(7) It is in a separate container from the cockpit voice recorder when both are required. If used to comply with only the flight data recorder requirements, a combination unit may be installed.

* * * * *

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

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

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, and 44704.

5. Amend § 25.1457 by amending paragraph (d)(2) to remove the ''and'' at the end of the sentence and paragraph (d)(3) to change the period at the end of the sentence to a semicolon and by adding new paragraphs (a)(6), (d)(4), (d)(5), and (d)(6) and revising paragraph (d)(1) to read as follows:

§ 25.1457 Cockpit voice recorders.

(a) * * *

(6) If data-link communication equipment is installed, all data-link communications, using an approved data message set. Data-link messages must be recorded as the output signal from the communications unit that translates the signal into usable data.

* * * * *

(d) * * *

(1) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads. The cockpit voice recorder must remain powered for as long as possible without jeopardizing emergency operation of the airplane;

* * * * *

(4) Any single electrical failure does not disable both the cockpit voice recorder and the digital flight data recorder;

(5) It has an independent power source—

(i) That provides 10 minutes of electrical power to the cockpit voice recorder, and

(ii) To which the cockpit voice recorder is switched automatically in the event that all power to the cockpit voice recorder is interrupted either by normal shutdown or by any other loss of power to the electrical power bus; and

(6) It is in a separate container from the flight data recorder when both are required. If used to comply with only the cockpit voice recorder requirements, a combination unit may be installed.

* * * * *

6. Amend § 25.1459 by amending paragraph (a)(4) to change the period at the end of the sentence to a semicolon, paragraph (a)(5) to remove the ''and'' at the end of the sentence, and paragraph (a)(6) to change the period at the end of the sentence to a semicolon and by revising the section heading and paragraph (a)(3) and by adding new paragraphs (a)(7) and (a)(8) to read as follows:

§ 25.1459 Flight data recorders.

(a) * * *

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight data recorder without jeopardizing service to essential or emergency loads. The flight data recorder must remain powered for as long as possible without jeopardizing emergency operation of the airplane;

* * * * *

(7) Any single electrical failure does not disable both the cockpit voice recorder and the flight data recorder; and

(8) It is in a separate container from the cockpit voice recorder when both are required. If used to comply with only the flight data recorder requirements, a combination unit may be installed.

* * * * *

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

8. Amend § 27.1457 by amending paragraph (d)(2) to remove the ''and'' at the end of the sentence and paragraph (d)(3) to change the period at the end of the sentence to a semicolon and by adding new paragraphs (a)(6), (d)(4), (d)(5), and (h) and by revising paragraph (d)(1) to read as follows:

§ 27.1457 Cockpit voice recorders.

(a) * * *

(6) If data-link communication equipment is installed, all data-link communications, using an approved data message set. Data-link messages must be recorded as the output signal from the communications unit that translates the signal into usable data.

* * * * *

(d) * * *

(1) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads. The cockpit voice recorder must remain powered for as long as possible without jeopardizing emergency operation of the rotorcraft;

* * * * *

(4) Whether the cockpit voice recorder and digital flight data recorder are installed in separate boxes or in a combination unit, no single electrical failure may disable both the cockpit voice recorder and the digital flight data recorder; and

(5) It has an independent power source—

(i) That provides 10 minutes of electrical power to the cockpit voice recorder, and

(ii) To which the cockpit voice recorder is switched automatically in the event that all power to the cockpit voice recorder is interrupted either by normal shutdown or by any other loss of power to the electrical power bus.

* * * * *

(h) When both a cockpit voice recorder and a flight data recorder are required by the operating rules, one combination unit may be installed, provided that all other requirements of this section are met.

9. Amend § 27.1459 by revising the section heading and paragraph (a)(3) and by adding new paragraphs (a)(6) and (e) to read as follows:

§ 27.1459 Flight data recorders.

(a) * * *

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight data recorder without jeopardizing service to essential or emergency loads. The flight data recorder must remain powered for as long as possible without jeopardizing emergency operation of the rotorcraft;

* * * * *

(6) Whether the cockpit voice recorder and digital flight data recorder are installed in separate boxes or in a combination unit, no single electrical failure may disable both the cockpit voice recorder and the digital flight data recorder.

* * * * *

(e) When both a cockpit voice recorder and a flight data recorder are required by the operating rules, one combination unit may be installed, provided that all other requirements of this section are met.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

11. Amend § 29.1457 by amending paragraph (d)(2) to remove the ''and'' at the end of the sentence and paragraph (d)(3) to change the period at the end of the sentence to a semicolon and by adding new paragraphs (a)(6), (d)(4), (d)(5), and (h) and by revising paragraph (d)(1) to read as follows:

§ 29.1457 Cockpit voice recorders.

(a) * * *

(6) If data-link communication equipment is installed, all data-link communications, using an approved data message set. Data-link messages must be recorded as the output signal from the communications unit that translates the signal into usable data.

* * * * *

(d) * * *

(1) It receives its electrical power from the bus that provides the maximum reliability for operation of the cockpit voice recorder without jeopardizing service to essential or emergency loads. The cockpit voice recorder must remain powered for as long as possible without jeopardizing emergency operation of the rotorcraft;

* * * * *

(4) Whether the cockpit voice recorder and digital flight data recorder are installed in separate boxes or in a combination unit, no single electrical failure may disable both the cockpit voice recorder and the digital flight data recorder; and

(5) It has an independent power source that—

(i) Provides 10 minutes of electrical power to the cockpit voice recorder, and

(ii) To which the cockpit voice recorder is switched automatically in the event that all power to the cockpit voice recorder is interrupted either by normal shutdown or by any other loss of power to the electrical power bus.

* * * * *

(h) When both a cockpit voice recorder and a flight data recorder are

required by the operating rules, one combination unit may be installed, provided that all other requirements of this section are met.

12. Amend § 29.1459 by amending paragraph (a)(4) to remove the ''and'' at the end of the sentence and paragraph (a)(5) to change the period at the end of the sentence to a semicolon and add the word ''and'' after the new semicolon and by revising the section heading and paragraph (a)(3) and by adding new paragraphs (a)(6) and (e) to read as follows:

§ 29.1459 Flight data recorders.

(a) * * *

(3) It receives its electrical power from the bus that provides the maximum reliability for operation of the flight data recorder without jeopardizing service to essential or emergency loads. The flight data recorder must remain powered for as long as possible without jeopardizing emergency operation of the rotorcraft;

* * * * *

(6) Whether the cockpit voice recorder and digital flight data recorder are installed in separate boxes or in a combination unit, no single electrical failure may disable both the cockpit voice recorder and the digital flight data recorder.

* * * * *

(e) When both a cockpit voice recorder and a flight data recorder are required by the operating rules, one combination unit may be installed, provided that all other requirements of this section are met.

PART 91—GENERAL OPERATING AND FLIGHT RULES

13. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

14. Amend § 91.609 by revising the section heading and paragraph (e)(2), by redesignating paragraph (c) as (c)(1), and by adding new paragraphs (c)(2), (c)(3), (i), (j), and (k) to read as follows:

§ 91.609 Flight data recorders and cockpit voice recorders.

* * * * *

(c)(2) All airplanes subject to paragraph (c)(1) of this section that are manufactured before [insert date 2 years from the effective date of the final rule], by [insert date 4 years from the effective date of the final rule], must meet the requirements of § 23.1459(a)(7) or § 25.1459(a)(8), as applicable, and also have a digital flight data recorder that retains at least the last 25 hours of recorded information.

(c)(3) All airplanes and rotorcraft subject to paragraph (c)(1) of this section that are manufactured on or after [insert date 2 years from the effective date of the final rule], must meet the requirements in § 23.1459, § 25.1459, § 27.1459, or § 29.1459, as applicable, and also retain at least the last 25 hours of recorded information using a recorder that meets the standards of TSO–C124a, or later revision.

* * * * *

(e) * * *

(2) Is operated continuously from the start of the use of the checklist before starting the engines for the purpose of flight, to completion of the final checklist at the termination of the flight.

* * * * *

(i) All airplanes required by this section to have a cockpit voice recorder and a flight data recorder, that are manufactured before [insert date 2 years from the effective date of the final rule], must by [insert date 4 years from the effective date of the final rule], have a cockpit voice recorder that also—

(1) Meets the requirements of § 23.1457(d)(6) or § 25.1457(d)(6) of this chapter, as applicable;

(2) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision; and

(3) If transport category, meets the requirements of § 25.1457(a)(3), (a)(4), and (a)(5) of this chapter.

(j) All airplanes or rotorcraft required by this section to have a cockpit voice recorder and flight data recorder, that are manufactured on or after [insert date 2 years from the effective date of the final rule], must have a cockpit voice recorder installed that also—

(1) Meets the requirements of § 23.1457, § 25.1457, § 27.1457, or § 29.1457 of this chapter, as applicable; and

(2) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision.

(k) All airplanes or rotorcraft required by this section to have a cockpit voice recorder and a flight data recorder, that install data-link communication equipment on or after [insert date 2 years from the effective date of the final rule], must record all data-link messages as required by the certification rule applicable to the aircraft.

15. Amend appendix E to part 91 by adding footnote 5 to the Stabilizer Trim Position or Pitch Control Position parameter to read as follows:

APPENDIX E TO PART 91.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [4] read out
*	*	*	*	*
Stabilizer Trim Position or Pitch Control Position. [5]	Full Range	±3% unless higher uniquely required.	1	1% [3]
*	*	*	*	*

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft, the recording system, excluding these sensors (but including all other characteristics of the recording system), shall contribute no more than half of the values in this column.

* * * * *

[3] Percent of full range.

[4] This column applies to aircraft manufactured after October 11, 1991.

[5] Pitch Control Position for all aircraft manufactured on or after [insert date 2 years from the effective date of the final rule], the sampling interval per second is 16.

