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Tuesday
January 27, 1998

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Contents

Federal Register

Vol. 63, No. 17

Tuesday, January 27, 1998

Agency for International Development
NOTICES
Grants and cooperative agreements; availability, etc.:
Central and Eastern Europe and New Independent States of former Soviet Union; market-oriented solutions to environmental problems promotion program, 3920–3921

Agricultural Marketing Service
PROPOSED RULES
Mushroom promotion, research, and consumer information order; referendum order, 3848–3849

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farm Service Agency
See Forest Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Interstate transportation of animals and animal products (quarantine):
Livestock markets; handling of reactors, 3849–3851
Plant-related quarantine, foreign:
Karnal bunt disease—
Mexicali Valley, Mexico, 3844–3848

Antitrust Division
NOTICES
National cooperative research notifications:
Petroleum Environmental Research Forum, 3922

Army Department
See Engineers Corps
NOTICES
Meetings:
U.S. Military Academy, Board of Visitors, 3884

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
PROPOSED RULES
Pollution:
Marine transportation-related facilities and tank vessels; capacity increases review, 3861–3862

Commerce Department
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
RULES
Tree assistance program; CFR part removed, 3791–3792

Consumer Product Safety Commission
NOTICES
Settlement agreements:
COA, Inc., 3882–3883

Defense Department
See Army Department
See Engineers Corps
See Navy Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Electronic data interchange transactions; shipment evidence, 4074
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 3884

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
National Institute on Disability and Rehabilitation Research—
Rehabilitation engineering research centers program, 4148–4150

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Atomic energy agreements; subsequent arrangements; correction, 3884–3885

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
San Gabriel Canyon, CA; sediment management plan, 3884

Environmental Protection Agency
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
New nonroad spark-ignition engines at or below 19 kilowatts; phase 2 emission standards, 3950–4036
Radiation protection programs:
Spent nuclear fuel, high-level and transuranic radioactive wastes management and disposal; waste isolation pilot plant compliance—
Air drilling during petroleum exploration; analysis availability, 3863
NOTICES
Clean Water Act:
Pennsylvania; continuing planning process, 3890
Meetings:
Drinking water issues—
Arsenic; national primary drinking water regulation; stakeholders, 3890–3891

Executive Office of the President
See Management and Budget Office

Farm Service Agency
RULES
Tree assistance program; implementation, 3791–3792

Federal Aviation Administration
RULES
Airworthiness directives:
Cessna, 3809–3811

PROPOSED RULES
Airworthiness directives:
McDonnell Douglas, 3852–3854
Class E airspace, 3854–3860
NOTICES
Meetings:
RTCA, Inc., 3944

Federal Communications Commission
RULES
Common carrier services:
Telecommunications Act of 1996; implementation—
Universal service support mechanisms; payment of quarterly contributions in equal monthly installments, 3830–3832
Radio stations; table of assignments:
Colorado, 3832–3833
Florida, 3834–3835
Mississippi, 3833
New York, 3832
Texas, 3833–3834
Wisconsin, 3832, 3834
NOTICES
Common carrier services:
Satellite notifications; registration and processing cost recovery, 3891–3892
Universal service contribution factors, 3892–3894
Meetings:
1999/2000 World Radiocommunication Conference (WRC 99) Advisory Committee, 3894
North American Numbering Council, 3894–3895
Meetings; Sunshine Act, 3895

Federal Election Commission
PROPOSED RULES
Contribution and expenditure limitations and prohibitions:
Corporate and labor organizations—
Membership association member; definition; correction, 3851–3852
NOTICES
Privacy Act:
Systems of records, 3895–3896

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 3889–3890
Applications, hearings, determinations, etc.:
Aurora Power Resources, Inc., 3885
CNG Transmission Corp., 3885
Consumers Energy Co., 3885–3886
East Tennessee Natural Gas Co., 3886
Garden Banks Gas Pipeline, L.L.C., 3886
Granite State Gas Transmission Inc., 3886
Great Lakes Gas Transmission Co., 3886–3887
Great Lakes Gas Transmission L.P., 3887
Millennium Energy Corp., 3887–3888
NorAm Gas Transmission Co., 3888
South Georgia Natural Gas Co., 3888
Texas Gas Transmission Corp. et al., 3888–3889

Federal Highway Administration
RULES
Speed limit enforcement certification:
National maximum speed limit compliance program; CFR part removed, 3811–3812

Federal Reserve System
RULES
Securities credit transactions:
OTC margin stocks and foreign stocks lists (Regulations G, T, U, and X), 3804–3809
NOTICES
Banks and bank holding companies:
Change in bank control, 3896
Formations, acquisitions, and mergers, 3896–3897
Permissible nonbanking activities, 3897
Meetings; Sunshine Act, 3897
Reports and guidance documents; availability, etc.:
Capital and accounting standards; differences among Federal banking and thrift agencies; report to congressional committees, 3897–3901

Fish and Wildlife Service
RULES
Endangered and threatened species:
San Bernardino kangaroo rat, 3835–3843
PROPOSED RULES
Endangered and threatened species:
San Bernardino kangaroo rat, 3877–3878
Willamette daisy, Fender's Blue butterfly, and Kincaid's lupine, 3863–3877
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3908–3909
Endangered and threatened species permit applications, 3909–3911

Food and Drug Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3902–3903
Human drugs:
Drug products discontinued from sale for reasons other than safety or effectiveness—
Minocycline hydrochloride tablets, 3903–3904
Medical devices; premarket approval:
Periogard Periodontal Tissue Monitor, 3904
VENTAK AV AICD Models 1810/1815 Automatic Implantable Cardioverter Defibrillator, 3905
Meetings:
Anesthetic and Life Support Drugs Advisory Committee, 3905–3906
Food Advisory Committee, 3906
Health professional organizations representatives, 3906–3907
Medical Imaging Drugs Advisory Committee, 3907
Reports and guidance documents; availability, etc.:
Veterinary medicinal products; analytical procedures validation; definition and terminology and methodology; industry guidance, 3907–3908

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 3922

Forest Service
NOTICES
Meetings:
Intergovernmental Advisory Committee, 3879

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Electronic data interchange transactions; shipment evidence, 4074

NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 3884

Health and Human Services Department
See Food and Drug Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 3901–3902
Federal claims; interest rates on overdue debts, 3902
Meetings:
Vital and Health Statistics National Committee, 3902

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 3890

Housing and Urban Development Department
NOTICES
Public and Indian housing:
Housing assistance payments (Section 8)—
Rental voucher, rental certificate, and moderate rehabilitation programs; administrative fees; annual factors, 4090–4146
Native American housing block grant program; transition requirements, 4076–4087

Immigration and Naturalization Service
RULES
Immigration:
Spouses and unmarried minor children of refugees/asylees; procedures for filing derivative petitions, 3792–3803

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau

Internal Revenue Service
RULES
Income taxes:
Foreign tax credit claims of U.S. taxpayers; filing requirements, 3812–3813
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3946–3947

International Development Cooperation Agency
See Agency for International Development

Justice Department
See Antitrust Division
See Foreign Claims Settlement Commission
See Immigration and Naturalization Service
See Justice Programs Office
See National Institute of Justice
NOTICES
Pollution control; consent judgments:
Abbott Laboratories et al., 3921
Chester (PA) Residents Concerned for Quality Living et al., 3921
Young Refining Co., 3921–3922

Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3922–3923
Grants and cooperative agreements; availability, etc.:
Federal justice statistics program; continuation, 3923–3925

Labor Department
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Environmental statements; notice of intent:
Bisti/De-Na-Zin Wilderness Area, NM; oil and gas development, 3911
Management framework plans, etc.:
Utah, 3911–3912
Meetings:
Resource advisory councils—
Eastern Washington, 3912

Management and Budget Office
NOTICES
Cost-effectiveness analysis of Federal programs; discount rates (Circular A-94), 3932–3933

Maritime Administration
RULES
U.S.-flag commercial vessels:
Carriage of bulk and packaged preference cargoes; fair and reasonable guideline rates determination; procedures and methodology, 3819–3830

Minerals Management Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 3912–3913

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Electronic data interchange transactions; shipment evidence, 4074
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 3884

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 3926

National Highway Traffic Safety Administration
RULES
Speed limit enforcement certification:
National maximum speed limit compliance program; CFR part removed, 3811–3812

National Institute of Justice
NOTICES
Grants and cooperative agreements; availability, etc.:
Drug court evaluation II program, 3925–3926

National Oceanic and Atmospheric Administration
NOTICES
Coastal zone management programs and estuarine sanctuaries:
State programs—
Intent to evaluate performance, 3879–3880
Fishery conservation and management:
Magnuson Act provisions—
Individual fishing quotas; public hearings, 3880
Meetings:
Pacific Fishery Management Council, 3880
Permits:
Marine mammals, 3880–3882

National Park Service
NOTICES
Meetings:
White House Preservation Committee, 3913

Navy Department
PROPOSED RULES
Personnel:
Employee conduct standards and reporting procedures on defense related employment; CFR parts removed, 3860–3861

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Northern States Power Co., 3929–3932
Meetings; Sunshine Act, 3932
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 3926–3928
Vermont Yankee Nuclear Power Corp., 3928–3929
Westinghouse Electric Corp., 3929

Occupational Safety and Health Administration
RULES
Construction safety and health standards:
Scaffolds; effective date and reporting and recordkeeping requirements, 3813–3814

Office of Management and Budget
See Management and Budget Office

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
MBNA America Bank, National Association et al., 4038–4071

Postal Service
RULES
International Mail Manual:
Global priority mail; expansion, 3814–3819

Public Health Service
See Food and Drug Administration

Reclamation Bureau
NOTICES
Contract negotiations:
Tabulation of water service and repayment; quarterly status report, 3913–3920

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 3938–3940
Chicago Stock Exchange, Inc., 3940–3941
Depository Trust Co., 3941–3942
National Association of Securities Dealers, Inc., 3942–3944
Applications, hearings, determinations, etc.:
Daily Money Fund et al., 3933–3938

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 3944
GRC Holdings Corp., 3945
Missouri Central Railroad Co., 3945

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
Harbor Financial, M.H.C., 3947
Heritage Federal Savings & Loan Association, 3947
SouthBanc Shares, M.H.C., 3947

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary (Financial Markets), 3945–3946

Separate Parts In This Issue

Part II
Environmental Protection Agency, 3950–4036

Part III
Department of Labor, Pension and Welfare Benefits Administration, 4038–4071

Part IV
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 4074

Part V
Department of Housing and Urban Development, 4076–4087

Part VI
Department of Housing and Urban Development, 4090–4146

Part VII
Department of Education, 4148–4150

Reader Aids

Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
783.....3791
1478.....3791
Proposed Rules:
319.....3844
1209.....3848

8 CFR
207.....3792
208.....3792
299.....3792

9 CFR
Proposed Rules:
71.....3849

11 CFR
Proposed Rules:
114.....3851

12 CFR
207.....3804
220.....3804
221.....3804
224.....3804

14 CFR
39.....3809
Proposed Rules:
39.....3852
71 (6 documents) 3854, 3855, 3856, 3857, 3858, 3859

23 CFR
1260.....3811

26 CFR
1.....3812

29 CFR
1926.....3813

32 CFR
Proposed Rules:
721.....3860
722.....3860

33 CFR
Proposed Rules:
154.....3861
155.....3861

39 CFR
20.....3814

40 CFR
Proposed Rules:
90.....3950
194.....3863

46 CFR
382.....3819

47 CFR
54.....3830
73 (7 documents) 3832, 3833, 3834

48 CFR
Proposed Rules:
52.....4074

50 CFR
17.....3835
Proposed Rules:
17 (2 documents) 3863, 3877

Rules and Regulations

Federal Register
Vol. 63, No. 17
Tuesday, January 27, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 783

Commodity Credit Corporation

7 CFR Part 1478

RIN 0560–AF17

Tree Assistance Program

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to adopt as final, with change, the interim rule published in the **Federal Register** on September 29, 1997 (62 FR 50850). This final rule sets forth the regulations necessary for implementing the 1997 Tree Assistance Program (TAP). The Act Making Emergency Supplemental Appropriations for Recovery from Natural Disasters for the fiscal year ending September 30, 1997 (the Act), authorized TAP assistance to small orchardists to replace or rehabilitate trees and vineyards damaged by natural disasters. Due to limited funds appropriated for this program, the losses for which reimbursement is sought are limited to natural disasters that occurred between October 1, 1996, and September 30, 1997. Cost-share assistance may not exceed 100 percent of the eligible replacement or rehabilitation costs and may be based on average costs or the actual costs for the replanting practices, as determined by the Deputy Administrator for Farm Programs.