16. Amend appendix F to part 91 by adding footnote 4 to the Collective, Pedal Position, Lat. Cyclic, Long. Cyclic, and Controllable Stabilator Position parameters to read as follows:

APPENDIX F TO PART 91.—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [3] read out
*	*	*	*	*
Collective [4]	Full Range	±3%	2	1% [2]
Pedal Position [4]	Full Range	±3%	2	1% [2]
Lat. Cyclic [4]	Full Range	±3%	2	1% [2]
Long. Cyclic [4]	Full Range	±3%	2	1% [2]
Controllable Stabilator Position. [4]	Full Range	±3%	2	1% [2]

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft, the recording system, excluding these sensors (but including all other characteristics of the recording system), shall contribute no more than half of the values in this column.
[2] Percent of full range.
[3] This column applies to aircraft manufactured after October 11, 1991.
[4] For all aircraft manufactured on or after [insert date 2 years from the effective date of the final rule], the sampling interval per second is 4.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

17. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

18. Amend § 121.343 by revising the section heading, by amending paragraph (c) to change ''1994'' to ''1995'', and by adding new paragraph (m) to read as follows:

§ 121.343 Flight data recorders.

* * * * *

(m) After August 20, 2001, this section applies only to the airplane models listed in § 121.344(l)(2). All other airplanes must comply with the requirements of § 121.344, as applicable.

19. Amend § 121.344 by adding new paragraph (n) to read as follows:

§ 121.344 Digital flight data recorders for transport category airplanes.

* * * * *

(n) All aircraft subject to the requirements of this section that are manufactured on or after [insert date 2 years from the effective date of the final rule], must have a digital flight data recorder installed that also—

(1) Meets the requirements of § 25.1459(a)(3), (a)(7), and (a)(8) of this chapter; and

(2) Retains the 25 hours of recorded information required in paragraph (h) using a recorder that meets the standards of TSO–C124a, or later revision.

20. Amend § 121.344a by adding new paragraph (g) to read as follows:

§ 121.344a Digital flight data recorders for 10–19 seat airplanes.

* * * * *

(g) All airplanes subject to the requirements of this section that are manufactured on or after [insert date 2 years from the effective date of the final rule], must have a digital flight data recorder installed that also—

(1) Meets the requirements in § 23.1459(a)(3), (a)(6), and (a)(7) or § 25.1459(a)(3), (a)(7), and (a)(8) of this chapter, as applicable; and

(2) Retains the 25 hours of recorded information required in § 121.344(g) using a recorder that meets the standards of TSO–C124a, or later revision.

21. Amend § 121.359 by adding new paragraphs (i), (j), and (k) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(i) By [insert date 4 years from the effective date of the final rule], all turbine engine-powered airplanes subject to this section that are manufactured before [insert date 2 years from the effective date of the final rule], must have a cockpit voice recorder installed that also—

(1) Meets the requirements of § 23.1457(d)(6) or § 25.1457(d)(6) of this chapter, as applicable;

(2) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision;

(3) Is operated continuously from the start of the use of the checklist before starting the engines for the purpose of flight, to the completion of the final checklist at the termination of the flight; and

(4) If transport category, meets the requirements in § 25.1457(a)(3), (a)(4), and (a)(5) of this chapter.

(j) All turbine engine-powered airplanes subject to this section that are manufactured on or after [insert date 2 years from the effective date of the final rule], must have a cockpit voice recorder installed that also—

(1) Meets the requirements of § 23.1457 or § 25.1457 of this chapter, as applicable;

(2) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision; and

(3) Is operated continuously from the start of the use of the checklist before starting the engines for the purpose of flight, to the completion of the final checklist at the termination of the flight.

(k) All airplanes required by this part to have a cockpit voice recorder and a flight data recorder, that install data-link communication equipment on or after [insert date 2 years from the effective date of the final rule], must record all data-link messages as required by the certification rule applicable to the airplane.

22. Amend appendix M to part 121 by revising parameters 1, 14a, 14b, 15, 16 and 17 to correct typographical errors; and by adding footnote 20 to parameters 12a through 17 and 88 to read as follows:

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
1. Time or relative times counts,[1]	24 Hrs, 0 to 4095	±0.125% per hour	4	1 sec	UTC time preferred when relative available. Count increments each 4 seconds of system operation.
*	*	*	*	*	* *
12a. Pitch control(s) position (nonfly-by-wire systems).[20]	Full Range	±2° unless higher accuracy uniquely required..	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch control(s) position (fly-by-wire system).[3 20]	Full Range	±2° unless higher accuracy uniquely required..	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	
13a. Lateral control position(s) (nonfly-by-wire).[20]	Full Range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 121.344.(f).	0.2% of full range	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
13b. Lateral contorl position(s) (fly-by-wire).[4 20]	Full Range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.2% of full range.	
14a. Yaw control position(s) (nonfly-by-wire).[5 20]	Full Range	±2° unless higher accuracy uniquely required.	0.5	0.2% of full range	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
14b. Yaw control position(s) (fly-by-wire).[20]	Full Range	±2° unless higher accuracy uniquely required.	0.5	0.2% of full range.	
15. Pitch control surface(s) position.[6 20]	Full Range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 121.344.(f).	0.2% of full range	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
16. Lateral control surface(s) position.[7 20]	Full Range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 121.344.(f).	0.3% of full range	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25, as applicable.
17. Yaw control surface(s) position.[8 20]	Full Range	±2° unless higher accuracy uniquely required.	0.5	0.2% of full range	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5.

APPENDIX M TO PART 121.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
*	*	*	*	*	* *
88. All cockpit flight control input forces (control wheel, control column, rudder pedal).[20]	Full Range Control wheel ±70 lbs. Control column ±85 lbs. Rudder pedal ±165 lbs.	±5°	1	0.2% of full range	For fly-by-wire flight control systems, where flight control surface forces position is a function of the displacement of control input device only, it is not necessary to record this parameter. For airplanes that have a flight control breakaway capability that allows either pilot to operate the control independently, record both control force inputs. The control force inputs may be sampled alternately once per 2 seconds to produce the sampling interval of 1.
*	*	*	*	*	* *

[1] For A300 B2/B4 airplanes, resolution = 6 seconds.

* * * * * * *

[3] For A318/A319/A320/A321 series airplanes, resolution = 0.275% (0.088° > 0.064°). For A330/A340 series airplanes, resolution = 2.20% (0.703° > 0.064°).

[4] For A318/A319/A320/A321 series airplanes, resolution = 0.22% (0.088° > 0.080°). For A330/A340 series airplanes, resolution = 1.76% (0.703° > 0.080°).

[5] For A330/A340 series airplanes, resolution = 1.18% (0.703° > 0.120°).

[6] For A330/A340 series airplanes, resolution = 0.783% (0.352° > 0.090°).

[7] For A330/A340 series airplanes, aileron resolution = 0.704% (0.352° > 0.100°). For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703° > 0.100°).

[8] For A330/A340 series airplanes, resolution = 0.30% (0.176° > 0.12°). For A330/A340 series airplanes, seconds per sampling interval = 1.

* * * * * * *

[20] For all aircraft manufactured on or after [insert date 2 years from the effective date of the final rule], the seconds per sampling interval is 0.0625.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

23. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

24. Amend § 125.225 by revising the section heading and by adding new paragraph (j) to read as follows:

§ 125.225 Flight data recorders.

* * * * *

(j) After August 20, 2001, this section applies only to the airplane models listed in § 125.226(l)(2). All other airplanes must comply with the requirements of § 125.226.

25. Amend § 125.226 by adding new paragraph (m) to read as follows:

§ 125.226 Digital flight data recorders.

* * * * *

(m) All aircraft subject to the requirements of this section that are manufactured on or after [insert date 2 years from the effective date of the final rule], must have a flight data recorder installed that also—

(1) Meets the requirements in § 25.1459(a)(3), (a)(7), and (a)(8) of this chapter; and

(2) Retains the 25 hours of recorded information required in paragraph (f) of this section using a recorder that meets the standards of TSO–C124a, or later revision.

26. Amend § 125.227 by adding new paragraphs (g), (h), and (i) to read as follows:

§ 125.227 Cockpit voice recorders.

* * * * *

(g) By [insert date 4 years from the effective date of the final rule], all turbine engine-powered airplanes subject to this section that are manufactured before [insert date 2 years from the effective date of the final rule], must have a cockpit voice recorder installed that also—

(1) Meets the requirements of § 25.1457(a)(3), (a)(4), (a)(5), and (d)(6) of this chapter;

(2) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision; and

(3) Is operated continuously from the start of the use of the checklist before starting the engines for the purpose of flight, to the completion of the final checklist at the termination of the flight.

(h) All turbine engine-powered airplanes subject to this section that are manufactured on or after [insert date 2 years from the effective date of the final rule], must have a cockpit voice recorder installed that also—

(1) Meets the requirements of § 25.1457(a)(3) through (a)(6), (d)(1), (d)(4), (d)(5), and (d)(6) of this chapter;

(2) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision; and

(3) Is operated continuously from the start of the use of the checklist before starting the engines for the purpose of flight, to the completion of the final checklist at the termination of the flight.

(i) All turbine engine-powered airplanes required by this part to have a cockpit voice recorder and a flight data recorder, that install data-link communication equipment on or after [insert date 2 years from the effective date of the final rule], must record all data-link messages as required by the certification rule applicable to the airplane.

27. Amend appendix E to part 125 by revising parameters 12b, 13b, 14a, 14b, 15 and 23, and by adding footnote 20 to parameters 12a through 17 and 88 to read as follows:

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
*	*	*	*	*	* *
12a. Pitch control(s) position (nonfly-by-wire systems).[20]	Full range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 125.226(f).	0.2% of full range	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch control(s) position (fly-by-wire systems).[3 20]	Full range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 125.226(f).	0.2% of full range.	
13a. Lateral control positions(s) (nonfly-by-wire).[20]	Full range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 125.226(f).	0.2% of full range	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
13b. Lateral control position(s) (fly-by-wire).[4 20]	Full range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 125.226(f).	0.2% of full range.	
14a.Yaw control position(s) (nonfly-by-wire).[5 20]	Full range	±2° unless higher accuracy uniquely required.	0.5	0.2% of full range	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
14b. Yaw control position(s) (fly-by-wire).[20]	Full range	±2° unless higher accuracy uniquely required.	0.5	0.2% of full range.	
15. Pitch control surface(s) position.[6 20]	Full range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 125.226(f).	0.2% of full range	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25, as applicable.
17. Yaw control surface(s) position.[8 20]	Full range	±2° unless higher accuracy uniquely required.	0.5	0.2% of full range	For airplanes fitted with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5.
*	*	*	*	*	* *
23. Ground Spoiler Position or Speed Brake Selection.[12]	Full Range or Each Position (discrete).	±2° Unless higher accuracy uniquely required.	1 or 0.5 for airplanes operated under § 125.226(f).	0.2% of full range.	