EFFECTIVE DATE: Final rule effective January 26, 1998.

FOR FURTHER INFORMATION CONTACT: David M. Nix, Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), USDA, 1400 Independence Avenue, SW., STOP 0517, Washington, DC 20012–0517, telephone (202) 690–4091, e-mail address: dnix@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

An Environmental Evaluation with respect to the Tree Assistance Program has been completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State law to the extent that such laws are inconsistent with the provisions of this rule. The provisions of this rule are retroactive to October 1, 1996. Before any judicial action may be brought regarding the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12612

It has been determined that 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.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA regulations.

Discussion of Changes

No comments were received in response to the interim rule issued on September 29, 1997. However, during the administration of this program, FSA discovered a need for clarification regarding duplication of benefits which will be set forth in this final rule.

Clarification provides if an owner is eligible to receive payments under this part, catastrophic risk protection crop insurance program (7 CFR part 402), and non-insured crop disaster assistance program (7 CFR part 1437) for the same tree or vine loss, the eligible owner must choose whether to receive the other program benefits or payments under this part.

List of Subjects in 7 CFR Parts 783 and 1478

Disaster assistance, Grant programs—agriculture.

Accordingly, the interim rule set forth at 7 CFR part 783 which was published September 29, 1997, is adopted as a final rule with the following change:

PART 783—1997 TREE ASSISTANCE PROGRAM

1. The authority citation for part 783 continues to read as follows:

Authority: Pub. L. 105–18, 111 Stat. 158.

2. Section 783.8 paragraph (c) is revised to read as follows:

§ 783.8 Application process.

* * * * *

(c) If an owner is eligible to receive payments under this part and the catastrophic risk protection crop insurance program (7 CFR part 402), or

the noninsured crop disaster assistance program (7 CFR part 1437) for the same tree or vine loss, the eligible owner must choose whether to receive the other program benefits or payments under this part. The eligible owner cannot receive both. However, if the other program benefits are not available until after the eligible owner has received benefits under this part, the eligible owner may obtain the other program benefits if the eligible owner refunds the total amount of the payment received prior to receiving the other program benefits. If the eligible owner purchased additional coverage insurance, as defined in 7 CFR 400.651, or is eligible for emergency loans, the eligible owner will be eligible for assistance under such program, and this part as long as the amount received for the loss under the additional coverage or the emergency loan together with the amount received from the other programs does not exceed the amount of the actual loss of the eligible owner.

Signed at Washington, D.C., on January 20, 1998.

Bruce R. Weber,

Acting Administrator, Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–1916 Filed 1–26–98; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 207, 208, and 299

[INS No. 1639–93]

RIN 1115–AD59

Procedures for Filing a Derivative Petition (Form I–730) for a Spouse and Unmarried Children of a Refugee/Asylee

AGENCY: Immigaration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Immigration and Naturalization Service (Service) regulations by providing specific guidelines on the procedures which must be followed by a refugee or asylee to bring his/her spouse and unmarried, minor child(ren) (derivatives) into the United States. This rule responds to the family reunification needs of refugees by establishing an equitable and consistent derivative policy for refugees which parallels the current derivative procedures for asylees. This rule also amends asylum regulations by removing from the definition of qualifying relationship child(ren) born to, or legally adopted by, the principal alien and spouse after approval of the principal alien's asylum application.

DATES: This rule is effective February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Suzy Nguyen or Ramonia Law-Hill, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: On July 9, 1996, the Service published a proposed rule in the **Federal Register** at 61 FR 35984, providing procedures that must be followed by a refugee or asylee to bring his or her spouse and unmarried, minor child(ren) (derivatives) into the United States.

The proposed rule was designed to respond more fully to the family reunification needs of refugees, while establishing specific guidelines on the derivative policy for both refugees and asylees. First, the proposed rule allowed the Service to use the refugee's date of admission into the United States to determine accompanying or following-to-join eligibility for his/her spouse and unmarried, minor child(ren). A refugee would be able to file a Form I–730, Refugee/Asylee Relative Petition, for his/her spouse and/or each individual child if the relationship predates the refugee's date of admission to the United States, rather than the date of interview or tentative approval date of the application. This eligibility would extend to a child who is *in utero* on the date of the refugee's admission to the United States but is born after the refugee's admission as a refugee.

Second, the proposed rule imposed a 1-year time limit from the date of the principal refugee's admission to the United States within which he or she must file a Form I–730 for his/her spouse and/or each individual child, unless the Service determined that the filing period should be extended for humanitarian reasons. Similarly, the principal asylee would be required to file a Form I–730 for each qualifying family member within 1 year of the date on which he or she was granted asylum status, unless the Service determines that the filing period should be extended for humanitarian reasons.

Third, the proposed rule required that only an alien who was admitted to the United States as a principal refugee would be eligible to file the Form I–730 for accompanying or following-to-join benefits for his/her spouse and/or unmarried, minor child(ren). Those individuals who derived their refugee status from the principal refugee would not be eligible to file a Form I–730.

Fourth, the proposed rule would amend the asylum regulations by requiring that, for purposes of filing a Form I–730, the asylee's relationship to a child must have existed at the time of approval of the asylum application.

Finally, the proposed rule added certain documentary and evidentiary requirements for filing a Form I–730, such as requiring that a separate Form I–730 be filed for each individual qualifying family member and that a photograph of the derivative be included. These proposed regulations served to clarify the Service's accompanying and following-to-join policy for Service officers and the general public by standardizing refugee and asylee derivative procedures.

The Immigration and Naturalization Service allowed a 60-day public comment period which ended on September 9, 1996. The Service received 19 comments on the proposed rule. The following is a discussion of those comments and the Service's response.

Discussion of Comments

Using the Principal Refugee's Date of Admission To Determine Derivative Eligibility

The Service proposed that the principal refugee's date of admission into the United States be used to determine accompanying or following-to-join eligibility for his/her derivatives. Current regulations require that the refugee's relationship to the spouse or child exist prior to the tentative approval date of the principal's application for refugee status. Furthermore, according to the proposed rule, if the refugee proves that he/she is the parent of a child who was born after the refugee's admission to the United States, but who was *in utero* on the date of refugee's admission as a refugee, the child shall be eligible to accompany or follow-to-join the refugee.

Fourteen commenters praised and supported the Service's decision to use the principal refugee's date of admission rather than date of tentative approval. In addition, three commenters supported the Service's proposed rule pertaining to children *in utero.* Only one commenter was in opposition, claiming that the change would invite exploitation and fraud.

The Service has carefully considered the one commenter's concern regarding the possibility of fraud. The Service feels that the proposed rule contains certain evidentiary and documentary requirements (such as requiring a recent photograph of the spouse or child and

requiring evidence of the claimed relationship as set forth in 8 CFR part 204) which may reduce the risk of fraud and exploitation. Furthermore, the current interpretation of derivative eligibility for refugees has created confusion for Service officers, attorneys and representatives, refugees, and the general public. The Service believes that this rule will alleviate inconsistencies in determining eligibility that has been encountered due to the difficulty in determining the date of tentative approval of the principal refugee's application. In addition, the current interpretation is too restrictive because it requires a refugee to meet a heavier burden for establishing a relationship with his/her spouse and/or child(ren) than is required by regulation for a citizen or lawful permanent resident of the United States. Moreover, the Service believes that this rule reflects the intent of Congress by enhancing family reunification for refugees.

One Year Filing Requirement

The proposed rule required that a separate Form I–730 must be filed for each qualifying derivative within 1 year of the principal refugee's admission to the United States, unless the Service determines that the filing period should be extended for humanitarian reasons. Similarly, the proposed rule required that a separate Form I–730 for each qualifying derivative must be filed within 1 year of the date on which the principal asylee was granted asylum status, unless the Service determines that the filing period should be extended for humanitarian reasons.

Twelve commenters opposed the 1-year time limit. Ten of those claimed that 1 year is too short or unrealistic. Two commenters suggested a minimum of 3 years, and one suggested that a more reasonable time limit would be when the refugee/asylee becomes eligible for U.S. Citizenship. Seven commenters argued that there is no time restriction imposed in the Immigration and Nationality Act (''the Act'') and that, therefore, the Service should not set a time limit. Others noted that, since this is a newly imposed time limit, the Service should ensure that refugees and asylees are well informed of this filing requirement. Only one commenter agreed that the 1-year time limit was reasonable.

Derivative benefits for refugees and asylees are intended to expediently reunite families in order for them to make the difficult transition to a new life with the support of their immediate family members by avoiding lengthy delays due to visa quotas. The timely filing of Form I–730 will expedite the reunification of refugee families. At the moment, Service regulations on derivative benefits for refugee and asylees contain no time limitation. As a result, there are individuals who had entered the United States in the late 1970s or early 1980s as refugees who did not file Form I–730 petitions for their derivatives until ten or more years after their admission. Such filings no longer serve the purpose for which they were originally intended and, instead, only serve to deplete limited refugee admission numbers and refugee resettlement monies needed for currently emerging refugee populations. In determining the filing time limitation for Form I–730, the Service acknowledges that it must be responsive to the needs of the applicant base.

After careful consideration of the comments received, the Service is modifying the proposed rule with regard to the 1-year time limit. Accordingly, the final rule requires that the Form I–730 must be filed within *2 years* of the date of admission to the United States for a refugee, or within 2 years of the grant of asylum for an asylee. Although the Service believes that 1 year is a reasonable time limit for refugees and asylees to file the Form I–730, the Service would like to acknowledge and address the commenters' concerns by adopting this change. Therefore, the filing of the Form I–730 within 2 years of admission as a refugee or grant of asylum will serve to notify the Service of a refugee's or asylee's intent to have his/her derivative(s) join him/her in the United States. The Service has also carefully reviewed the provisions of section 207(c)(2) of the Act and has determined that the establishment of a filing period does not violate the language or intent of that section of the Act.

Five commenters argued that, since the proposed rule did not define which ''humanitarian reasons'' warranted an extension of the filing deadline, this would lead to arbitrary and conflicting decisions by Service officers, or create a large category of applicants under this exception. On the contrary, the Service believes that defining the specific qualifying ''humanitarian reasons'' would only act to restrict severely the category and shut the door on applicants who need this exception most. As with other immigration benefits, applications should be decided on a case-by-case basis. Likewise, although humanitarian exceptions are used throughout other Service regulations, the term is not defined so that individuals with exceptional cases are not shut out. The Service will make continual assessments of the processing of the I–730 petitions, particularly in the early stages of the promulgation of this rule, and provide guidance to Service officers, if necessary, in order to ensure uniformity in the decision process.

Ten commenters noted that the Service should have some type of grandfather clause to allow petitioners whose Forms I–730 were denied under the old regulations to refile or reopen their cases. Five commenters pointed out that, although the introductory comment to the proposed rule had indicated that refugees and asylees in the United States for more than 1 year when the regulation becomes effective would be given 1 year to file, this provision was not put in the proposed regulation itself. Furthermore, the proposed rule failed to address refugees and asylees who have been in the United States for less than 1 year at the time the regulation becomes effective.

The Service agrees with the commenters who expressed the need for some type of grandfather clause. The Service is also grateful to those commenters who spotted the inadvertent omission. In response to these comments, the Service is including a grandfather clause in the final rule which allows all persons admitted as refugees or granted asylum prior to the effective date of the final rule to file the Form I–730 within 2 years of that effective date regardless of when they were admitted as a refugee or granted asylum. This will allow refugees and asylees an equal opportunity to apply for derivative benefits for their spouse and/or child(ren). A principal refugee who had previously submitted the Form I–730 but was denied because of current regulations requiring the relationship with his/her derivative(s) to have existed prior to the tentative approval date of his/her application for refugees status should reapply by submitting Form I–730 for each individual derivative within 2 years of the effective date of the final rule. It is noted that petitioners must reapply in these situations since the Service will not *sua sponte* reopen previously denied files. In order to better inform the general public, the Service is including the grandfather clause in the instructions part of the revised Form I–730 to inform all potential refugee and asylee petitioners that they have either 2 years from the date on which the final rule becomes effective or 2 years after the date of admission (for refugees) or grant of asylum (for asylees), whichever is later, to file the Form I–730.

Only the Principal Refugee May File a Form I–730

Similar to current regulations, the proposed rule required that the Form I–730 be filed by the principal refugee. Individuals who have derived their refugee status from the principal refugee are not eligible to file a Form I–730.

Ten commenters opposed the Service's requirement that only the principal refugee may file the Form I–730. Four commenters claimed that, because of the refugee registration systems used overseas, certain refugees may be inadvertently labeled as a derivative when he/she does not fit the definition of a derivative spouse or child and, in fact, should be considered a principal for the purposes of filing the Form I–730. Two commenters argued that any refugee who does not meet the statutory definition of a ''derivative'' should be allowed to file the Form I–730. Several commenters stated that if the purpose of the principal applicant rule is to deter fraud, then it is overbroad and, as such, violates the intent and language of the Act. One commenter expressed the need for a humanitarian exception in the case where the principal refugee is deceased or incapacitated, becomes abusive, or abandons his/her family after the derivative spouse has reached the United States, in order to allow the derivative spouse to petition for their mutual child(ren). Another commenter stated that the regulation should allow for the child of an unmarried parent to accompany or follow-to-join him/her even if the parent had obtained his/her refugee status on a derivative basis.

The Service has carefully considered their comments and has reviewed the language of the Act at sections 207 (c)(1) and (c)(2). The requirement that only the principal refugee may file for accompanying of following-to-join benefits for his/her spouse and/or child(ren) may be ascertained from the language of sections 207 (c)(1) and (c)(2) of the Act. Section 207(c)(2) provides for the admission of spouses and children (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act) of a refugee qualifying for admission under section 207(c)(1) of the Act. Accordingly, only a principal refugee, admitted under section 207(c)(1) of the Act, may file a Form I–730 on behalf of his or her spouse or child(ren). The Service already regards persons admitted under section 207 who do not meet the statutory definition of a spouse or child to be principals for the purpose of filing an I–730 petition.

Eight commenters stated that the proposed rule was confusing in its use of the terms ''principal refugee,'' ''principal applicant,'' and ''principal alien.'' The Service agrees with these comments and has removed the term ''principal applicant'' from the final rule in order to avoid any confusion.

Eligible and Ineligible Relatives of a Refugee/Asylee

The Service listed in proposed § 207.7(b) relatives of refugees who are ineligible for accompanying or following-to-join benefits, which included: a spouse or child who has previously been granted asylee or refugee status; an adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least 2 years; a stepchild, if the marriage that created this relationship took place after the child became 18 years old; a husband or wife if each/both were not physically present at the marriage ceremony and the marriage was not consummated, or if the U.S. Attorney General has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws; and a parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin or in-law.

Six commenters put forth various arguments for the inclusion of certain relatives as eligible accompanying or following-to-join derivatives of a refugee or asylee. Four commenters stated that some type of exclusion should be made for a child of a derivative child. Two commenters claimed that relatives listed in proposed § 207.7(b)(6) (i.e., parent, sibling, grandparent/child, nephew/niece, uncle/aunt, cousin, and in-law) should be included as derivative refugees when they are dependent on the principal refugee and reside in his/her household. One commenter argued that barring the mother of the principal alien's child because the principal was not married to the child's mother is harsh and irrelevant. Another claimed that eligible ''accompanying derivative'' should include relatives of the principal petitioner's spouse, or the principal petitioner's child. One commenter pointed out that many children in agrarian or less-developed societies are customarily adopted without legal formalities; therefore, people should be allowed to present proof that they were the actual custodial guardian of the child for the requisite minimum of 2 years, to petition for the child as a derivative refugee, and then complete the legal adoption formalities in the United States.

The Service has carefully considered these comments. However, section 207(c)(2) of the Act clearly specifies that only a ''spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E))'' of a refugee shall be eligible for accompanying or following-to-join benefits. Accordingly, the Service has deemed ineligible those relatives who do not fit the statutory definition of a spouse and child as defined in sections 101(a)(35) and 101(b)(1) (A), (B), (C), (D), or (E), respectively, of the Act.

Evidentiary and Documentary Requirements

The proposed rule required that a separate Form I–730 must be filed for each qualifying family member, which must also include a recent photograph of this family member. The petitioning refugee or asylee has the burden to establish by a preponderance of the evidence that the person for whom he/she is petitioning is an eligible spouse or child. The evidence to establish the claimed relationship for a spouse or unmarried, minor child as set forth in 8 CFR part 204 must be submitted with the Form I–730; where possible, this will consist of the documents specified in § 204.2(a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5). No fee is charged for filing a Form I–730 petition.

Three commenters opposed the proposed requirement that a separate Form I–730 must be filed for each family member. Four commenters claimed that the photograph requirement is too restrictive and unrealistic. Six commenters argued that the heightened evidence needed to prove spousal relationship should only apply in situations where Congress has expressed the fear of marriage fraud, which would not include refugees cases. In addition, five commenters stated that the ''where possible'' language of the proposed rule is vague and, therefore, may result in arbitrary decisions by Service officers.

The Service has carefully considered the comments. However, the Service believes that the evidentiary and documentary requirements are reasonable. First, having a separate Form I–730 for each family member will enhance efficiency and facilitate Service processing of the petition, especially in cases where there are many derivatives and/or they are residing in different geographic locations. Since each derivative has a separate I–730, each petition may be processed on its own without having to wait for the rest of the family members. Second, the photograph required of each derivative need not meet Alien Documentation Identification and Telecommunication

System (ADIT) specifications. The Service believes that it is not overly burdensome to require a non-ADIT photograph. Third, the Service believes that adopting the standard of evidence set forth in 8 CFR part 204 to establish a claimed relationship for a spouse or minor, unmarried child is a reasonable requirement in light of the risk of fraudulent petitions.

Finally, petitioners should note that although there is no appeal from the denial of a petition filed on Form I–730, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the refugee or asylee relative petition proceeding, if the petitioner establishes eligibility for accompanying or following-to-join benefits. This is consistent with other types of applications for immigration benefits where no administrative appeal is available, but the applicant may submit a new application or a motion to reopen in the case of a denial (e.g., 8 CFR 204.2(a)(1)(iii)(D)).

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is administrative in nature and merely imposes specific regulatory restraints, which parallel procedures currently found in asylum regulations. This rule will not result in an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, or cause major increases in costs or prices for consumers, or have other adverse effects on the economy in terms of productivity, competition jobs, the environment, public health, or safety. Furthermore, the affected parties are not small entities, and the impact of the regulation is not an economic one.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to and, approved by, the Office of Management and Budget.

Executive Order 12612

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 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 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Form I–730

The revised Form I–730 has been included at the end of this final rule to allow the public to duplicate the form from the **Federal Register** until the form is printed and distributed worldwide.

Paperwork Reduction Act

The information collection requirement (Form I–730) contained in this rule has been submitted to and approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5

List of Subjects

8 CFR Part 207

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 207—ADMISSION OF REFUGEES

1. The authority citation for part 207 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182, 8 CFR part 2.

§§ 207.7 and 207.8 [Redesignated as § 207.8 and § 207.9]

2. Sections 207.7 and 207.8 are redesignated as § 207.8 and § 207.9 respectively.

3. A new § 207.7 is added to read as follows:

§ 207.7 Derivatives of refugees.

(a) *Eligibility*. A spouse, as defined in section 101(a)(35) of the Act, and/or child(ren), as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Act, shall be granted refugee status if accompanying or following-to-join the principal alien. An accompanying derivative is a spouse or child of a refugee who is in the physical company of the principal refugee when he or she is admitted to the United States, or a spouse or child of a refugee who is admitted within 4 months following the principal refugee's admission. A following-to-join derivative, on the other hand, is a spouse or child of a refugee who seeks admission more than 4 months after the principal refugee's admission to the United States.

(b) *Ineligibility*. The following relatives of refugees are ineligible for accompanying or following-to-join benefits:

(1) A spouse or child who has previously been granted asylee or refugee status;

(2) An adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least 2 years;

(3) A stepchild, if the marriage that created this relationship took place after the child became 18 years old;

(4) A husband or wife if each/both were not physically present at the marriage ceremony, and the marriage was not consummated (section 101(a)(35) of the Act);

(5) A husband or wife if the U.S. Attorney General has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws; and

(6) A parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin or in-law.

(c) *Relationship.* The relationship of a spouse and child as defined in sections 101(a)(35) and 101(b) (1)(A), (B), (C), (D), or (E), respectively, of the Act, must have existed prior to the refugee's admission to the United States and must continue to exist at the time of filing for accompanying or following-to-join benefits and at the time of the spouse or child's subsequent admission to the United States. If the refugee proves that the refugee is the parent of a child who was born after the refugee's admission as a refugee, but who was *in utero* on the date of the refugee's admission as a refugee, the child shall be eligible to accompany or follow-to-join the refugee. The child's mother, if not the principal refugee, shall not be eligible to accompany or follow-to-join the principal refugee unless the child's mother was the principal refugee's spouse on the date of the principal refugee's admission as a refugee.

(d) *Filing.* A refugee may request accompanying or following-to-join benefits for his/her spouse and unmarried, minor child(ren) (whether the spouse and children are in or outside the United States) by filing a separate Form I–730 Refugee/Asylee Relative Petition, for each qualifying family member with the designated Service office. The Form I–730 may only be filed by the principal refugee. Family members who derived their refugee status are not eligible to file the Form I–730 on behalf of their spouse and child(ren). A separate Form I–730 must be filed for each qualifying family member before February 28, 2000 or within 2 years of the refugee's admission to the United States, whichever is later, unless the Service determines that the filing period should be extended for humanitarian reasons. There is no time limit imposed on a family member's travel to the United States once the Form I–730 has been approved, provided that the relationship of spouse or child continues to exist and approval of the Form I–730 petition has not been subsequently revoked. There is no fee for filing this petition.

(e) *Evidence.* Documentary evidence consists of those documents which establish that the petitioner is a refugee, and evidence of the claimed relationship of the petitioner to the beneficiary. The burden of proof is on the petitioner to establish by a preponderance of the evidence that any person on whose behalf he/she is making a request under this section is an eligible spouse or unmarried, minor child. Evidence to establish the claimed relationship for a spouse or unmarried, minor child as set forth in 8 CFR part 204 must be submitted with the request for accompanying or following-to-join benefits. Where possible this will consist of the documents specified in § 204.2(a (1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. In addition, a recent photograph of each derivative must accompany the Form I–730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes.

(f) *Approvals.* (1) *Spouse or child in the United States.* When a spouse or child of a refugee is in the United States and the Form I–730 is approved, the Service will notify the refugee of such approval on Form I–797, Notice of Action. Employment will be authorized incident to status.

(2) *Spouse or child outside the United States.* When a spouse or child of a refugee is outside the United States and the Form I–730 is approved, the Service will notify the refugee of such approval on Form I–797. The approved Form I–730 will be sent by the Service to the Department of State for forwarding to the American Embassy or Consulate having jurisdiction over the area in which the refugee's spouse or child is located.

(3) *Benefits.* The approval of the Form I–730 shall remain valid for the duration of the relationship to the refugee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I–730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of a refugee. To demonstrate employment authorization, the Service will issue a Form I–94, Arrival-Departure Record, which also reflects the derivative's current status as a refugee, or the derivative may apply under § 274a.12(a) of this chapter, using Form I–765, Application for Employment Authorization, and a copy of the Form I–797.

(g) *Denials.* If the spouse or child of a refugee is found to be ineligible for derivative status, a written notice explaining the basis for denial shall be forwarded to the principal refugee. There shall be no appeal from this decision. However, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the refugee or asylee relative petition proceeding, if the refugee establishes eligibility for the accompanying or following-to-join benefits contained in this part.

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

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

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

5. In § 208.19, paragraphs (b), (c), (d), and (f) are revised to read as follows:

§ 208.19 Admission of asylee's spouse and children.

* * * * *

(b) *Relationship.* The relationship of spouse and child as defined in sections 101(a)(35) and 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved and must continue to exist at the time of filing for accompanying or following-to-join benefits and at the time of the spouse or child's subsequent admission to the United States. If the asylee proves that the asylee is the parent of a child who was born after asylum was granted, but who was *in utero* on the date of the asylum grant, the child shall be eligible to accompany or follow-to-join the asylee. The child's mother, if not the principal asylee, shall not be eligible to accompany or follow-to-join the principal asylee unless the child's mother was the principal asylee's spouse on the date the principal asylee was granted asylum.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States, but was not included in the asylee's application, the asylee may request accompanying or following-to-join benefits for his/her spouse or child by filing for each qualifying family member a separate Form I–730, Refugee/Asylee Relative Petition, and supporting evidence, with the designated Service office, regardless of the status of that spouse or child in the United States. A recent photograph of each derivative must accompany the Form I–730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes. Additionally, a separate Form I–730 must be filed by the asylee for each qualifying family member before February 28, 2000, or within 2 years of the date in which he/she was granted asylum status, whichever is later, unless it is determined by the Service that this

period should be extended for humanitarian reasons. Upon approval of the Form I–730, the Service will notify the asylee of such approval on Form I–797, Notice of Action. Employment will be authorized incident to status. To demonstrate employment authorization, the Service will issue a Form I–94, Arrival-Departure Record, which also reflects the derivative's current status as an asylee, or the derivative may apply under § 274a.12(a) of this chapter, using Form I–765, Application for Employment Authorization, and a copy of the Form I–797. The approval of the Form I–730 shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I–730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the asylee may request accompanying or following-to-join benefits for his/her spouse or child(ren) by filing a separate Form I–730 for each qualifying family member with the designated Service office, setting forth the full name, relationship, date and place of birth, and current location of each such person. A recent photograph of each derivative must accompany the Form I–730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes. A separate Form I–730 for each qualifying family member must be filed before February 28, 2000, or within 2 years of the date in which the asylee was granted asylum status, whichever is later, unless the Service determines that the filing period should be extended for humanitarian reasons. When the Form I–730 is approved, the Service will notify the asylee of such approval on Form I–797. The approved Form I–730 shall be forwarded by the Service to the Department of State for delivery to the American Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located. The approval of the Form I–730 shall remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I–730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

* * * * *

(f) *Burden of proof.* To establish the claimed relationship of spouse or child as defined in sections 101(a)(35) and 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in § 204.2 (a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he or she is making a request under this section is an eligible spouse or child.