APPENDIX E TO PART 125.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
*	*	*	*	*	* *
88. All cockpit flight control input forces (control wheel, control column, rudder pedal).[20]	Full range Control wheel ±70 lbs. Control column ±85 lbs. Rudder pedal ±165 lbs.	±5%	1	0.2% of full range	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter. For airplanes that have a flight control breakaway capability that allows control independently, record both control force inputs. The control force inputs may be samples alternately once per 2 seconds to produce the sampling interval of 1.

* * * * * * *

[3] For A318/A319/A320/A321 series airplanes, resolution = 0.275% (0.088° > 0.064°). For A330/A340 series airplanes, resolution = 2.20% (0.703° > 0.064°).

[4] For A318/A319/A320/A321 series airplanes, resolution = 0.22% (0.088° > 0.080°). For A330/A340 series airplanes, resolution = 1.76% (0.703° > 0.080°).

[5] For A330/A340 series airplanes, resolution = 1.18% (0.703° > 0.120°).

[6] For A330/A340 series airplanes, resolution = 0.783% (0.352° > 0.090°).

* * * * * * *

[8] For A330/A340 series airplanes, resolution = 0.30% (0.176° > 0.12°). For A330/A340 series airplanes, seconds per sampling interval = 1.

* * * * * * *

[12] For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703° > 0.100°).

* * * * * * *

[20] For all aircraft manufactured on or after [insert date 2 years from the effective date of the final rule], the seconds per sampling interval is 0.0625.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

28. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71, sec. 104.

29. Amend § 129.1 by revising paragraph (b) to read as follows:

§ 129.1 Applicability.

* * * * *

(b) Sections 129.14, 129.20, and 129.22 also apply to U.S.-registered aircraft operated in common carriage by a foreign person or foreign air carrier solely outside the United States. For the purpose of this part, a foreign person is any person, not a citizen of the United States, who operates a U.S.-registered aircraft in common carriage solely outside the United States.

* * * * *

30. Amend part 129 by adding new § 129.22 to read as follows:

§ 129.22 Cockpit voice recorders.

No person may operate an aircraft under this part that is registered in the United States unless it is equipped with an approved cockpit voice recorder that meets the standards of TSO–C123a, or later revision. The cockpit voice recorder must record the information that would be required to be recorded if the aircraft were operated under part 121, 125, or 135 of this chapter and must be installed by the compliance times required by that part, as applicable to the aircraft.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

31. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

32. Amend § 135.151 by amending paragraphs (a)(2) and (b)(2) and by adding new paragraphs (f), (g), and (h) to read as follows:

§ 135.151 Cockpit voice recorders.

(a) * * *

(2) Is operated continuously from the start of the use of the checklist before starting the engines for the purpose of flight, to the completion of the final checklist at the termination of the flight.

(b) * * *

(2) Is operated continuously from the start of the use of the checklist before starting the engines for the purpose of flight, to the completion of the final checklist at the termination of the flight.

* * * * *

(f) By [insert date 4 years from the effective date of the final rule], all airplanes subject to paragraph (a) or paragraph (b) of this section that are manufactured before [insert date 2 years from the effective date of the final rule], and are required to have a flight data recorder installed in accordance with § 135.152, must have a cockpit voice recorder that also—

(1) Meet the requirements in § 23.1457(d)(6) or § 25.1457(d)(6) of this chapter, as applicable;

(2) Retain at least the last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision; and

(3) If transport category, meet the requirements in § 25.1457(a)(3), (a)(4), and (a)(5) of this chapter.

(g)(1) No person may operate a multiengine, turbine-powered airplane or rotorcraft that is manufactured on or after [insert date 2 years from the effective date of the final rule], has a passenger seating configuration of six or more seats, for which two pilots are required by certification or operating rules, and that is required to have a flight data recorder under § 135.152, unless it is equipped with an approved cockpit voice recorder that also—

(i) Is installed in accordance with the requirements of § 23.1457, § 25.1457, § 27.1457(a)(6), (d)(1), (d)(4), (d)(5), and

(h), or § 29.1457(a)(6), (d)(1), (d)(4), (d)(5), and (h) of this chapter, as applicable;

(ii) Is operated continuously from the start of the use of the checklist before starting the engines for the purpose of flight, to the completion of the final checklist at the termination of the flight; and

(iii) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision.

(2) No person may operate a multiengine, turbine-powered airplane or rotorcraft that is manufactured on or after [insert date 2 years from the effective date of the final rule], has a passenger seating configuration of 20 or more seats, and that is required to have a flight data recorder under § 135.152, unless it is equipped with an approved cockpit voice recorder that also—

(i) Is installed in accordance with the requirements of § 23.1457, § 25.1457, § 27.1457(a)(6), (d)(1), (d)(4), (d)(5), and (h), or § 29.1457(a)(6), (d)(1), (d)(4), (d)(5), and (h) of this chapter, as applicable;

(ii) Is operated continuously from the start of the use of the checklist before starting the engines for the purpose of flight, to the completion of the final checklist at the termination of the flight; and

(iii) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision.

(h) All airplanes or rotorcraft required by this part to have a cockpit voice recorder and a flight data recorder, that install data-link communication equipment on or after [insert date 2 years from the effective date of the final rule], must record all data-link messages as required by the certification rule applicable to the aircraft.

33. Amend § 135.152 by revising the section heading and by adding new paragraphs (l) and (m) to read as follows:

§ 135.152 Flight data recorders.

* * * * *

(l) By [insert date 4 years from the effective date of the final rule], all aircraft manufactured before [insert date 2 years from the effective date of the final rule], must also meet the requirements in § 23.1459(a)(7), § 25.1459(a)(8), § 27.1459(e), or § 29.1459(e) of this chapter, as applicable.

(m) All aircraft manufactured on or after [insert date 2 years from the effective date of the final rule], must have a flight data recorder installed that also—

(1) Meets the requirements of § 23.1459(a)(3), (a)(6), and (a)(7), § 25.1459(a)(3), (a)(7), and (a)(8), § 27.1459 (a)(3), (a)(6), and (e), or § 29.1459(a)(3), (a)(6), and (e) of this chapter, as applicable; and

(2) Retains the 25 hours of recorded information required in paragraph (d) of this section using a recorder that meets the standards of TSO–C124a, or later revision.

34. Amend appendix C to part 135 by adding footnote 4 to the Collective, Pedal Position, Lat. Cyclic, Long. Cyclic, and Controllable Stabilator Position parameters to read as follows:

APPENDIX C TO PART 135.—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [3] read out
*	*	*	*	*
Collective. [4]	Full Range	±3%	2	1% [2]
Pedal Position [4]	Full Range	±3%	2	1% [2]
Lat. Cyclic [4]	Full Range	±3%	2	1% [2]
Long. Cyclic [4]	Full Range	±3%	2	1% [2]
Controllable Stabilator Position. [4]	Full Range	±3%	2	1% [2]

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft, the recording system, excluding these sensors (but including all other characteristics of the recording system), shall contribute no more than half of the values in this column.
[2] Per cent of full range.
[3] This column applies to aircraft manufactured after October 11, 1991.
[4] For all aircraft manufactured on or after [insert date 2 years from the effective date of the final rule], the sampling interval per second is 4.

35. Amend appendix E to part 135 by adding footnote 3 to the Pilot Input—Primary Controls (Collective, Longitudinal Cyclic, Lateral Cyclic, Pedal) parameter to read as follows:

APPENDIX E TO PART 135.—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [2] read out
*	*	*	*	*
Pilot Input—Primary Controls (Collective, Longitudinal Cyclic, Lateral Cyclic, Pedal). [3]	Full Range	±3%	2	0.5% [1]
*	*	*	*	*

[1] Percent of full range.
[2] This column applies to aircraft manufactured after October 11, 1991.
[3] For all aircraft manufactured on or after [insert date 2 years from the effective date of the final rule], the sampling interval per second is 4.

36. Amend appendix F to part 135 by revising the appendix heading and parameters 14a, 14b, 15, 16, 17, and (23); and by adding footnote 18 to parameters 12a through 17 and 88 to read as follows:

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
*	*	*	*	*	* *
12a. Pitch control(s) position (nonfly-by-wire systems).[18]	Full Range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range.	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch control(s) position (fly-by-wire systems).[18]	Full Range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range.	
13a. Lateral control position(s) (nonfly-by-wire).[18]	Full Range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range.	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
13b. Lateral control position(s) (fly-by-wire).[18]	Full Range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range.	
14a. Yaw control position(s) (nonfly-by-wire).[18]	Full Range	±2° unless higher accuracy uniquely required.	0.5	0.2% of full range.	For airplanes that have a flight control breakaway capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling of 0.5 or 0.25, as applicable.
14b. Yaw control position(s) (fly-by-wire).[18]	Full Range	±2° unless higher accuracy uniquely required.	0.5	0.2% of full range.	
15. Pitch control surface(s) position.[18]	Full Range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range.	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25, as applicable.
16. Lateral control surface(s) position.[18]	Full Range	±2° unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range.	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25, as applicable.
17. Yaw control surface(s) position.[18]	Full Range	±2° unless higher accuracy uniquely required.	0.5	0.2% of full range.	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5.

APPENDIX F TO PART 135.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
*	*	*	*	*	* *
23. Ground Spoiler Position or Speed Brake Selection	Full Range or Each Position (discrete).	±2° unless higher accuracy uniquely required.	1 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range.	
*	*	*	*	*	* *
88. All cockpit flight control input forces (control wheel, control column, rudder pedal).[18]	Full Range Control wheel ±70 lbs. Control column ±85 lbs. Rudder pedal ±165 lbs.	#5°	1	0.2% of full range.	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter. For airplanes that have a flight control breakaway capability that allows either pilot to operate the control independently, record both control force inputs. The control force inputs may be sampled alternately once per 2 seconds to produce the sampling interval of 1.

* * * * * * *

[18] For all aircraft manufactured on or after [insert date 2 years from the effective date of the final rule], the seconds per sampling interval is 0.0625.