* * * * *

PART 299—IMMIGRATION FORMS

6. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

7. Section 299.1 is amended by revising the entry for Form ''I–730'' to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* * * *	*	* *
I–730	01–07–98	Refugee/Asylee Relative Petition.
* * * *	*	* *

8. Section 299.5 is amended by revising the entry for Form ''I–730'' to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
* * * *	*	* *
I–730	Refugee/Asylee Relative Petition	1115–0121
* * * *	*	* *

Dated: July 30, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

Note: The Form I–730, Refugee/Asylee Relative Petition, will not appear in the Code of Federal Regulations.

BILLING CODE 4410–01–M

U.S. Department of Justice

Immigration and Naturalization Service

OMB No. 1115-0121

Refugee/Asylee Relative Petition

INSTRUCTIONS

Read these instructions carefully. If you do not follow the instructions, the Immigration and Naturalization Service (INS) may have to return your petition, which may delay final action. If more space is needed to complete an answer, continue on a separate sheet of paper.

1. Who Can File This Petition?

If you have been admitted to the United States as a refugee or if you have been granted status in the United States as an asylee, **within the previous two years and as the principal applicant**, you may file this petition. A separate Form I-730 must be filed for each family member.

You are **not** eligible to file this petition if:

1) You were granted status in the United States as a derivative beneficiary or as an accompanying or following-to-join family member; or
2) You were admitted to the United States as a refugee more than two years ago (see *NOTE); or
3) You were granted status in the United States as an asylee more than two years ago (see *NOTE).

***NOTE**: The requirement that the Refugee/Asylee Relative Petition must be filed within two years of your admission as a refugee or grant of asylum does not go into effect until two years after the effective date of the final rule entitled *Procedures for Filing a Derivative Petition (Form I-730) for a Spouse and Unmarried Children of a Refugee/Asylee.*

2. Who Is Eligible For Accompanying Or Following-To-Join Benefits?

Your **spouse** and/or your **unmarried children under twenty-one (21) years of age**, whether in or outside of the United States, are eligible for accompanying or following-to-join benefits based on this petition **provided** that the family member(s) qualify under the conditions described below.

- If you are a refugee: The relationship between you and your relative must have existed on the date you were admitted to the United States as a refugee and must continue to exist. If the person you are filing for is a child who was conceived but not yet born on the date you were admitted to the United States, the relationship will be considered to exist as of the date you were admitted to the United States. (The mother of such child is not an eligible relative unless the mother was married to the principal refugee when the refugee was admitted to the United States.)

- If you are an asylee: The relationship between you and your relative must have existed on the date you were granted asylum in the United States and must continue to exist. If the person you are filing for is a child who was conceived but not yet born on the date you were granted asylum in the United States, the relationship will be considered to exist as of the date you were granted asylum in the United States. (The mother of such child is not an eligible relative unless the mother was married to the principal asylee when the asylee was granted asylum in the United States.)

- In all cases, if the family member you are filing for is your child, the child must continue to be unmarried and under 21 years of age.

- A spouse or child must be otherwise admissible as an immigrant (for refugee relatives) or not subject to the mandatory bars of 8 CFR 208.19 (for asylee relatives).

A petition may not be approved for the following people:

- A spouse or child who has previously been granted refugee or asylee status.

- An adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the adoptive parent(s) for at least two years.

- A stepchild, if the marriage that created this relationship took place after the child became 18 years old.

- A husband or wife, if each was not physically present at the marriage ceremony and the marriage was not consummated.

- A husband or wife, if it is determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws.

- A parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin, or in-law.

3. What Documents Need To Be Submitted?

Certain documents are required to be submitted with this petition to show that you are eligible to file this petition and to show that a relationship exists between you and your relative. (If the documents described below are not available, see Sections 4 and 5 of these instructions.)

- In all cases, submit **evidence of your status as a refugee or asylee** in the United States.

- In all cases, submit a recent, clear **photograph** of the family member you are filing for.

- If you are petitioning for your **husband** or **wife**, submit your marriage certificate. If you and/or your spouse were ever previously married to other people, submit evidence of the legal termination of the previous marriage(s). Evidence of any legal name change must also be submitted, if applicable.

- If you are petitioning for your **child** and you are the **natural mother**, whether the child was born in or out of wedlock, submit the child's birth certificate showing both the child's name and your name. Evidence of any legal name change must also be submitted if the names on the birth certificate do not match the names on the petition.

- If you are petitioning for your **child** and you are the **natural father**, submit the child's birth certificate showing both the child's name and your name. If you were married to the child's mother, submit your marriage certificate. If you and/or the child's mother were ever previously married to other people, submit evidence of the legal termination of the previous marriage(s). If you were not married to the child's mother, submit evidence that the child was legitimated by the civil authorities. If the child was not legitimated by the civil authorities, submit evidence that a bona fide parent/child relationship exists or existed between you and the child. Evidence of a bona fide parent/child relationship should prove that you have emotional and financial ties to the child, and that you have shown genuine concern and interest in the child's support, instruction, and general welfare. Such evidence may include (but is not limited to) the following:
  1) Money order receipts;
  2) Canceled checks showing financial support of the child;
  3) Income tax returns in which you claim the child as a dependent and member of your household;
  4) Medical or insurance records which include the child as a dependent;
  5) School records for the child;
  6) Correspondence between you and the child; and
  7) Notarized affidavits of reliable persons who are knowledgeable about the relationship.

  Evidence of any legal name change must also be submitted, if applicable.

- If you are petitioning for your **stepchild**, whether the child was born in or out of wedlock, submit the child's birth certificate and the marriage certificate between you and the child's natural parent. If you and/or the child's natural parent were ever previously married to other people, submit evidence of the legal termination of the previous marriage(s). Evidence of any legal name changes must also be submitted, if applicable.

- If you are petitioning for your **adopted child**, submit a certified copy of the adoption decree and evidence that you resided together with the child for at least two years. If you were granted legal custody of the child prior to the adoption, submit a certified copy of the court order granting custody. Evidence of any legal name changes must also be submitted, if applicable.

IMPORTANT NOTE: In all cases, you should submit one legible photocopy of each required document to the INS. Where a copy of a document is submitted, the INS may at any time require that the original document be submitted for review. Documents in a foreign language must be accompanied by a complete English translation. The translator must certify that the translation is accurate and that he or she is competent to translate. Original documents submitted when not required will remain a part of the record.

4. What If A Document Is Not Available?

If the documents described above are not available from the civil authorities, you can submit the following, as **secondary evidence**, along with a statement from the appropriate civil authority certifying that the required document(s) is(are) not available.

- **Church record**: A certificate under the seal of the church where the baptism, dedication, or comparable rite occurred within two months after birth, showing the date and place of the child's birth, the date of the religious ceremony, and the names of the child's parents.

- **School record**: A letter from the authorities of the school(s) attended, showing the date of admission to the school, the child's date and place of birth, and the names of both parents, if shown in the school records.

- **Census record**: State or federal census record showing name, place of birth, and date of birth or the age of the person(s) listed.

5. What If Secondary Evidence Is Not Available?

If the secondary evidence described above is not available, you can submit affidavits. If you submit affidavits, they must overcome the absence of primary and secondary evidence.

- **Affidavits**: Submit written statements sworn to or affirmed by two persons who were living at the time and who have personal knowledge of the event you are trying to prove: for example, the date and place of birth, marriage or death. The persons making the affidavits need not be citizens of the United States. Each affidavit should contain the following information regarding the person making the affidavit: his or her full name, address, date and place of birth and his or her relationship to you (if any); full information concerning the event; and complete details concerning how the person acquired the knowledge of the event.

6. How To Prepare This Form?

- Type or print clearly in black or blue ink.

- Answer all questions completely and accurately. If any item does not apply, please write "N/A".

- If you need extra space to complete any item, attach a separate continuation sheet. Indicate the item number, and date and sign each sheet.

7. Where To File This Form?

Send this form along with the required supporting evidence to the following address:

INS
Nebraska Service Center
P. O. Box 87730
Lincoln, NE 68501-7730

8. What Are The Penalties For Committing Marriage Fraud Or Submitting False Information Or Both?

- Title 8, United States Code, Section 1325, states that any individual who knowingly enters into a marriage contract for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than five years, or fined not more than $250,000, or both.

- Title 18, United States Code, Section 1001, states that whoever willfully and knowingly falsifies a material fact, makes a false statement or makes use of a false document will be fined up to $10,000 or imprisoned up to five years, or both.

9. The INS Authority For Collecting This Information:

The INS requests the information on the form to carry out the immigration laws contained in Title 8, United States Code, Sections 1157(c)(2) and 1158(b)(3). The INS needs this information to determine whether a person is eligible for immigration benefits. The information you provide may also be disclosed to other federal, state, local, and foreign law enforcement and regulatory agencies during the course of the investigation required by the INS. You do not have to give this information. However, if you refuse to give some or all of it, your petition may be denied.

10. Paperwork Reduction Act Notice.

A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated to average **35** minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Justice, Immigration and Naturalization Service, Policy Directives and Instructions Branch (Room 5307), Washington, DC 20536.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0121

Refugee/Asylee Relative Petition

START HERE - Please Type or Print

Part 1. Information about you.

Family Name	Given Name	Middle Name

Address - C/O

Street Number and Name	Apt. #

City	State or Province

Country	ZIP/Postal Code	Sex: a. ☐ Male b. ☐ Female

Date of Birth *(Month/Day/Year)*	Country of Birth

A#	Social Security #

Other names used *(including maiden name)*

Present Status: *(check one)*
a. ☐ Refugee c. ☐ Lawful Permanent Resident based on previous Refugee status
b. ☐ Asylee d. ☐ Lawful Permanent Resident based on previous Asylee status

Date *(Month/Day/Year)* and Place Refugee or Asylee status was granted:

If granted Refugee status, Date *(Month/Day/Year)* and Place Admitted to the United States:

If Married, Date *(Month/Day/Year)* and Place of Present Marriage:

If Previously Married, Name(s) of Prior Spouse(s):

Date(s) Previous Marriage(s) Ended: *(Month/Day/Year)*

Part 2. Information about the relationship.

The alien relative is my: a. ☐ Spouse
b. ☐ Unmarried child under 21 years of age

Number of relatives I am filing for: _____ (_____of_____)

Part 3. Information about your alien relative.

(If you are petitioning for more than one family member you must complete and file a separate Form I-730 for each additional family member.)

Family Name	Given Name	Middle Name

Address - C/O

Street Number and Name	Apt. #

Continued on back.

Form I-730 (Rev. 1-7-98)N

FOR INS USE ONLY

Returned	Receipt
Submitted	
Reloc Sent	
Reloc Rec'd	
☐ Petitioner Interviewed ☐ Beneficiary Interviewed	

Consulate

Sections of Law
☐ *207 (c) (2) Spouse*
☐ *207 (c) (2) Child*
☐ *208 (b) (3) Spouse*
☐ *208 (b) (3) Child*

Remarks

Action Block

To Be Completed by *Attorney or Representative*, if any
☐ Fill in box if G-28 is attached to represent the applicant

Volag #

Atty State License #

Part 3. Information about your alien relative. *Continued*

City	State or Providence	
Country	ZIP/Postal Code	Sex: a. ☐ Male b. ☐ Female
Date of Birth (*Month/Day/Year*)	Country of Birth	
Alien # (If any)	Social Security # *(If Any)*	

Other name(s) used *(including maiden name)*

If Married, Date *(Month/Day/Year)* and Place of Present Marriage:

If Previously Married, Name(s) of Prior Spouse(s):

Date(s) Previous Marriage(s) Ended: *(Month/Day/Year)*

Part 4. Processing Information.