Issued in Washington, DC, on February 22, 2005.

Ronald T. Wojnar,

Acting Director, Aircraft Certification Service.

[FR Doc. 05–3726 Filed 2–24–05; 8:45 am]

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Federal Register

Monday,
February 28, 2005

Part V

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–03]

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program; Fiscal Year 2005

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Revised 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. The primary uses of FMRs are 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. Today's notice revises the final FY2005 FMRs that were published on October 1, 2004, for a limited number of areas.

EFFECTIVE DATE: The FMRs published in this notice are effective February 28, 2005.

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 the HUD Web site, *http://www.huduser.org/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, a table of 40th percentile recent mover rents for the 39 areas with 50th percentile FMRs will be provided on the same website noted above. Any questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or further methodological explanations 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 TDD 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 by 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 Web site: *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.

HUD's regulations at 24 CFR 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 were published on October 1, 2004 (69 FR 59003), consistent with section 8(c)(1) of the USHA.

III. Final FY2005 FMRs, Published on October 1, 2004

HUD's final FY2005 FMRs were set at the 40th and 50th percentile and trended forward to April 2005 in accordance with HUD regulations. 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 data and new Office of Management and Budget (OMB) metropolitan area definitions and by insufficient time to evaluate and respond to the proposed changes. While HUD is required by statute to use the most recent available data in setting FMRs, HUD is not obligated to use the new OMB definitions. In the final FMR publication, the 2004 FMR area definitions were used to eliminate FMR differences resulting from geography changes. The FY2005 FMR schedules contained in the October 1, 2004, FMR notice are based on the 2000 Census and, when available, more current data, but were calculated for the same geographical areas used in preparing the FY2004 FMRs.

By September 7, 2004, HUD had received 370 public comments on the proposed FY2005 FMRs. Most of these comments opposed implementation of the proposed FMRs. The primary reason given was that the proposed FY2005 FMRs were significantly different from the FY2004 FMRs, and that additional time was needed to examine the proposed FMRs. Many commenters asked HUD to delay issuing FY2005 FMRs. HUD was obligated by statute to issue revised FMRs based on the most current available data by October 1, 2004, and did so, but allowed additional public comments to be submitted until November 2004.

IV. Revised Final FY2005 FMRs

The revised final FY2005 FMRs continue to be based on the same geographic areas as were used in the FY2004 FMRs. The only changes between the final FY2005 FMRs published on October 1, 2004, and the FMRs in this publication resulted from additional information submitted with public comments or resulting from HUD Random Digit Dialing (RDD) surveys. A total of 283 public comments submitted in the second public comment period that closed in November 2004 were reviewed. Most of the comments received lacked the data needed to support FMR changes. The comments received are discussed in more detail later in this notice.

V. FMR Methodology

A. Data Sources

The data sources used are explained in detail in the October 1, 2004, **Federal Register** FMR publication. Data from the 2000 Census were used to revise FMRs for most areas, which served to correct estimation errors that have accumulated since the 1990 Census data were used to revise FMRs. A number of the larger metropolitan areas also had American Housing Survey or RDD surveys conducted after the 2000 Census that were used in calculating FMRs. At HUD's request, the Census Bureau prepared a special extract of Census data that is a very close approximation of the unsuppressed data used in calculating FMRs that can be used to almost exactly replicate HUD's FMR calculations. This data set is located on HUD's HUDUSER Web site at: *http://www.huduser.org/datasets/fmr/CensusRentData/index.html.*

B. Large Bedroom Rents

A number of concerns about FMR reductions for large bedroom FMRs were noted in public comments. The changes made were the result of changes in rent relationship patterns shown by the 2000 Census. Relative to two-bedroom FMRs, a large number of efficiency and one-bedroom rents increased while many three-bedroom and large unit FMRs decreased. A majority of three-plus bedroom FMRs increased in FY2005, but there were an unusual number of decreases that were related to the Census rebenchmarking process that occurs every 10 years.

FMR estimates are calculated for two-bedroom units. This is the most common size of rental units, and therefore the most reliable to survey and analyze. After each decennial Census, rent relationships between two-bedroom units and other unit sizes are calculated and used to set FMRs for other units. This is done because it is much easier to update two-bedroom estimates and to use pre-established cost relationships with other bedroom sizes than it is to develop independent FMR estimates for each bedroom size.

For the past several years, bedroom ratios have been based on 1990 Census data. The FY2005 FMRs were the first to make use of 2000 Census data to more correctly reflect market rent differentials between units with differing numbers of bedrooms. The 2000 Census data were analyzed in essentially the same way as the 1990 Census data to determine the bedroom ratio outliers. The one major difference in this analysis was that HUD had unrestricted access to the 2000 Census data, which permitted it to more precisely calculate bedroom ratios. The analysis showed significant changes in bedroom ratios over the decade and permitted more accurate estimates of bedroom rent interval differences. Median efficiency rents increased 9 percent relative to the two-bedroom ratios. One-bedroom rents also increased relative to two-bedroom rents. Median four-bedroom rents, however, fell 9 percent over the decade relative to two-bedroom rents and median three-bedroom rent ratios also decreased. These changes were at least partly associated with the relatively large number of new, higher rent one- and two-bedroom units built during the 1990's.

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 bonuses of 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. 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: 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 0.89 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 3 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 due to insufficient sample sizes. The areas covered by this new estimation method have less than 33 two-bedroom Census sample observations.

C. FMR Updates to 2000 Census

After 2000 Census FMR 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 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 3 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.

D. Additional RDD Surveys and Other Data

RDDs covering 23 additional areas were conducted by HUD in the September-November 2004 period and completed in time for use in this publication. Supplemental surveys were conducted for the portions of the three metropolitan areas where RDDs were conducted in August 2004 and implemented in the October 1, 2004, FMR publication to cover portions of these metropolitan areas not covered in the initial surveys. The first column of the following table identifies the RDD survey area. The second column shows the final FY2005 FMR as published on October 1, 2004. The third column shows the October 2004 or November 2004 RDD results, trended to the middle of FY2005. A change in FMR estimates is shown only if the RDD result shows a statistically significant difference from the FMR estimate published on October 1, 2004. 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 Sept.–Nov. RDD	FY2005 FMR with RDD	RDD result
Albany-Schenectady-Troy, NY	679	679	No Change.
Albuquerque, NM	699	699	No Change.
Atlanta, GA	928	834	Decrease.
Bergen-Passaic, NJ	1132	1132	No Change.
Boston, MA	1266	1266	No Change.
Cincinnati, OH–KY–IN	706	652	Decrease.
Columbus, OH	675	640	Decrease.
Dayton-Springfield, OH	595	595	No Change.
Denver, CO	973	888	Decrease.
Detroit, MI	805	805	No Change.
Honolulu, HI	955	1087	Increase.
Houston, TX	801	733	Decrease.
Kauai County, HI	831	1061	Increase.
Louisville, KY–IN	597	553	Decrease.
Maui County, HI	899	1149	Increase.
McAllen-Edinburg-Mission, TX	480	593	Increase.
Nashville, TN	697	654	Decrease.
Newark, NJ	1020	1020	No Change.
New York, NY	1018	1075	Increase.
Omaha, NE	650	650	No Change.
Philadelphia, PA	962	914	Decrease.
Salt Lake City, UT	747	682	Decrease.
Springfield, MA	732	772	Increase.
Tulsa, OK	640	640	No Change.
Tuscon, AZ	712	673	Decrease.
Washington, DC	1187	1187	No Change.

HUD is directed by statute to use the most recent data available in its FMR publications. These RDD survey results are being implemented in the revised final FY2005 FMR publication consistent with that requirement.

The new and old OMB geographic definitions of the Boston, Detroit, and Washington D.C. metropolitan areas contained measurable differences, although the bulk of the old definitions were still contained in the new definitions. The surveys conducted in August 2004 were based on the new definitions. When the decision to revert to the old definitions was made, revised FMR estimates were made by multiplying the new definition FMR estimate by the 2000 Census 40th percentile new-to-old definition rent ratio (e.g., if the median rent for the old definition was 3 percent higher than the rent using the new definition, the survey result was adjusted by increasing it by 3 percent). Rent relationships among different parts of metropolitan areas tend to be very stable in the short-term and medium-term, so this approach should normally be reliable. In response to concerns, however, HUD conducted full surveys of the old definition area parts not included in the initial surveys. The results of the original and supplemental samples were then merged using 2000 Census sampling weights. Counties or county parts were added or deleted to provide an aggregate sample based on the old OMB definition. Because two surveys were used to cover different parts of the old metropolitan area definition, the combined survey coverage had larger samples and more statistically reliable estimates than normally sought. None of the resulting estimates resulted in a change in the FMR estimates because they were not sufficiently different. To the extent there were differences, the revised estimates for Boston, Detroit, and Washington were somewhat lower than the FMR estimates published on October 1, 2004, but not by enough to trigger changes.

HUD also reviewed surveys and data supplied by housing authorities as part of the public comment process. The results are shown on the following table:

Area definition	Two-bedroom FY2005 FMRs		Revised FMR change
	10/1/2004 final FMRs	Revised final FMRs	
Cheyenne, WY	536	592	RDD Increase.
Cleveland County, NC	523	578	RDD Increase.
Columbia, MD	988	1242	Census-Based Increase.

Area definition	Two-bedroom FY2005 FMRs		Revised FMR change
	10/1/2004 final FMRs	Revised final FMRs	
Dover, DE	616	663	RDD Increase.
Drew County, AR	413	506	Survey Based Increase.
Fargo, ND	523	551	RDD Increase.
Hawaii County, HI	691	818	RDD Increase.
Maui County, HI	899	1149	RDD Increase.*
McDowell County, NC	490	541	RDD Increase.
Polk County, NC	504	557	RDD Increase.
Rutherford County, NC	492	544	RDD Increase.
San Jose, CA	1313	1313**	3+ Bedroom Survey Increase.
Stevens Co., MN	488	488**	1 & 4 Bedroom FMR Increases.
Sussex County, DE	572	617	RDD Increase.

* The survey conducted by local authorities showed an increase, but the HUD RDD survey had a larger sample, was more statistically reliable, and showed a larger increase.