A. Check One:
a. ☐ The person named in Part 3 is now in the United States.
b. ☐ The person named in Part 3 is now outside the United States. *(Please indicate the location of the American Consulate or Embassy where your relative will apply for a visa.)*

American Consulate/Embassy at: _____
City and Country

B. Is the person named in Part 3 in exclusion, deportation, or removal proceedings in the United States?
a. ☐ No
b. ☐ Yes *(Please explain on a separate paper.)*

Part 5. Signature.

Read the information on penalties in the instructions before completing this section and sign below. If someone helped you to prepare this petition, he or she must complete Part 6.

I certify or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it, is all true and correct. I authorize the release of any information from my record which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature	Print Name	Date	Daytime Telephone # ( )

Please Note: *If you do not completely fill out this form, or fail to submit the required documents listed in the instructions, your relative may not be found eligible for the requested benefit and this petition may be denied.*

Part 6. Signature of person preparing form if other than Petitioner above. *(Sign Below)*

I declare that I prepared this petition at the request of the above person and it is based on all of the information of which I have knowledge.

Signature	Print Name	Date	Daytime Telephone # ( )

Firm Name and Address

[FR Doc. 98–1879 Filed 1–26–98; 8:45 am]
BILLING CODE 4410–01–C

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and the previous Foreign List.

EFFECTIVE DATES: *Regulations G and U (12 CFR parts 207 and 221):* February 9, 1998–March 31, 1998; *Regulations T and X (12 CFR parts 220 and 224):* February 9, 1998–January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. For the hearing impaired *only,* contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are the deletions from and additions to the Board's OTC List, which was last published on October 27, 1997 (62 FR 55495), and became effective November 10, 1997. A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks traded over-the-counter in the United States that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated for trading in the national market system (NMS security) under rules approved by the Securities and Exchange Commission (SEC). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc.

In order to determine the loan value of stock and other collateral under Regulations G and U, lenders must be able to determine whether a particular stock is a *margin stock,*[1] a term which is currently defined to include *OTC margin stock.* The definition of *OTC margin stock* in Regulations G and U states that ''[a]n OTC stock is not considered to be an *OTC margin stock* unless it appears on the Board's periodically published list of OTC margin stocks.'' The OTC List provides the names of these stocks.

Pursuant to amendments recently adopted by the Board (see 63 FR 2805, January 16, 1998) lenders subject to Regulation G will become subject to Regulation U on April 1, 1998 and Regulation G will be removed from the Code of Federal Regulations. Also on April 1, 1998, the definition of *margin stock* in the revised Regulation U will no longer include *OTC margin stock* and the definition of *OTC margin stock* will be removed from the revised Regulation U.

With the extension of Regulation U on April 1, 1998 to cover lenders currently subject to Regulation G, and the elimination of the concept and accompanying definition of *OTC margin stock* in the revised Regulation U, lenders subject to Regulation U will no longer be bound by the OTC List published today. Instead, as of April 1, 1998, lenders subject to the revised Regulation U will be bound by the revised definition of *margin stock,* which continues to include ''[a]ny OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security).'' In other words, on April 1, 1998, all lenders subject to the revised Regulation U will no longer use the OTC List to determine whether an OTC stock is subject to the 50 percent loan value limitation when used as collateral for a purpose loan. To determine whether an OTC stock is subject to this limitation, a Regulation U lender will need to determine whether the stock trades in the National Market tier of the Nasdaq Stock Market. The names of these stocks are available at the SEC and at the National Association of Securities Dealers, Inc. and can also be determined by consulting the internet at *http://www.nasdaq.com.*

Lenders subject to Regulation T and borrowers subject to Regulation X who are required under § 224.3(a) to conform credit they obtain to Regulation T will continue to use the OTC List until publication of the next OTC List, anticipated for May 1998. The definition of *OTC margin stock* will be retained in Regulation T until January 1, 1999. The Board will cease publication of the OTC List at that time.

Also listed below are the deletions from and additions to the Foreign List, which was last published on October 27, 1997 (62 FR 55495), and became effective November 10, 1997. The Foreign List is used solely by lenders subject to Regulation T. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6(a) and (b), 220.17(a), (b), (c) and (d), and 221.7(a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements,

[1] The equivalent term in Regulation T is *margin security.* Regulation X incorporates Regulations G, T, and U in section 224.3 and therefore also incorporates the definitions in Regulations G, T, and U.

Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2 and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List and the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

ALLERGAN LIGAND RETINOID THERAPEUTICS, INC.
$.001 par common
ALLIANCE IMAGING, INC.
$.01 par common
AMERICA FIRST FINANCIAL FUND 1987
Beneficial unit certificates
AMERICAN TELECASTING, INC.
$.01 par common
AMSCAN HOLDINGS, INC.
$.10 par common
BATTERY TECHNOLOGIES, INC.
No par common
CAI WIRELESS SYSTEMS, INC.
No par common
CATALYTICA, INC.
Warrants (expire 10–31–1997)
CENTURA SOFTWARE CORPORATION
$.01 par common
CHEMTRAK INCORPORATED
$.001 par common
CINERGI PICTURES ENTERTAINMENT INC.
$.01 par common
CYPROS PHARMACEUTICAL CORPORATION
Class B, warrants (expire 11–03–1997)
EGEORGE FINANCIAL CORPORATION
$.10 par common
ECOGEN INC.
Warrants (expire 01–31–1998)
ELEK-TEK, INC.
$.01 par common
FAULDING INC.
$.01 par common
FFBS BANCORP, INC. (Mississippi)
$.01 par common
FIRST BANKS, INC. (Missouri)
Class C, 9% increasing rate
GARNET RESOURCES CORPORATION
$.01 par common
GATEWAY DATA SCIENCES CORPORATION
$.01 par common
GEOGRAPHICS, INC.
No par common. Warrants (expire 06–01–1999)
GLASGAL COMMUNICATIONS, INC.
Warrants (expire 09–21–1999)
GRAND UNION COMPANY, THE
$1.00 par common
HOUSECALL MEDICAL RESOURCES, INC.
$.01 par common
HYBRIDON, INC.
$.001 par common
IITC HOLDINGS, LTD.
Class A, no par common
INTERNATIONAL VERIFACT, INC.
Redeemable Warrants (expire 01–05–1998)
INTERSTATE NATIONAL DEALER SERVICES, INC.
Warrants (expire 07–22–1999)
KINETIC CONCEPTS, INC.
$.001 par common
KS BANCORP, INC. (North Carolina)
No par common
LTX CORPORATION
13½% convertible debentures
MACHEEZMO MOUSE RESTAURANTS, INC.
No par common
MAXCOR FINANCIAL GROUP, INC.
Series A, warrants (expire 11–30–2001)
Series B, warrants (expire 11–30–2001)
McMORAN OIL & GAS COMPANY
Rights (expire 11–13–1997)
MERIDIAN POINT REALTY TRUST 83
No par shares of beneficial
MICRO-INTEGRATION CORPORATION
$.01 par common
MIDCOM COMMUNICATIONS, INC.
$.0001 par common
MVSI, INC.
Warrants (expire 08–15–2000)
NAL FINANCIAL GROUP, INC.
$.15 par common
NEUROBIOLOGICAL TECHNOLOGIES, INC.
$.001 par common
NIAGARA CORPORATION
Warrants (expire 08–13–2000)
NUKO INFORMATION SYSTEMS, INC.
$.001 par common
ON-GARD SYSTEMS, INC.
$.001 par common
PENNICHUCK CORPORATION
$1.00 par common
PREMIER LASER SYSTEMS, INC.
Class A, warrants (expire 11–30–1999)
Q-ENTERTAINMENT, INC.
No par common
REDWOOD TRUST, INC.
Warrants (expire 12–31–1997)
REGENT BANCSHARES CORP. (Pennsylvania)
Series A, $.10 par convertible
TRANSWORLD HEALTHCARE, INC.
Warrants (expire 12–07–1997)
U.S. BANCORP (Minnesota)
Series A, preferred stock
VENTURE SEISMIC, LTD.
Warrants (expire 11–06–2000)
VIDEOLAN TECHNOLOGIES, INC.
Warrants (expire 08–10–2000)
VIROGROUP, INC.
$.01 par common
VISION-SCIENCES, INC.
$.01 par common
WASHINGTON MUTUAL, INC.
Series C, $1.00 par non-cumulative Depositary shares
WELCOME HOME, INC.
$.01 par common
WELLCARE MANAGEMENT GROUP, INC., THE
$.01 par common
WESTERN PACIFIC AIRLINES, INC.
$.001 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

1ST UNITED BANCORP (Florida)
$.01 par common
ACC CONSUMER FINANCE CORPORATION
$.001 par common
ACCESS BEYOND, INC.
$.01 par common
ADCO TECHNOLOGIES, INC.
$.01 par common
AIRWAYS CORPORATION
$.01 par common
ALL AMERICAN COMMUNICATIONS, INC.
$.0001 par common
Class B, non-voting, $.0001 par common
ALLIED CAPITAL ADVISERS, INC.
$.001 par common
ALLIED CAPITAL COMMERCIAL CORPORATION
$.0001 par common
ALLIED CAPITAL CORPORATION
$1.00 par common
ALLIED CAPITAL CORPORATION II
$1.00 par common
ALLTRISTA CORPORATION
No par common
ALPINE LACE BRANDS, INC.
$.01 par common
AMERICAN NATIONAL BANCORP, INC.
$1.00 par common
AMERICAN RECREATION COMPANY HOLDINGS
$.01 par common
ANDYNE COMPUTING LTD.
No par common
ARBOR HEALTH CARE COMPANY
$.03 par common
ARV ASSISTED LIVING, INC.
No par common
ATCHISON CASTING CORPORATION
$.01 par common
ATLAS AIR, INC.
$.01 par common
BANK CORPORATION OF GEORGIA
$1.00 par common
BDM INTERNATIONAL, INC.
$.01 par common
BELMONT HOMES, INC.
$.10 par common
BOWLIN OUTDOOR ADVERTISING & TRAVEL
$.001 par common
BOX WORLDWIDE, INC., THE
$.001 par common
BRANFORD SAVINGS BANK (Connecticut)
No par common
CAIRN ENERGY USA, INC.
$.01 par common
CALNETICS CORPORATION
No par common
CAPITAL BANCORP (Florida)
$1.00 par common
CB COMMERCIAL REAL ESTATE SERVICES