** The FMR changes for these areas related to specific bedroom sizes and do not affect the two-bedroom FMR.

The results of locally funded RDD surveys for Cheyenne, WY, Fargo, ND, and Hawaii County, HI, justified FMR increases. Columbia, MD submitted extensive data, but these data were not statistically reflective of the overall rental inventory. An increase in Columbia's FMRs was justified, however, based on an analysis of area-specific Census data that was not available when FY2005 FMRs were initially determined. HUD accepted the RDD results for Hawaii County, HI, but had concerns about the survey results presented for Maui County. HUD's own survey of Maui had a much larger sample and produced a higher FMR result that is contained in this publication. At the request of Polk County, NC, a 2001 multi-county RDD was re-evaluated using 2000 Census bedroom relationships, which resulted in FMR increases for most bedroom sizes. Santa Clara County, CA, submitted data on three- and four-bedroom rents that supported increases for their FMRs, and Stevens County, MN, submitted data on one- and four-bedroom rentals that supported increases.

VI. Public Comments

An additional 283 comments were received during the September 7th through mid-November 2004 period. Nearly all comments can be summarized into six categories:

1. Over one-fourth of these comments, most originated before October 1, 2004, expressed concern about the use of the new OMB geographic definitions. These were addressed in the October 1, 2004, FMR publication, which published FMRs using the FY2004 FMR definitions.

2. A number of requests were made to permit continued use of the FY2004 FMRs when they were higher than the FY2005 FMRs. HUD did not honor this request, because it is inconsistent with the statutory requirement to use the most current available data in calculating FMRs. In addition, the proposed policy would unfairly hurt the majority of FMR areas with FY2005 increases, since it would eventually change the pro-rating of funding to disproportionately favor areas that data show should receive lower FMRs.

3. Numerous complaints were received about three-plus bedroom FMR reductions. As noted in the FMR Methodology section of this notice, the majority of large unit FMRs had increases as a result of using 2000 Census data and any decreases are based on local market data from the 2000 Census that HUD has made publicly available.

4. A number of requests were made to conduct RDD surveys in areas with FY2005 FMR decreases. HUD has conducted surveys in the largest of these areas, but funding for this purpose is limited.

5. Complaints were received that HUD's current exception rent policy makes it very difficult to obtain exception rent approvals for submarkets that 2000 Census and other data show have much higher rents than the FMR area-wide rents, and that this is adversely affecting program viability and de-concentration objectives. HUD will consider these comments, but the exception rent policy is not within the scope of this notice.

6. Complaints were made about FMR reductions and inconsistencies due to eliminating state non-metropolitan FMR minimums. Prior to FY2005, HUD set minimum state nonmetro FMRs based on state-wide nonmetro 40th percentile rents. One complaint was that the unusually low FMRs in some counties reflect housing quality issues that are not addressed by the current policy. The other and sometimes related complaint was from areas where there were sufficient census data to calculate FMRs, and where lower cost, adjacent counties were assigned higher county group FMRs. HUD will review this policy but no change is being made at this time.

Form letters were received from Atlanta, Georgia, requesting that additional excise or liquor taxes be used to increase funding for programs for the poor. Tax and funding issues are not determined in a FMR **Federal Register** notice, and no response is provided. Another form letter campaign from Connecticut complained about low FMRs for 2-bedroom, 3-bedroom and 4-bedroom units throughout the state. No data in support of higher FMRs for these bedroom sizes was provided and no changes were made.

Some requests were received that were at odds with the requirement that HUD must use the most current data available in setting FMRs. Commenters from Vermont asked HUD to use the 2000 RDDs conducted in place of the 2000 Census data. Since both sets of data are from 2000, the Census data must be used because it is based on a greater number of observations, making it more statistically reliable.

Numerous comments were received from Puerto Rico, where RDD surveys were delayed at the request of the local housing agency to give it additional time to review the survey instrument and consider alternatives. The request for higher FMRs was a common theme. Some comments requested RDD surveys for all of Puerto Rico, but others argued that RDD survey results would not be valid because of incomplete telephone coverage and unusual housing quality issues. A suggestion was received that Puerto Rico's FMRs be set using construction costs, but this approach appears inconsistent with statutory and regulatory provisions. One comment

argued that Puerto Rico's housing markets are unlike those of the United States, because most renters live in single-family homes. This, however, is also true for most rental markets in the United States. Until surveys are completed, Puerto Rico will be permitted to continue to use its FY2004 FMRs.

The Council of Large Public Housing Authorities (CLPHA) commented that the HUD method of calculating FMRs is overcomplicated and requested that large PHAs be allowed to set their own FMRs, which would require a statutory change. It also requested that more reliable data sources, such as the American Community Survey (ACS), be used to set FMRs. HUD agrees that the ACS is of enormous potential value in improving FMR estimates, because it will eventually provide decennial-census-quality data on an annual basis. HUD plans to start using ACS data in producing FY2006 FMRs, but full ACS sample data will not be available until near the start of FY2007.

CLPHA also complained about HUD's use of new OMB definitions in conducting RDD surveys, and that use of these definitions had damaging results for many PHAs. The comments received correctly note that HUD completed 24 RDD surveys prior to the final FY2005 FMR publication, that 11 of the surveys resulted in FMR decreases, and that the new Office of Management and Budget metropolitan area definitions had been used in defining survey areas. No concerns were raised about RDD-based FMR increases, although the same estimation procedures were used. The comments failed to note that surveys for five of the 11 areas covered 100 percent of the respective final FY2005 FMR areas (Baltimore, Detroit, Orange County, San Francisco, and Seattle), that another four surveys covered 97–99 percent of the renters in the final FY2005 FMR areas (Chicago, Fort Worth, Kansas City, and San Jose), and that eliminating the few cases not within the old FMR area definition did not measurably change the published FMR estimate. Only three of the initial 24 survey areas had significant metropolitan area definition differences (Boston, Detroit, and Washington). As previously noted, additional surveys were conducted for the three metropolitan areas where there was a more than 3 percent difference between the old and new metropolitan area definitions. In each instance, the supplemental surveys resulted in larger than usual samples and provided estimates that were slightly lower than those published on October 1, 2004, but still within the statistical confidence intervals of the published estimates.

CLPHA also expressed concerns with sample bias associated with telephone surveys due to increased use of cell phones. Call screening is also of concern to HUD. Changes in phone utilization may bias outcomes, but what research is available suggests that the bias is still very small for most surveys. It is also unclear if the bias has the effect of increasing or decreasing FMRs. HUD is sensitive to this concern. In large metropolitan areas where extensive data are available on large apartment complex rents, HUD compares the results of the RDD and apartment complex surveys. Research indicates that typical apartment complex rents differ both in amounts and rent changes from the overall rental market, but they nonetheless provide a means of confirming whether there were any recent, significant changes in rent levels. The difficulty HUD faces is that, until ACS data become fully available, RDD surveys offer the only currently available, cost-feasible, and validated means of obtaining statistically reliable rent estimates for most areas.

VII. 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.

One comment was received, for Adams County, CO, but the survey included was not valid since it only covered a small portion of the manufactured home spaces in the metropolitan area of Denver, CO. All approved exceptions to these rents that were in effect in FY2004 were updated to 2005 using the same data used to estimate the Housing Choice Voucher program FMRs. 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. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

VIII. HUD Rental Housing Survey Guides

HUD recommends the use of professionally-conducted RDD telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $20,000–$30,000. Areas with 500 or more program units usually meet this criterion, and areas with fewer units may meet it if local rents are thought to be significantly different than the FMR proposed by HUD. In addition, HUD has developed a simplified version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations.

PHAs in nonmetropolitan areas may, in certain circumstances, do surveys of groups of counties; all county-group surveys have to 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 should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single-family, duplex and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means of verification for determining whether the sample is representative of the FMR area's rental housing stock. All survey results must be fully documented.

A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations HUD is prepared to relax normal sample size requirements.

Accordingly, the FMR Schedules, which will not be codified in 24 CFR part 888, are amended as follows:

Dated: February 8, 2005.

Dennis C. Shea,

Assistant Secretary for Policy Development and Research.

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 geographical 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 County, Grundy County, and Kendall County, IL
Cincinnati-Hamilton, OH-KY-IN—Brown County, OH; Gallatin County, Grant County, and Pendleton County, KY; and Ohio County, IN
Dallas, TX—Henderson County, TX
Flagstaff, AZ-UT—Kane County, UT
New Orleans, LA—St. James Parish, LA
Washington, DC-MD-VA-WV—Berkeley County and Jefferson County, WV; and Clarke County, Culpeper County, King George County, and Warren County, VA

c. *Nonmetropolitan Area FMRs*—FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states and for FMR areas in Puerto Rico, the Virgin Islands and the Pacific Islands.

d. *Virginia Independent Cities*—FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan County. The full definitions of these areas, including the independent cities, are as follows:

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED WITH COUNTY

County	Cities
Allegheny	Clifton Falls, Covington.
Augusta	Staunton and Waynesboro.
Carroll	Galax.
Frederick	Winchester.
Greensville	Emporia.
Henry	Martinsville.
Montgomery	Radford.
Rockbridge	Buena Vista and Lexington.

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED WITH COUNTY—Continued

County	Cities
Rockingham	Harrisonburg.
Southhampton	Franklin.
Wise	Norton.