$.01 par common
CENTRAL FIDELITY BANKS, INC.
$5.00 par common
COMMUNITY BANK SYSTEM, INC. (New York)
$1.25 par common
COMMUNITY CARE OF AMERICA, INC.
$.01 par common
COMPUTATIONAL SYSTEMS, INC.
No par common
COMPUTER DATA SYSTEMS, INC.
$.10 par common
CYRIX CORPORATION
$.004 par common
DATA DOCUMENTS INCORPORATED
$.01 par common
DELCHAMPS, INC.
$.01 par common
DOUBLETREE CORPORATION
$.01 par common
ELEXSYS INTERNATIONAL, INC.
$1.00 par common
ENDOVASCULAR TECHNOLOGIES, INC.
$.00001 par common
EXIDE ELECTRONICS GROUP, INC.
$.01 par common
FINANCIAL INSTITUTIONS INSURANCE
$1.00 par common
FIRST FINANCIAL CORPORATION
$1.00 par common
FIRST SOUTHEAST FINANCIAL CORPORATION
$.01 par common
FIRSTPLUS FINANCIAL GROUP, INC.
$.01 par common
FOREST OIL CORPORATION
$.10 par common
GAME FINANCIAL CORPORATION
$.01 par common
GATEWAY BANCORP, INC. (Kentucky)
$.01 par common
GLASTONBURY BANK & TRUST COMPANY
$2.50 par common
GREEN, A.P. INDUSTRIES, INC.
$1.00 par common
GREENFIELD INDUSTRIES, INC.
$.01 par common
GROUND ROUND RESTAURANTS, INC.
$.1667 par common
GYNECARE INC.
$.01 par common
HA-LO INDUSTRIES, INC.
No par common
HAYES WHEELS INTERNATIONAL,
$.01 par common
HEALTHDYNE, INC.
$.01 par common
HOLLYWOOD PARK, INC.
$.01 par common
HOMEGATE HOSPITALITY, INC.
$.01 par common
HPR, INC.
$.01 par common
INACOM CORP.
$.10 par common
INFINITY FINANCIAL TECHNOLOGY, INC.
No par common
INTERNATIONAL DAIRY QUEEN, INC.
Class A, $.01 par common
Class B, $.01 par common
INTERNATIONAL IMAGING MATERIALS, INC.
$.01 par common
JACKSON HEWITT INC.
$.02 par common
JEFFERSON BANKSHARES, INC. (Virginia)
$2.50 par common
LB FINANCIAL, INC.
$.01 par common
LEASING SOLUTIONS, INC.
No par common
LINDSAY MANUFACTURING CO.
$1.00 par common
MAGNA BANCORP, INC. (Mississippi)
$.01 par common
MAGNETIC TECHNOLOGIES CORPORATION
$.15 par common
MAIL BOXES ETC.
No par common
MEDIC COMPUTER SYSTEMS, INC.
$.01 par common
MELAMINE CHEMICALS, INC.
$.01 par common
MODTECH, INC.
$.01 par common
MOSINEE PAPER CORPORATION
$2.50 par common
MUSTANG SOFTWARE, INC.
No par common
NATIONAL HEALTH ENHANCEMENT SYSTEMS
$.001 par common
NATIONAL PICTURE & FRAME COMPANY
$.01 par common
NETWORK GENERAL CORPORATION
$.01 par common
NFO WORLDWIDE, INC.
$.01 par common
OFFSHORE ENERGY DEVELOPMENT
$.01 par common
ORTHODONTIC CENTERS OF AMERICA INC.
$.01 par common
PHONETEL TECHNOLOGIES, INC.
$0.01 par common
PHYSICIAN SUPPORT SYSTEMS, INC.
$.001 par common
PHYSICIANS HEALTH SERVICES, INC.
Class A, $.01 par common
PITTENCRIEFF COMMUNICATIONS, INC.
$.01 par common
POE & BROWN, INC.
$.10 par common
PREMENOS TECHNOLOGY CORPORATION
$.01 par common
PREMIER PARKS, INC.
$.05 par common
PRIMARY BANK (New Hampshire)
$.01 par common
PRONET, INC.
$.01 par common
REXWORKS, INC.
$.12 par common
ROBBINS & MYERS, INC.
No par common
ROTECH MEDICAL CORPORATION
$.0002 par common
SEAMAN FURNITURE COMPANY, INC.
$.01 par common
SEQUANA THERAPEUTICS, INC.
$.001 par common
SHO-ME FINANCIAL CORPORATION
$.01 par common
SIRROM CAPITAL CORPORATION
No par common
$.01 par common
Class A, $.01 par common
SULLIVAN DENTAL PRODUCTS, INC.
$.01 par common
TECHNOLOGY SERVICE GROUP, INC.
$.01 par common
Warrants (expire 05–09–1999)
TECNOL MEDICAL PRODUCTS, INC.
$.001 par common
THOMPSON PBE, INC.
$.01 par common
TODHUNTER INTERNATIONAL, INC.
$.01 par common
TRANSTEXAS GAS CORPORATION
$.01 par common
TRIANGLE BANCORP, INC. (North
No par common
TUESDAY MORNING CORP.
$.01 par common
TYSON FOODS, INC.
Class A, $.10 par common
USLD COMMUNICATIONS CORPORATION
$.01 par common
VACATION BREAK U.S.A., INC.
$.01 par common
VECTRA BANKING CORPORATION
$.01 par common
VBC Capital I Cumulative capital
VIEWLOGIC SYSTEMS, INC.
$.01 par common
VIRGINIA FIRST FINANCIAL CORPORATION
$1.00 par common
WALTER INDUSTRIES, INC.
$.01 par common
ZYTEC CORP.
No par common

Additions to the List of Marginable OTC Stocks

ACT TELECONFERENCING, INC.
No par common
ADVANTICA RESTAURANT GROUP, INC.
$.01 par common
Warrants (expire 01–07–2005)
ALYDAAR SOFTWARE CORPORATION
$.001 par common
AMERICAN BINGO & GAMING CORPORATION
$.001 par common
AMERICAN EDUCATIONAL PRODUCTS, INC.
$.05 par common
AMERICAN PHYSICIAN PARTNERS, INC.
$.001 par common
AMERIPATH, INC.
$.01 par common
AMSURG, INC.
Class A, no par common
Class B, no par common
AMVESTORS FINANCIAL CORPORATION
Warrants (expire 04–03–2002)
APPLIED FILMS CORPORATION
No par common
APPLIED MICRO CIRCUITS CORPORATION
$.01 par common
ATLANTIC GULF COMMUNITIES CORPORATION
A Warrants (expire 06–23–2004)
B Warrants (expire 06–23–2004)
C Warrants (expire 06–23–2004)
AVTEAM, INC.
$.01 par common
BANK OF THE OZARKS, INC.
$.01 par common
BARBEQUES GALORE LIMITED
American Depositary Receipts
BAY BANCSHARES, INC. (Texas)
$1.00 par common
BERINGER WINE ESTATES HOLDINGS, INC.
Class B, no par common
BIGMAR, INC.

$.001 par common
BIOANALYTICAL SYSTEMS, INC.
No par common
BOREL BANK & TRUST COMPANY (California)
$.01 par common
BRASS EAGLE, INC.
$.01 par common
BRIGHT HORIZONS, INC.
$.01 par common
BROUGHTON FOODS COMPANY
$1.00 par common
C.H. ROBINSON WORLDWIDE, INC.
$.10 par common
C3, INC.
No par common
CANADA SOUTHERN PETROLEUM LTD.
$1.00 par limited voting shares
CAPITOL BANCORP, LTD.
$10.00 par trust preferred
CAPTEC NET LEASE REALTY, INC.
$.01 par common
CASELLA WASTE SYSTEMS, INC.
Class A, $.01 par common
CELLEGY PHARMACEUTICALS, INC.
Warrants (expire 08–10–2000)
CFI MORTGAGE, INC.
$.01 par common
COLORADO MEDTECH, INC.
No par common
COLT TELECOM GROUP, PLC
American Depositary Shares
COMMUNITY FIRST BANKSHARES, INC.
Cumulative Capital Securities of CFB Capital II
COMPU-DAWN, INC.
$.01 par common
CONCORD COMMUNICATIONS, INC.
$.01 par common
CONNING CORPORATION
$.01 par common
CONSOLIDATED CAPITAL CORPORATION
$.001 par common
CRAGAR INDUSTRIES, INC.
$.01 par common
CROSSKEYS SYSTEMS CORPORATION
No par common
DENALI, INC.
$.01 par common
DENTAL CARE ALLIANCE, INC.
$.01 par common
DENTAL/MEDICAL DIAGNOSTIC SYSTEMS, INC.
$.01 par common
EAST TELECOM GROUP PLC
American Depositary Receipts
ECHOSTAR COMMUNICATIONS CORPORATION
Series C, $.01 par cumulative convertible preferred
EDISON BROTHERS STORES, INCORPORATED
$.01 par common
ELECTRIC LIGHTWAVE, INC.
Class A, $.01 par common
ELECTRONIC PROCESSING, INC.
$.01 par common
ENERGIS, PLC
American Depositary Shares
ESG RE LIMITED
$1.00 par common
EXCEL SWITCHING CORPORATION
$.01 par common
FALLBROOK NATIONAL BANK
$.625 par common
FAROUDJA, INC.
$.001 par common
FINET HOLDINGS CORPORATION
$.01 par common
FIRST ROBINSON FINANCIAL CORPORATION
$.01 par common
FIRST SECURITYFED FINANCIAL, INC.
$.01 par common
FLEXIINTERNATIONAL SOFTWARE, INC.
$.01 par common
FOCAL, INC.
$.01 par common
FORMULA SYSTEMS (1985), LTD.
American Depositary Receipts
FRANKLIN BANK, NATIONAL ASSOCIATION
Series A, noncumulative exchangeable preferred
FRANCHISE MORTGAGE ACCEPTANCE COMPANY
$.001 par common
FRIENDLY ICE CREAM CORPORATION
$.01 par common
GAMETECH INTERNATIONAL, INC.
$.001 par common
GART SPORTS COMPANY
$.01 par common
GENE LOGIC, INC.
$.001 par common
GILAT COMMUNICATIONS, LTD.
Ordinary Shares (NIS .01)
GOLD BANC CORPORATION, INC.
$25 par preferred securities
GREAT PEE DEE BANCORP, INC.
$.01 par common
HAYES CORPORATION
$.01 par common
HEALTHWORLD CORPORATION
$.01 par common
HERBALIFE INTERNATIONAL, INC.
Class B, $.01 par common
HERITAGE FINANCIAL CORPORATION
$.01 par common
HERLEY INDUSTRIES, INC.
Warrants (expire 01–11–1999)
HOLT'S CIGAR HOLDINGS, INC.
$.001 par common
HOMECAPITAL INVESTMENT CORPORATION
$.01 par common
HURRICANEHYDROCARBONS, LTD.
Class A, no par common
HYBRID NETWORKS, INC.
$.001 par common
I.C. ISAACS & COMPANY, INC.
$.0001 par common
ICOS VISION SYSTEMS CORPORATION
No par common
IMAGEMAX, INC.
No par common
IMAGING TECHNOLOGIES CORPORATION
$.005 par common
IMPERIAL CREDIT COMMERCIAL MORTGAGE INVESTORS
$.001 par common
INDIANA UNITED BANCORP, INC.
Cumulative trust preferred securities
INFORMATION ADVANTAGE, INC.
$.01 par common
INMARK ENTERPRISES, INC.
$.001 par common
INNOVATIVE VALVE TECHNOLOGIES, INC.
$.001 par common
INTERNATIONAL AIRCRAFT INVESTORS
$.01 par common
INTERNATIONAL BRIGUETTES HOLDING
$.01 par ordinary shares
INTERNATIONAL MANUFACTURING SERVICES, INC.
Class A, $.001 par common
INTERNATIONAL SPORTS WAGERING, INC.
$.001 par common
INTERVU, INC.
$.001 par common
ITC DELTACOM, INC.
$.01 par common
JAVELIN SYSTEMS, INC.
$.01 par common
KSB BANCORP, INC.
$.01 par common
LAMINATING TECHNOLOGIES, INC.
$.01 par common
LANDMARK SYSTEMS CORPORATION
$.01 par common
LET'S TALK CELLULAR & WIRELESS, INC.
$.01 par common
LINC CAPITAL, INC.
$.001 par common
LONG ISLAND COMMERCIAL BANK
$3.00 par common
LYNX THERAPEUTICS, INC.
$.001 par common
MADE2MANAGE SYSTEMS, INC.
No par common
MAHONING NATIONAL BANCORP, INC.
No par common, $1.00 stated value
MEDIWARE INFORMATION SYSTEMS, INC.
$.10 par common
METROMEDIA FIBER NETWORK, INC.
Class A, $.01 par common
METRONET COMMUNICATIONS CORPORATION
Class B, non-voting no par common
MIDWAY AIRLINES CORPORATION
$.01 par common
MMC NETWORKS, INC.
$.001 par common
MONTGOMERY FINANCIAL CORPORATION
$.01 par common
MOTOR CARGO INDUSTRIES, INC.
No par common
MPW INDUSTRIAL SERVICES GROUP, INC.
No par common
MYSTIC FINANCIAL, INC.
$.01 par common
N2K, INC.
$.001 par common
NAM TAI ELECTRONICS, INC.
Warrants (expire 11–01–2000)
NANOPHASE TECHNOLOGIES CORPORATION
$.01 par common
NEUTRAL POSTURE ERGONOMICS, INC.
$.01 par common
NOVACARE EMPLOYEES SERVICES, INC.
$.01 par common
NOVAMERICAN STEEL, INC.
No par common
NRG GENERATING (U.S.), INC.
$.01 par common
NYMOX PHARMACEUTICAL CORPORATION
$2.00 par common
OAO TECHNOLOGY SOLUTIONS, INC.
$.01 par common
OMNI ENERGY SERVICES CORPORATION
$.01 par common
OUTSOURCE INTERNATIONAL, INC.
$.001 par common
OYO GEOSPACE CORPORATION