2. Bedroom Size Adjustments

Schedule B shows the FMRs for 0-bedroom through 4-bedroom units. The FMRs for unit sizes larger than 4 bedrooms are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the 0-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by state.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

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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

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 2

ALASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Denali	550	679	848	1191	1341
Fairbanks North Star	522	628	803	1163	1228
Juneau	665	815	1025	1385	1726
Ketchikan Gateway	587	749	900	1311	1580
Lake and Peninsula	639	741	939	1161	1196
Nome	640	839	963	1162	1197
Northwest Arctic	639	741	939	1161	1196
Sitka	625	721	860	1253	1509
Southeast Fairbanks	550	679	848	1191	1341
Wade Hampton	639	741	939	1161	1196
Yakutat	639	741	939	1161	1196

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Dillingham	639	741	939	1161	1196
Haines	550	679	848	1191	1341
Kenai Peninsula	492	562	684	937	1201
Kodiak Island	628	735	967	1390	1471
Matanuska-Susitna	515	600	765	1088	1321
North Slope	672	786	1033	1235	1272
Prince of Wales-Outer Ketch	639	741	939	1161	1196
Skagway-Hoonah-Angoon	639	741	939	1161	1196
Valdez-Cordova	550	679	848	1191	1341
Wrangell-Petersburg	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	446	524	673	969	1024	Pima
Yuma, AZ MSA	461	544	650	922	1130	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	337	413	488	677	858
Gila	433	507	667	916	943
Greenlee	412	458	575	790	894
Navajo	404	432	570	768	910
Yavapai	534	551	696	1014	1045

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cochise	397	460	577	797	979
Graham	451	486	544	752	865
La Paz	461	462	554	784	807
Santa Cruz	475	476	603	879	905

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
Arkansas	319	336	418	607	624
Baxter	341	396	479	644	812
Bradley	320	325	430	533	565
Carroll	389	390	468	590	822
Clark	353	358	461	594	612
Cleburne	402	403	483	662	850

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashley	345	357	469	562	618
Boone	375	376	452	579	650
Calhoun	278	386	430	548	697
Chicot	320	325	430	533	565
Clay	301	303	374	479	510
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	328	421	506	636	887
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	1889	2068	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

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 4

CALIFORNIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Santa Rosa, CA PMSA	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	615	701	888	1261	1472	Adams, Arapahoe, Broomfield, 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

COLORADO 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
Jackson	492	607	674	869	934	Kiowa	397	410	499	654	804
Kit Carson	397	410	499	654	804	Lake	590	746	901	1122	1581
La Plata	517	631	722	1013	1153	Las Animas	355	471	522	673	695
Lincoln	397	410	499	654	804	Logan	405	406	517	673	779
Mineral	590	746	901	1122	1581	Moffat	380	415	521	683	915
Montezuma	413	483	558	666	890	Montrose	398	522	605	803	995
Morgan	449	486	542	722	872	Otero	355	375	455	630	649
Ouray	590	746	901	1122	1581	Park	533	622	819	979	1042
Phillips	397	410	499	654	804	Pitkin	825	964	1269	1763	2228
Prowers	345	405	450	610	791	Rio Blanco	492	607	674	869	934
Rio Grande	351	412	459	666	686	Routt	609	721	937	1121	1645
Saguache	351	412	459	655	673	San Juan	468	555	642	850	1097
San Miguel	636	763	975	1422	1464	Sedgwick	397	410	499	654	804
Summit	684	804	1051	1497	1844	Teller	543	635	835	1216	1465
Washington	397	410	499	654	804	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

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CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Middlesex county towns of Cromwell town, Durham town, East Haddam town, 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,

CONNECTICUT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
New London	566	675	779	954	1034	Westbrook town Lyme town, Voluntown town
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	550	599	663	867	1164	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	510	555	617	844	869

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

FLORIDA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	266	368	409	598	614
Calhoun	385	386	462	582	664
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
Bradford	299	415	460	570	588
Citrus	413	449	497	721	868
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	691	750	834	1034	1164	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

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

GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Dawson	544	590	655	909	937
Dodge	292	293	370	495	509
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

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Decatur	329	383	504	603	670
Dooly	354	366	426	537	725
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

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 10

GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Worth	327	355	394	535	613

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	760	891	1087	1577	1765	Honolulu

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	607	729	818	1153	1264
Maui	892	988	1149	1537	1647
Kauai	715	805	1061	1332	1449

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

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 11

ILLINOIS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*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
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

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 12

ILLINOIS 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
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	424	497	652	903	938	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	400	466	553	789	826	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

INDIANA 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
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						

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

IOWA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Louisa	374	418	517	669	708
Lyon	300	342	451	549	648
Mahaska	360	408	520	623	822
Marshall	372	431	538	692	794
Mitchell	327	359	453	579	607
Monroe	332	370	486	593	663
Muscatine	372	459	571	703	758
Osceola	300	342	451	549	648
Palo Alto	300	342	451	549	648
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
Lucas	332	370	486	593	663
Madison	366	427	562	702	723
Marion	363	446	557	688	708
Mills	363	443	557	683	735
Monona	334	343	447	588	615
Montgomery	363	443	557	683	735
O'Brien	300	342	451	549	648
Page	314	370	486	580	597
Plymouth	392	393	473	637	656
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

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

KANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Greenwood	316	361	474	591	609	Hamilton	420	424	516	628	689
Harper	280	329	431	561	662	Haskell	420	424	516	628	689
Hodgeman	420	424	516	628	689	Jackson	382	425	523	762	918
Jefferson	382	425	521	759	915	Jewell	370	384	486	638	659
Kearny	420	424	516	628	689	Kingman	280	329	431	561	662
Kiowa	280	329	431	561	662	Labette	284	340	437	592	609
Lane	420	424	516	628	689	Lincoln	370	384	486	638	659
Linn	324	360	448	577	628	Logan	340	345	454	581	598
Lyon	314	367	482	644	762	McPherson	401	402	482	631	649
Marion	316	361	474	591	609	Marshall	377	414	509	653	804
Meade	420	424	516	628	689	Mitchell	370	384	486	638	659
Montgomery	333	372	465	572	712	Morris	377	414	509	653	804
Morton	420	424	516	628	689	Nemaha	382	425	521	759	915
Neosho	287	345	443	527	775	Ness	420	424	516	628	689
Norton	340	345	454	581	598	Osage	316	361	474	591	609
Osborne	340	345	454	581	598	Ottawa	370	384	486	638	659
Pawnee	280	329	431	561	662	Phillips	340	345	454	581	598
Pottawatomie	329	455	505	643	741	Pratt	282	330	433	561	662
Rawlins	340	345	454	581	598	Reno	346	385	505	692	712
Republic	370	384	486	638	659	Rice	351	383	485	643	663
Riley	396	428	531	773	932	Rooks	340	345	454	581	598
Rush	280	329	431	561	662	Russell	340	345	454	581	598
Saline	401	403	530	706	727	Scott	420	424	516	628	689
Seward	364	448	518	636	771	Sheridan	340	345	454	581	598
Sherman	340	351	462	580	598	Smith	340	345	454	581	598
Stafford	280	329	431	561	662	Stanton	420	424	516	628	689
Stevens	420	424	516	628	689	Sumner	312	367	482	649	755
Thomas	340	347	457	581	598	Trego	340	345	454	581	598
Wabaunsee	316	361	474	591	609	Wallace	340	345	454	581	598
Washington	370	384	486	638	659	Wichita	420	424	516	628	689
Wilson	324	360	449	577	628	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	424	497	652	903	938	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	400	466	553	789	826	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	342	383	504	712	746	Daviess
Pendleton County MSA**	420	508	645	773	905	Pendleton

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 16

KENTUCKY continued

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
Carlisle	342	378	466	597	673
Casey	295	327	389	474	529
Clinton	295	327	389	474	529
Cumberland	295	327	389	474	529
Elliott	368	369	444	563	667
Fleming	327	354	437	547	565
Franklin	413	438	576	781	803
Garrard	353	395	474	566	830
Grayson	336	337	404	527	618
Hancock	372	373	449	554	571
Harlan	303	326	366	450	569
Hart	297	324	399	509	593
Hickman	342	378	466	597	673
Jackson	325	342	392	474	488
Knott	297	312	358	435	465
Larue	342	344	442	591	609
Lawrence	267	312	412	550	567
Leslie	297	312	358	435	465
Lewis	327	354	437	547	565
Livingston	323	324	389	508	577
Lyon	407	414	491	637	656
McCreary	291	314	350	451	463
Magoffin	334	337	402	495	509
Marshall	374	375	452	589	766
Mason	281	359	434	633	727
Menifee	327	354	437	547	565
Metcalfe	297	324	399	509	593
Montgomery	336	392	517	617	636
Muhlenberg	315	316	382	485	498
Nicholas	427	428	560	686	721
Owen	458	524	596	813	1045
Perry	322	339	388	464	569
Powell	317	400	489	585	603
Robertson	327	354	437	547	565
Rowan	369	409	455	571	589
Shelby	466	467	564	742	764
Spencer	409	429	537	675	733
Todd	407	414	491	637	656

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
Carroll	411	412	512	677	735
Clay	215	298	332	396	408
Crittenden	323	324	389	508	577
Edmonson	297	324	399	509	593
Estill	323	324	389	497	655
Floyd	306	343	404	530	611
Fulton	342	378	466	597	673
Graves	335	336	417	498	607
Green	295	327	392	474	529
Hardin	368	395	476	694	828
Harrison	359	361	472	619	639
Henry	409	429	537	675	733
Hopkins	343	344	414	519	726
Johnson	245	320	376	513	527
Knox	232	280	354	499	516
Laurel	346	375	417	512	700
Lee	297	312	358	435	465
Letcher	297	312	358	445	465
Lincoln	301	412	457	547	723
Logan	370	402	447	612	678
McCracken	313	394	484	649	669
McLean	343	378	499	706	731
Marion	342	344	442	591	609
Martin	334	337	402	495	509
Meade	388	389	466	598	670
Mercer	379	404	458	603	710
Monroe	297	324	399	509	593
Morgan	327	354	437	547	565
Nelson	333	402	486	708	766
Ohio	317	337	384	509	559
Owsley	297	312	358	435	465
Pike	353	354	426	511	526
Pulaski	292	323	411	507	537
Rockcastle	325	342	392	474	488
Russell	295	327	389	474	529
Simpson	374	439	577	717	739
Taylor	264	361	401	517	679
Trigg	407	414	491	637	656

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
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,

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 18

MAINE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						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, 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,

SCHEDULE B - 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
						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, 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,

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 20

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						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, 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,

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						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, 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,

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
York	505	524	667	798	871	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 Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

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**	1030	1071	1242	1688	1966	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
Caroline	467	483	565	764	785
Garrett	294	364	452	583	773
St. Mary's	591	614	799	1050	1382
Talbot	549	550	662	896	946
Worcester	503	523	606	885	942
Dorchester	352	423	539	727	748
Kent	526	527	634	778	1044
Somerset	412	438	516	639	839
Wicomico	420	532	640	814	873

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,

SCHEDULE B - 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
						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, 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,

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 24

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						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, 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	509	609	772	923	1062	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,

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						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, 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