$.01 par common
PAPER WAREHOUSE, INC.
$.01 par common
PAULA FINANCIAL
$.01 par common
PEMBRIDGE, INC.
No par common
PENNFED FINANCIAL SERVICES, INC.
$25.00 par cumulative trust preferred stock
PENNFIRST BANCORP, INC.
Cumulative trust preferred securities
PERICOM SEMICONDUCTOR CORPORATION
No par common
PETROGLYPH ENERGY, INC.
$.01 par common
POWER INTEGRATION, INC.
$.001 par common
PRECISION AUTO CARE, INC.
$.01 par common
PREVIEW TRAVEL, INC.
$.001 par common
PRINCETON VIDEO IMAGE, INC.
No par common
PRIORITY HEALTHCARE CORPORATION
Class B, $.01 par common
PROGENICS PHARMACEUTICALS, INC.
$.0013 par common
PRT GROUP
$.001 par common
QUESTA OIL & GAS COMPANY
$.01 par common
QUIGLEY CORPORATION
$.0005 par common
REALNETWORKS, INC.
$.001 par common
ROCK OF AGES CORPORATION
Class A, $.01 par common
SIX RIVERS NATIONAL BANK (California)
$5.00 par common
SKY NETWORK TELEVISION LIMITED
American Depositary Shares
SNB BANCSHARES, INC. (Georgia)
$1.00 par common
SOMNUS MEDICAL TECHNOLOGIES, INC.
$.001 par common
SOUTHERN COMMUNITY BANCSHARES, INC.
$.01 par common
SPECTRA-PHYSICS LASERS, INC.
$.01 par common
SPIROS DEVELOPMENT CORPORATION II, INC.
Units (expire 12–31–1999)
SPORTSLINE USA, INC.
$.01 par common
STIRLING COOKE BROWN HOLDINGS LIMITED
$.25 par ordinary shares
SUCCESS BANCSHARES, INC. (Illinois)
$.001 par common
SUN BANCORP, INC. (New Jersey)
$1.00 par common
T & W FINANCIAL CORPORATION
$.01 par common
TEKGRAF, INC.
$.001 par common
Warrants (expire 11–20–2002)
TELIGENT, INC.
Class A, $.01 par common
TELSCAPE INTERNATIONAL, INC.
$.001 par common
TERA COMPUTER COMPANY
$.01 par common
TIER TECHNOLOGIES, INC.
Class B, no par common
TIMBERLAND BANCORP, INC.
$.01 par common
TODAY'S MAN, INC.
Warrants (expire 12–31–1999)
TOPRO, INC.
$.0001 par common
TOYMAX INTERNATIONAL, INC.
$.01 par common
TRANSCOASTAL MARINE SERVICES, INC.
$.001 par common
TRANSIT GROUP, INC.
$.01 par common
TRI-COUNTY BANCORP, INC.
$.10 par common
TROPICAL SPORTSWEAR INTERNATIONAL CORPORATION
$.01 par common
U.S. TIMBERLANDS COMPANY, LP
No par common
U.S. VISION, INC.
$.01 par common
UBICS, INC.
$.01 par common
UNIDYNE CORPORATION
$.001 par common
UNION COMMUNITY BANCORP.
No par common
USWEB CORPORATION
$.0001 par common
VARI-LITE INTERNATIONAL, INC.
$.01 par common
VIRGIN EXPRESS HOLDINGS, PLC
American Depositary Shares
VRB BANCORP (Oregon)
No par common
WARWICK COMMUNITY BANCORP, INC.
$.01 par common
WASHINGTON SCIENTIFIC INDUSTRIES, INC.
$.10 par common
WHG BANCSHARES CORPORATION
$.10 par common
WHITE CAP INDUSTRIES, INC.
$.01 par common
WMF GROUP, LTD.
$.01 par common
YOUNG INNOVATIONS, INC.
$.01 par common
ZYMETX, INC.
$.001 par common

Deletions From the Foreign Margin List

Australia

ARNOTTS LIMITED
Ordinary shares, par A$0.50
BANK OF MELBOURNE LIMITED
Ordinary shares, par A$1.00

Austria

CREDITANSTALT-BANKVEREIN AG
Preferred shares, par 100 Austrian
CREDITANSTALT-BANKVEREIN AG
Ordinary shares, par 1000 Austrian
CREDITANSTALT-BANKVEREIN AG
Participation Certificates, par 500

Belgium

BBL (BANQUE BRUX LAMB)
Ordinary shares, no par
POWERFIN SA
No par participating certificates

Canada

LONDON INSURANCE GROUP INC.
No par common

France

USINOR SACILOR
Common shares par 40 French francs
WORMS ET COMPAGNIE SCA
Registered shares, par 12 French

Germany

PWA PAPIERWERKE WALDHOF-ASCHAFFENBURG
Bearer shares, par DM 50

Hong Kong

CHINA LIGHT & POWER COMPANY, LIMITED
HK$5.00 par ordinary shares
KOWLOON MOTOR BUS COMPANY (1933) LTD
HK$1.00 par ordinary shares

Ireland

WOODCHESTER INVESTMENTS PLC
A Ordinary shares, par .20 Irish

Italy

BANCO AMBROSIANO VENETO SPA
Non-convertible savings shares, par
BANCO AMBROSIANO VENETO SPA
Ordinary shares, par 1000 lira

Japan

HOKKAIDO TAKUSHOKU BANK, LIMITED
Y 50 par common
JAPAN SYNTHETIC RUBBER CO., LTD.
Y 50 par common
SANYO SECURITIES CO., LTD.
Y 50 par common
TOSHOKU LTD.
Y 50 par common
YAMAICHI SECURITIES CO., LTD.
Y 50 par common

Mexico

CIFRA, S.A. DE C.V.
Series A Common, par .30 Mexican
CIFRA, S.A. DE C.V.
Series B Common, par .30 Mexican

Norway

STOREBRAND AS
Convertible preferred A shares, par

Philippines

AYALA CORPORATION
Class B common shares, par 1
AYALA LAND INC.
Class B Common Shares, par 1

Singapore

HAW PAR BROTHERS INTERNATIONAL LTD.
Ordinary shares, par S$1.00
INCHCAPE BERHAD
Ordinary shares, par S$0.50

Sweden

NORDBANKEN AB
Restricted shares, par 12.50
SPARBANKEN SVERIGE AB (Swedbank)
Series A, par 10 Swedish krona

Switzerland

ELEKTROWATT AG
Bearer shares, par 50 Swiss francs

United Kingdom

COWIE GROUP PLC
Ordinary shares, par 5 p
GRAND METROPOLITAN PLC
Ordinary shares, par 25 p
GUINNESS PLC

Ordinary shares, par 25 p
HARRISONS & CROSFIELD PLC
Ordinary shares, par 25 p
MERCURY ASSET MANAGEMENT GROUP PLC
Ordinary shares, par 5 p
REDLAND PLC
Ordinary shares, par 25 p
TR CITY OF LONDON TRUST PLC
Ordinary shares, par 25 p

Additions to the Foreign Margin List

Australia

TELSTRA CORPORATION
Ordinary shares, par A$1.00

Austria

AUSTRIAN TABAK
Ordinary shares, par 1000 Austrian

Belgium

UCB SA
Ordinary shares, no par

France

FRANCE TELECOM SA
Ordinary shares, par 25 French
USINOR SA
Common, par 40 French francs

Germany

HOECHST AG
Bearer shares, par DM 50

Hong Kong

CLP HOLDINGS, LIMITED
HK$5.00 par ordinary shares
KMB HOLDINGS, LIMITED
HK$1.00 par ordinary shares

Italy

BANCA INTESA SPA
Ordinary shares, par 1000 lira
BANCA INTESA SPA
Non-convertible savings shares, par

Japan

JSR CORPORATION
Y 50 par common
RINNAI CORPORATION
Y 50 par common

Mexico

CIFRA, S.A. DE C.V.
Series V, no par common

Norway

STOREBRAND AS
A Common Shares, par 5 Norwegian

Philippines

AYALA CORPORATION
Common, par 1 Philippine peso
AYALO LAND, INC.
Common, par 1 Philippine peso

Singapore

HAW PAR CORPORATION
Ordinary shares, par S$1.00
INCHOAPE MOTORS, LTD.
Ordinary shares, par S$.50

Sweden

FORENINGS SPARBANKEN AB
Series A, par 10 Swedish krona
NORDBANKEN HOLDING AB
Registered shares, par 12.50

United Kingdom

ARRIVA PLC
Ordinary shares, par 5 p
CITY OF LONDON PLC
Ordinary shares, par 25 p
DIAGEO PLC
Ordinary shares, par 25 p
ELEMENTIS PLC
Ordinary shares, par 25 p

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), January 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1863 Filed 1–26–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–151–AD; Amendment 39–10292; AD 98–01–14]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 182S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–01–14, which was sent previously to all known U.S. owners and operators of Cessna Aircraft Company (Cessna) Model 182S airplanes. This AD requires replacing the left and right Aeroquip engine exhaust mufflers (P/N 71379–1254017–8) with an FAA-approved equivalent part. Reports of carbon monoxide gas entering the cabin heating system and the cabin of the Cessna Model 182S airplanes prompted this action. This condition, if not corrected, could result in passenger and pilot injury with consequent loss of control of the airplane.

DATES: Effective February 23, 1998, to all persons except those to whom it was made immediately effective by priority letter AD 98–01–14, issued December 30, 1997, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–151–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from The Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277, telephone (316) 941–7550, facsimile (316) 942–9008.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pendleton, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 946–4128; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On December 30, 1997, the FAA issued priority letter AD 98–01–14, which applies to Cessna 182S airplanes. Cessna Aircraft Company has recently reported that a quality control problem exists with Aeroquip engine exhaust mufflers installed on certain Cessna Model 182S airplanes. Nineteen Cessna Model 182S airplanes are equipped with these mufflers.

The problem was discovered during a delivery flight from the manufacturing facility. Following this incident, three operators have reported cracked mufflers during use, and two similar failures occurred at Cessna's facility during production acceptance flight tests. Cessna subsequently pressure-tested the Aeroquip muffler assemblies, which revealed that 7 out of 10 mufflers showed gas leak paths through defective weldments.

These inadequate or failed weldments will permit exhaust gas (including carbon monoxide) leakage from the muffler, and consequently into the airplane's cabin and cockpit area.

Cessna reports that 19 of these Model 182S airplanes are directly affected. The serial numbers for these models are 18280050 through 18280060, 18280062, 18280063, 18280066, 18280067 through 18280070, and 18280083. All other Cessna Model 182S airplanes were manufactured with Cessna mufflers, part number (P/N) 1254017–8. After examining the circumstances and reviewing all information related to the situation described above, the FAA has determined that AD action should be taken to prevent carbon monoxide gas from entering the airplane's cabin heating system and cabin, which, if not corrected, could result in passenger and pilot injury with consequent loss of control of the airplane.

Relevant Service Information

Cessna Aircraft Company Service Bulletin No. SB97–78–01, dated

December 23, 1997, titled ''Engine Exhaust Muffler Inspection'' pertains to the subject of this priority letter AD.

The FAA's Determination and Explanation of the AD

Since an unsafe condition (carbon monoxide leakage into the cabin area) has been identified that is likely to exist or develop in other Cessna Model 182S airplanes of the same type design, the FAA issued priority letter AD 98–01–14 to prevent carbon monoxide gas from entering the airplane's cabin heating system and cabin, which, if not corrected, could result in passenger and pilot injury with consequent loss of control of the airplane. The AD requires replacing the left and right Aeroquip engine exhaust mufflers (P/N 71379–1254017–8) with an FAA-approved equivalent part.

Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 30, 1997, to all known U.S. operators of Cessna Model 182S airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–151–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–01–14 Cessna Aircraft Company. Amendment 39–10292; Docket No. 97–CE–151–AD.

Applicability: Model 182S airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished, except to those operators receiving this action by priority letter issued December 30, 1997, which made these actions effective immediately upon receipt.

To prevent carbon monoxide gas from entering the airplane's cabin heating system and cabin, which, if not corrected, could result in passenger and pilot injury with consequent loss of control of the airplane, accomplish the following:

(a) For Cessna Model 182S airplanes with serial numbers 18280050 through 18280060, 18280062, 18280063, 18280066, 18280067 through 18280070, and 18280083: Prior to further flight after the effective date of this AD, replace the left and right engine exhaust mufflers with an FAA-approved equivalent part in accordance with the appropriate Cessna maintenance manual.

(b) For all Cessna Model 182S airplanes: After the effective date of this AD, no person may install any Aeroquip engine exhaust muffler, part number 71379–1254017–8, on any airplane.

Note 2: Cessna Aircraft Company Service Bulletin No. SB97–78–01, dated December 23, 1997, titled ''Engine Exhaust Muffler Inspection'' pertains to the subject of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) Copies of the relative service information may be obtained from The Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. Copies of this document also may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10292) becomes effective on February 23, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–01–14, issued December 30, 1997, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on January 20, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1860 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 1260

[NHTSA–97–3196]

RIN 2125–AE17

Certification of Speed Limit Enforcement

AGENCY: Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Section 205(d) of the National Highway System Designation Act of 1995 repealed the National Maximum Speed Limit (NMSL) Compliance Program. It made the repeal effective on December 8, 1995, but provided that the Governors of certain States could delay the effective date of the repeal. All possible delay periods have now passed. This Final Rule provides that 23 CFR part 1260, which contains the procedures for implementing the NMSL, is now rescinded.