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 26

MICHIGAN continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
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
Barry	360	454	555	800	880	Benzie	532	533	646	807	830
Branch	412	440	579	694	714	Cass	402	459	508	673	782
Charlevoix	451	488	541	778	803	Cheboygan	348	404	499	670	704
Chippewa	329	409	505	612	686	Clare	346	359	472	636	655
Crawford	348	404	504	665	704	Delta	314	374	453	596	632
Dickinson	306	372	471	568	774	Emmet	378	466	580	782	827
Gladwin	369	389	464	621	687	Gogebic	312	373	452	553	657
Grand Traverse	544	545	683	894	922	Gratiot	408	409	489	652	728
Hillsdale	348	428	510	717	784	Houghton	322	377	453	589	675
Huron	365	367	439	582	707	Ionia	384	445	543	650	722
Iosco	369	391	452	657	682	Iron	312	373	452	553	657
Isabella	404	437	487	701	765	Kalkaska	427	464	515	625	645
Keweenaw	312	373	452	553	657	Lake	377	412	492	644	775
Leelanau	532	533	646	807	830	Luce	321	392	465	610	665
Mackinac	329	409	506	610	665	Manistee	396	410	538	644	722
Marquette	297	385	458	576	626	Mason	303	356	466	610	670
Mecosta	363	432	523	695	917	Menominee	359	360	432	570	760
Missaukee	382	459	541	711	781	Montcalm	383	444	508	686	707
Montmorency	348	404	505	665	704	Newaygo	423	447	510	690	710
Oceana	359	416	496	600	640	Ogemaw	369	388	480	620	686
Ontonagon	312	373	452	553	657	Osceola	380	381	458	627	790
Oscoda	348	403	493	664	703	Otsego	406	474	624	748	786
Presque Isle	348	403	493	664	703	Roscommon	391	393	471	612	753
St. Joseph	410	457	539	665	746	Sanilac	408	440	490	690	709
Schoolcraft	321	392	465	610	665	Shiawassee	355	437	544	749	835
Tuscola	358	409	519	623	745	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	365	433	551	795	919	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

MINNESOTA continued

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
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	398	488	588	800
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
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
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

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 28

MISSISSIPPI continued

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
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
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
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

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 29

MISSOURI continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*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

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	327	380	501	658	727	Atchison	360	361	449	559	692
Audrain	367	368	443	559	710	Barry	285	359	437	570	589
Barton	271	342	417	505	554	Bates	298	351	458	643	664
Benton	282	336	434	602	621	Bollinger	328	372	489	625	723
Butler	343	344	415	575	615	Caldwell	360	361	449	559	692
Callaway	385	389	492	672	692	Camden	414	420	516	752	773
Cape Girardeau	336	391	516	667	840	Carroll	354	387	500	627	700
Carter	334	335	403	560	602	Cedar	282	336	434	602	621
Chariton	354	387	500	627	700	Clark	326	336	443	548	646
Cole	349	387	502	730	852	Cooper	360	380	494	659	767
Crawford	283	359	435	579	763	Dade	348	364	474	616	663
Dallas	264	343	406	554	572	Daviess	360	361	449	559	692
DeKalb	360	361	452	559	692	Dent	322	350	430	567	721
Douglas	288	323	390	516	598	Dunklin	307	334	396	506	565
Gasconade	321	349	452	566	720	Gentry	360	361	449	559	692
Grundy	360	361	449	559	692	Harrison	360	361	449	559	692
Henry	327	380	501	601	619	Hickory	282	336	434	602	621
Holt	360	361	449	559	692	Howard	360	380	486	659	767
Howell	298	342	433	537	760	Iron	328	372	489	625	723
Johnson	398	424	514	687	773	Knox	326	336	443	548	646
Laclede	360	361	439	574	753	Lawrence	372	373	449	611	705
Lewis	326	336	443	548	646	Linn	326	336	443	548	646
Livingston	348	349	443	592	775	McDonald	339	340	426	606	626
Macon	329	330	407	487	524	Madison	328	372	489	625	723
Maries	322	350	430	567	721	Marion	298	347	458	596	613
Mercer	360	361	449	559	692	Miller	359	360	430	574	598
Mississippi	298	324	425	561	647	Moniteau	298	348	459	555	740
Monroe	298	348	459	590	607	Montgomery	298	348	459	590	607
Morgan	383	384	461	626	729	New Madrid	294	338	413	551	567
Nodaway	401	402	500	598	698	Oregon	288	323	390	516	598
Osage	322	350	430	567	721	Ozark	288	323	390	516	598
Pemiscot	279	327	428	538	554	Perry	337	367	481	576	846
Pettis	396	397	514	641	768	Phelps	336	362	454	628	773
Pike	294	344	453	593	648	Polk	283	331	435	634	727
Pulaski	388	419	466	677	741	Putnam	326	336	443	548	646
Ralls	298	348	459	590	607	Randolph	306	360	471	597	614
Reynolds	334	335	403	560	602	Ripley	334	335	403	560	602
St. Clair	282	336	434	602	621	Ste. Genevieve	328	372	489	625	723
St. Francois	393	395	475	663	690	Saline	300	351	462	599	703
Schuyler	326	336	443	548	646	Scotland	326	336	443	548	646

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 30

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
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
Wayne	334	335	403	560	602
Wright	294	308	401	506	521
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
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

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	341	398	524	663	682	Antelope	404	405	486	609	629
Arthur	349	403	462	610	629	Banner	339	344	453	588	705
Blaine	409	410	492	608	709	Boone	404	405	486	609	629
Box Butte	339	344	453	593	705	Boyd	339	344	453	588	705
Brown	339	344	453	588	705	Buffalo	370	433	570	775	901
Burt	404	405	486	609	629	Butler	391	392	471	597	626
Cedar	404	405	486	609	629	Chase	349	403	462	610	629
Cherry	339	344	453	588	705	Cheyenne	339	344	453	588	705
Clay	344	403	530	678	787	Colfax	404	405	486	609	629
Cuming	404	405	486	609	629	Custer	409	410	492	608	709
Dawes	310	365	479	574	713	Dawson	423	459	511	622	641
Deuel	339	344	453	588	705	Dixon	404	405	486	609	629
Dodge	388	455	598	714	872	Dundy	349	403	462	610	629
Fillmore	391	392	471	597	626	Franklin	344	403	530	678	787
Frontier	349	403	462	610	629	Furnas	349	403	462	610	629
Gage	408	409	491	599	617	Garden	339	344	453	588	705
Garfield	409	410	492	608	709	Gosper	349	403	462	610	629
Grant	349	403	462	610	629	Greeley	409	410	492	608	709
Hall	414	415	520	650	841	Hamilton	409	410	492	608	709
Harlan	344	403	530	678	787	Hayes	349	403	462	610	629
Hitchcock	349	403	462	610	629	Holt	339	344	453	588	705
Hooker	349	403	462	610	629	Howard	409	410	492	608	709
Jefferson	391	392	471	597	626	Johnson	391	392	471	597	626
Kearney	344	403	530	678	787	Keith	349	403	462	610	629
Keya Paha	339	344	453	588	705	Kimball	339	344	453	588	705
Knox	404	405	486	609	629	Lincoln	358	403	513	629	792
Logan	349	403	462	610	629	Loup	409	410	492	608	709
McPherson	349	403	462	610	629	Madison	362	382	502	684	706
Merrick	409	410	492	608	709	Morrill	339	344	453	588	705
Nance	404	405	486	609	629	Nemaha	391	392	471	597	626
Nuckolls	344	403	530	678	787	Otoe	399	401	481	596	625
Pawnee	391	392	471	597	626	Perkins	349	403	462	610	629
Phelps	344	403	530	678	787	Pierce	404	405	486	609	629
Platte	401	402	482	703	724	Polk	391	392	471	597	626
Red Willow	293	382	424	617	636	Richardson	391	392	471	597	626
Rock	339	344	453	588	705	Saline	433	457	522	638	659
Saunders	471	473	568	828	853	Scotts Bluff	406	407	489	623	822
Seward	307	379	474	630	799	Sheridan	339	344	453	588	705
Sherman	409	410	492	608	709	Sioux	339	344	453	588	705
Stanton	404	405	486	609	629	Thayer	391	392	471	597	626

NEBRASKA 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
Thomas	349	403	462	610	629	Thurston	404	405	486	609	629
Valley	409	410	492	608	709	Wayne	404	405	486	609	629
Webster	344	403	530	678	787	Wheeler	409	410	492	608	709
York	346	409	535	649	780						

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,

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 33

NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						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

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,

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 34

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						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, 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	663	761	914	1095	1328	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

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	320	360	427	621	640	Chaves	352	353	451	590	608
Cibola	333	359	400	581	631	Colfax	390	417	469	592	616
Curry	367	380	441	597	776	De Baca	365	376	439	592	721
Eddy	283	361	424	569	691	Grant	353	409	465	655	674
Guadalupe	431	437	520	653	681	Harding	365	376	439	592	721
Hidalgo	320	360	427	621	640	Lea	342	372	413	543	572
Lincoln	343	432	526	662	924	Luna	317	344	382	487	585
McKinley	348	409	538	643	833	Mora	431	437	520	653	681
Otero	334	395	437	639	769	Quay	365	376	439	592	721
Rio Arriba	393	400	473	612	679	Roosevelt	339	348	409	567	701
San Juan	419	443	534	706	796	San Miguel	369	398	490	651	756
Sierra	284	353	438	640	770	Socorro	362	363	435	521	738
Taos	523	568	629	753	776	Torrance	320	360	427	621	640
Union	365	376	439	592	721						

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	893	966	1075	1322	1360	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	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	422	424	508	633	778	Cattaraugus	428	429	516	678	778
Chenango	431	434	520	655	913	Clinton	486	488	585	743	966
Columbia	532	543	640	773	824	Cortland	464	465	568	722	886
Delaware	436	438	525	649	854	Essex	458	459	551	733	797
Franklin	420	421	503	646	715	Fulton	359	438	554	663	704

NEW YORK 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
Greene	459	496	604	785	808	Hamilton	462	463	556	693	803
Jefferson	479	480	577	744	781	Lewis	426	428	513	642	716
Otsego	452	463	544	723	752	St. Lawrence	427	428	515	652	712
Schuyler	464	466	559	745	769	Seneca	492	493	591	778	984
Steuben	455	456	548	703	776	Sullivan	468	519	666	797	934
Tompkins	585	602	705	853	885	Ulster	566	614	735	931	1157
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	480	481	578	761	855
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	351	419	541	668	687	Macon	369	401	517	628	907
Martin	363	385	437	566	582	Mitchell	374	462	546	653	771

NORTH CAROLINA 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
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	453	454	557	696	718	Richmond	328	411	456	573	591
Robeson	335	405	470	564	628	Rockingham	398	421	499	620	639
Rutherford	443	445	544	651	671	Sampson	340	347	409	568	720
Scotland	403	404	512	622	775	Stanly	379	409	500	681	741
Surry	333	401	446	596	613	Swain	396	398	477	626	729
Transylvania	320	445	493	622	656	Tyrrell	360	469	554	752	772
Vance	403	404	486	582	600	Warren	412	413	495	605	622
Washington	339	457	521	625	642	Watauga	404	494	621	755	975
Wilkes	334	382	456	585	609	Wilson	459	460	558	668	708
Yancey	367	368	443	529	545						

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	365	433	551	795	919	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	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	296	344	422	551	573	Barnes	345	347	416	573	731
Benson	345	347	416	573	731	Billings	296	344	422	551	573
Bottineau	344	390	485	683	744	Bowman	296	344	422	551	573
Burke	344	390	485	683	744	Cavalier	345	347	416	573	731
Dickey	345	347	416	573	731	Divide	296	344	422	551	573
Dunn	296	344	422	551	573	Eddy	345	347	416	573	731
Emmons	344	390	485	683	744	Foster	345	347	416	573	731
Golden Valley	296	344	422	551	573	Grant	296	344	422	551	573
Griggs	345	347	416	573	731	Hettinger	296	344	422	551	573
Kidder	344	390	485	683	744	LaMoure	345	347	416	573	731
Logan	344	390	485	683	744	McHenry	344	390	485	683	744
McIntosh	344	390	485	683	744	McKenzie	296	344	422	551	573
McLean	344	390	485	683	744	Mercer	296	344	422	551	573
Mountrail	344	390	485	683	744	Nelson	362	449	535	717	774
Oliver	296	344	422	551	573	Pembina	362	449	535	717	774
Pierce	344	390	485	683	744	Ramsey	345	355	467	573	736
Ransom	345	347	416	573	731	Renville	344	390	485	683	744
Richland	316	380	481	625	741	Rolette	344	390	485	683	744
Sargent	345	347	416	573	731	Sheridan	344	390	485	683	744
Sioux	296	344	422	551	573	Slope	296	344	422	551	573
Stark	297	361	418	608	735	Steele	362	449	535	717	774
Stutsman	352	353	423	586	743	Towner	345	347	416	573	731
Traill	362	449	535	717	774	Walsh	362	449	535	717	774

NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ward	304	378	465	642	762
Williams	265	323	407	536	568
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
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	424	497	652	903	938	Clermont, Hamilton, Warren
*Cleveland--Lorain--Elyria, OH PMSA	508	578	703	916	980	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	435	506	640	807	881	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

OHIO 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
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
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

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OKLAHOMA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
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
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	663	761	914	1095	1328	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

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
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
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

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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
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

SOUTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Douglas	303	355	467	598	623
Fall River	351	366	481	624	694
Grant	310	369	474	641	756
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
Edmunds	341	357	469	619	736
Faulk	341	357	469	619	736
Gregory	303	355	467	598	623
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	492	564	654	854	879	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

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

TENNESSEE 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
Grainger	364	365	439	579	635	Greene	285	359	439	595	611
Grundy	272	341	416	546	563	Hamblen	383	385	468	630	648
Hancock	344	345	415	531	639	Hardeman	292	362	404	547	709
Hardin	292	326	399	529	545	Haywood	375	388	508	607	667
Henderson	313	415	484	577	595	Henry	292	342	450	538	655
Hickman	299	416	461	672	693	Houston	347	348	440	544	597
Humphreys	340	368	409	583	602	Jackson	356	357	440	571	588
Jefferson	393	402	474	620	814	Johnson	287	357	443	594	611
Lake	329	368	443	575	592	Lauderdale	393	394	474	576	595
Lawrence	296	332	430	532	607	Lewis	299	348	449	572	589
Lincoln	369	370	445	544	560	McMinn	394	395	475	568	757
McNairy	256	301	394	569	586	Macon	290	353	446	531	590
Marshall	361	384	503	605	759	Maury	386	482	594	756	779
Meigs	272	341	416	546	563	Monroe	353	354	449	537	685
Moore	391	392	469	619	639	Morgan	362	363	439	549	640
Obion	299	361	436	575	606	Overton	264	332	405	495	509
Perry	299	348	449	572	589	Pickett	356	357	440	571	588
Polk	382	395	505	620	772	Putnam	372	373	465	669	718
Rhea	269	332	415	551	567	Roane	391	404	469	627	644
Scott	313	319	377	499	664	Sequatchie	272	341	416	546	563
Smith	384	385	461	615	635	Stewart	293	382	451	615	634
Trousdale	356	378	499	599	616	Van Buren	356	357	440	571	588
Warren	361	365	470	630	749	Wayne	299	348	449	572	589
Weakley	312	384	430	629	758	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	539	601	733	980	1232	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

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TEXAS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
McAllen--Edinburg--Mission, TX MSA	457	503	593	711	817	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
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

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 46

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Grimes	417	458	510	664	684
Hall	347	349	431	574	592
Hansford	347	349	431	574	592
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

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hale	305	386	454	556	621
Hamilton	374	402	508	667	764
Hardeman	307	364	453	576	685
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

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
Schleicher	356	357	431	556	574	Scurry	277	328	420	611	671
Shackelford	332	333	430	615	668	Shelby	308	309	371	533	650
Sherman	347	349	431	574	592	Somervell	380	408	483	615	642
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	520	579	682	960	1118	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,

SCHEDULE B - FAIR MARKET RENTS 2005 FOR EXISTING HOUSING PAGE 48

VERMONT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, 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

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VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Orange	475	537	625	870	897	Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town, Fairlee town, Newbury town, Orange town, 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

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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, 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

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Patrick	316	344	381	472	486
Pulaski	333	352	439	629	676
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
Prince Edward	455	456	548	656	878
Rappahannock	414	462	558	772	797
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

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WEST VIRGINIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Steubenville--Weirton, OH--WV MSA	305	374	461	576	625	Brooke, Hancock
Wheeling, WV--OH MSA	299	360	460	578	675	Marshall, Ohio

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

WISCONSIN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
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
Florence	329	397	492	626	657	Fond du Lac	430	461	555	729	791
Forest	379	416	514	669	690	Grant	386	387	465	602	816
Green	369	398	522	663	774	Green Lake	375	430	499	653	797
Iowa	380	444	584	698	718	Iron	327	382	479	613	636
Jackson	350	398	508	644	672	Jefferson	431	505	665	797	1004
Juneau	332	409	510	671	692	Kewaunee	329	397	492	626	657
Lafayette	366	386	496	635	712	Langlade	375	376	452	596	650
Lincoln	409	410	491	715	737	Manitowoc	335	392	516	617	768
Marinette	373	403	448	587	605	Marquette	387	434	528	680	755
Menominee	387	434	528	680	755	Monroe	345	403	531	674	736
Oconto	353	428	475	615	641	Oneida	375	410	538	688	947
Pepin	350	398	508	644	672	Polk	382	447	587	722	745
Portage	439	445	531	703	723	Price	327	382	479	613	636
Richland	344	384	489	627	647	Rusk	327	382	479	613	636
Sauk	380	505	579	778	803	Sawyer	327	385	479	613	636
Shawano	333	393	484	604	694	Taylor	327	382	479	613	636
Trempealeau	361	362	459	627	646	Vernon	370	372	466	589	642
Vilas	379	416	514	700	721	Walworth	444	522	681	850	877
Washburn	327	382	479	613	636	Waupaca	340	427	519	678	698
Waushara	387	434	528	680	755	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	443	467	592	806	1038	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	383	439	557	765	810	Big Horn	380	397	475	620	742
Campbell	426	459	514	696	758	Carbon	296	354	455	570	693
Converse	272	336	418	570	735	Crook	380	397	475	620	742
Fremont	375	377	479	600	765	Goshen	366	367	442	545	750
Hot Springs	380	397	475	620	742	Johnson	380	396	488	620	741
Lincoln	375	444	505	674	796	Niobrara	380	397	475	620	742
Park	356	409	481	604	796	Platte	380	397	475	620	742
Sheridan	382	412	506	647	790	Sublette	375	444	505	674	796
Sweetwater	313	380	477	667	692	Teton	652	727	915	1206	1242
Uinta	325	410	467	638	757	Washakie	380	397	475	620	742
Weston	380	397	475	620	742						

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GUAM

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	663	712	869	1266	1514

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. 01/06/2005
Note3: HUD defined MSAs are followed by **

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

[FR Doc. 05–3814 Filed 2–25–05; 8:45 am]
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Federal Register

Monday,
February 28, 2005

Part VI

The President

Memorandum of February 17, 2005—Delegation of Reporting Authority

Federal Register
Vol. 70, No. 38
Monday, February 28, 2005

Presidential Documents

Title 3—

The President

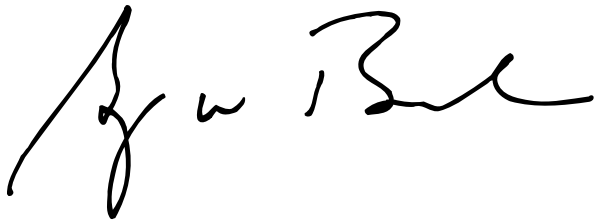
Memorandum of February 17, 2005

Delegation of Reporting Authority

Memorandum for the Director of the National Science Foundation

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority conferred upon the President by Public Law 98–373 (15 U.S.C. 4107(b) and 4108(a)), to provide the specified report and plan to the Congress.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 17, 2005.

[FR Doc. 05–3980
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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.

S. 5/P.L. 109–2
Class Action Fairness Act of 2005 (Feb. 18, 2005; 119 Stat. 4)
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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–052–00001–9)	9.00	[4] Jan. 1, 2004
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1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

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