EFFECTIVE DATE: January 27, 1998.

FOR FURTHER INFORMATION CONTACT: In FHWA, Janet Coleman, Office of Highway Safety, 202–366–4668; or Raymond W. Cuprill, Office of the Chief Counsel, 202–366–1377. In NHTSA, Garrett Morford, Police Traffic Services Division, 202–366–9790; or Heidi L. Coleman, Office of the Chief Counsel, 202–366–1834.

SUPPLEMENTARY INFORMATION:

Background

The 55 mph National Maximum Speed Limit (NMSL) was first instituted in 1974 as a temporary conservation measure in response to the oil embargo imposed by certain oil-producing nations. Because of the reduction in traffic fatalities that accompanied the institution of the speed limit, it was made permanent in 1975.

In 1978, Congress amended the law to require that, in addition to posting and enforcing the speed limit, States would have to achieve specific levels of compliance. In April 1987, Congress passed legislation that allowed States to post 65 mph maximum speed limits on rural Interstate highways. In December 1987, the President approved legislation enacting a limited demonstration program, that allowed the posting of speed limits as high as 65 mph on certain rural non-Interstate highways through the end of FY 1991.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) made the demonstration program permanent, and allowed other rural non-Interstate highways that were not a part of the demonstration program to be posted at the 65 mph speed limit, provided they met certain criteria.

ISTEA also required the Secretary of Transportation to publish a rule to establish speed limit compliance requirements on 65 mph roads, in addition to 55 mph roads, and to include a formula for determining compliance by the States.

FHWA and NHTSA had shared responsibility for the implementation of the NMSL compliance program since 1980. To implement this program and the requirements of ISTEA, the agencies promulgated a joint regulation, 23 CFR part 1260.

On November 28, 1995, the President signed into law the National Highway System Designation Act of 1995 (NHS Act). Section 205(d) of the NHS Act repealed the NMSL compliance program, as set forth in 23 U.S.C. §§ 141(a) and 154.

The NHS Act made the repeal effective on December 8, 1995, but provided some States with an option to delay this effective date. In any State in which the legislature was not in session on November 28, 1995, the Governor could declare, before December 8, 1995, that the legislature was not in session and that the State preferred to delay the effective date until after the State's legislature next convenes. In accordance with the NHS Act, such a declaration would delay the effective date of the repeal of the NMSL until the 60th day following the date on which the legislature next convenes. Five States decided to exercise the option: Kansas, Louisiana, Mississippi, Missouri and Ohio.

Accordingly, as provided in the NHS, on December 8, 1995, the NMSL was repealed for all States other than these five States. In those five States, it remained in effect until the 60th day following the date on which the legislature of that State next convened.

The agencies published a final rule in the **Federal Register** on March 20, 1996, 61 FR 11305, which rescinded the regulation for all States except the five which had delayed the effective date until after their legislatures next convened. That final rule added an applicability section to Part 1260 (section 1260.4), making the regulation applicable only to those five States. In addition, sections of the regulation that pertained to speed monitoring, certification requirements and compliance standards were deleted from the regulation because they were no longer applicable to any State. This removed the information collection requirement for all States at that time.

The expiration of the 60-day period has now occurred for all States. Since Part 1260 no longer applies to any State, the regulation is being rescinded in its entirety.

Regulatory Analyses and Notices

Civil Justice Reform

This final rule will not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather removes regulatory obligations that are no longer authorized by statute.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agencies have analyzed the effect of this action and determined that it is not significant within the meaning of Executive Order 12866 or of Department of Transportation regulatory policies and procedures. This final rule imposes no additional burden on the public. Regulatory obligations have been removed since they are no longer authorized by statute. Therefore, a regulatory evaluation is not required and was not prepared.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this action on

small entities. Based on the evaluation, we certify that this action will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

The Office of Management and Budget (OMB) had approved the information collection requirements associated with 23 CFR part 1260 (OMB Clearance No. 2125–0027). By rescinding all of part 1260, the information collection requirement, as that term is defined by OMB in 5 CFR part 1320, remains at zero.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of compliance with the National Environmental Policy Act and have determined that it will not have a significant effect on the human environment.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. There are no federalism implications pursuant to Executive Order 12612 since regulatory obligations are being rescinded because they are no longer authorized under current law. Under these circumstances, the preparation of a Federalism Assessment is not warranted.

Notice and Comment

The agencies find that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because the agencies are not exercising discretion in a way that could be meaningfully affected by public comment. Instead, this rescission of the agencies' speed limit compliance regulations is mandated by Section 205(d) of the NHS Act. Therefore, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation.

In addition, good cause exists to dispense with the 30-day delayed effective date requirement of 5 U.S.C. 553(d) because this final rule ''grants or recognizes an exemption or relieves a restriction'' in accordance with 5 U.S.C. 553(d)(1). In repealing the NMSL regulation for all States, all Federal speed limit provisions are terminated. Consequently, the agencies are proceeding directly to a final rule which is effective upon its date of publication.

List of Subjects in 23 CFR Part 1260

Grant programs—transportation, Highway and roads, Motor vehicles, Traffic regulations.

In consideration of the foregoing, Part 1260 of Title 23, Code of Federal Regulations, is removed.

Issued on: January 12, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 98–1888 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8759]

RIN 1545–AP36

Filing Requirements for Returns Claiming the Foreign Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulation.

SUMMARY: This document contains a final regulation relating to the substantiation requirements for taxpayers claiming foreign tax credits. The regulation is necessary to provide guidance to U.S. taxpayers who claim foreign tax credits.

DATES: *Effective date:* This regulation is effective January 27, 1998.

Applicability date: These regulations are applicable for tax returns whose original due date falls on or after January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Joan Thomsen, (202) 622–3850 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1997, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–208288–90), 62 FR 1700, relating to the filing requirements for returns claiming the foreign tax credit (the ''proposed regulation'').

Written comments responding to the proposed regulation were received. A public hearing was requested and scheduled but was later canceled when the one requester withdrew the request to testify. After consideration of all of the written comments, the proposed regulation under section 905(b) is adopted as revised by this Treasury Decision.

Summary of Comments and Final Regulations

The commenters argued that the ''interim credit'' notion incorporated in the proposed regulations from *Continental Illinois*, T.C. Memo 1991–66, 61 T.C.M. (CCH) 1916 (1991), *aff'd in part and rev'd in part*, 998 F.2d 513, 516–17 (7th Cir. 1993), was misapplied and that the proposed amendment to § 1.905–2(b)(3) denied district directors the flexibility to find compliance with section 905(b) unless the taxpayer produces receipts (or other direct evidence of payment) in order to prove that the taxes actually were paid to the foreign government. They argued that, even if the district director should be able to require such proof in cases such as *Continental Illinois*, district directors must have the flexibility to accept lesser proof. They argued that a portfolio holder of publicly-traded foreign securities, for example, will not be able to obtain proof in the form of receipts evidencing that the issuer of the securities actually paid the withheld taxes to the foreign government.

The comment letters are correct that the regulations historically have allowed the district director flexibility to determine that section 905(b) is satisfied without the production of tax receipts evidencing that the tax has been paid to the foreign government. Treasury and the IRS did not intend that the amendment to § 1.905–2(b)(3), as proposed, deny the district director the flexibility to accept secondary evidence of the foreign tax payment where it has been established to the satisfaction of the district director that it is impossible to furnish a receipt for such foreign tax payment. The amendment was merely intended to clarify that proof of the act of withholding through secondary evidence is not, per se, equivalent to proof of payment of the foreign tax. Treasury and the IRS have now concluded, however, that such clarification is not necessary. *Continental Illinois* v. *Commissioner, supra.*

Therefore, in response to comments, the proposed regulation is finalized without its proposed amendment to § 1.905–2(b)(3). Thus, the final regulations are identical to the final regulations currently in effect, except § 1.905–2(a)(2) no longer requires a foreign receipt or return to be attached to a Form 1116 or Form 1118.

Treasury and the IRS will continue to review the foreign tax credit substantiation rules to assure that they are functioning adequately. For

example, Treasury and the IRS are concerned that U.S. holders of foreign securities, including American Depositary Receipts (''ADRs''), may be claiming foreign tax credits in situations where an intermediary in the chain of ownership between the holder of a foreign security or an ADR and the issuer of the security (or the security underlying the ADR) has taken actions inconsistent with the ownership of the underlying security by the person claiming the credit, such as a disposition of such security. One approach to address this issue would involve modifying the substantiation, documentation and reporting rules with respect to payments on such securities and taxes withheld therefrom. For example, in order for a U.S. owner to be entitled to a credit for foreign taxes imposed on income with respect to a security, financial intermediaries (including custodians) could be required to substantiate that they have not taken any action inconsistent with beneficial ownership of the relevant security by such U.S. owner.

It should be noted that portfolio investors are not necessarily entitled to foreign tax credits for the full amount indicated on the Form 1099 as foreign taxes paid. Portfolio investors are only entitled to a foreign tax credit for the amount of tax that is legally owed, which may not be the same as the amount withheld. If, for example, a portfolio investor is entitled to a refund of foreign tax withheld because of a reduced treaty withholding rate, the investor is only entitled to a foreign tax credit for the reduced amount, whether or not the investor files a refund claim with the foreign tax authorities. The IRS has made changes to the Form 1116 Instructions and Publication 514 to clarify this point and intends to make similar changes to the Form 1118 Instructions.

Explanation of Provisions

Section 1.905–2(a)(1), 1.905–2(b)(1), (2), and (3), and 1.905–2(c)

Sections 1.905–2(a)(1), 1.905–2(b)(1), (2) and (3), and 1.905–2(c) are unchanged from the current final regulations.

Section 1.905–2(a)(2)

Under former § 1.905–2(a)(2), taxpayers generally were required to attach to their income tax returns either (1) the receipt for the foreign tax payment or (2) a foreign tax return for accrued foreign taxes. Section 1.905–2(a)(2) removes the requirement that the documentation be attached to the income tax return. The regulation now provides that such evidence of payment of foreign taxes must be presented to the district director upon request.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of this regulation is Joan Thomsen of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.905–2 is amended by revising the second through fourth sentences in paragraph (a)(2) to read as follows:

§ 1.905–2 Conditions of allowance of credit.

(a) * * *

(2) * * * Except where it is established to the satisfaction of the district director that it is impossible for the taxpayer to furnish such evidence, the taxpayer must provide upon request the receipt for each such tax payment if credit is sought for taxes already paid or the return on which each such accrued tax was based if credit is sought for taxes accrued. The receipt or return must be either the original, a duplicate original, or a duly certified or authenticated copy. The preceding two sentences are applicable for returns whose original due date falls on or after January 1, 1988. * * *

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: January 13, 1998.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 98–1816 Filed 1–26–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–205]

RIN 1218–AA40

Safety Standards for Scaffolds Used in the Construction Industry (Aerial Lifts); Effective Date and Office of Management and Budget Control Numbers Under Paperwork Reduction Act

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; amendment; announcement of effective date and OMB approval of information collection requirements.

SUMMARY: This document announces the effective date of a provision in the Occupational Safety and Health Administration's construction standard for scaffolds that addresses manufacturer certification of ''field modified'' aerial lifts. The document also adds an entry to display that the collection of information has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

EFFECTIVE DATE: The amendment in this final rule and § 1926.453(a)(2), published at 61 FR 46026, are effective January 27, 1998.

FOR FURTHER INFORMATION CONTACT: Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–7198.

SUPPLEMENTARY INFORMATION: In the August 30, 1996, **Federal Register** at 61 FR 46026, *et seq.*, OSHA revised the standards for scaffolds in construction, codified as subpart L of 29 CFR part 1926. The effective date for the revised subpart was November 29, 1996. However, in that same document, at 61

FR 46026 and 46103–46104, the Agency announced its intent to request Office of Management and Budget (OMB) approval for a provision addressing aerial lifts in § 1926.453(a)(2). OSHA stated that the effective date for § 1926.453(a)(2) would be announced in the **Federal Register** at a later date, once OSHA received approval for the information collection requirements in that provision from OMB. The aerial lift provisions contain a requirement for manufacturer certification of ''field modified'' aerial lifts, which was previously codified in § 1926.556, and which was redesignated at § 1926.453(a)(2) in the final rule.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has approved the information collection and assigned OMB control number 1218–0216, which expires on October 31, 2000. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor a collection of information unless: (1) The collection displays a valid control number, and (2) the agency informs potential persons who may respond to the collections of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Accordingly, now that OMB has approved the collections in § 1926.453(a)(2), OSHA is codifying the current OMB control number into § 1926.5, which is the central section in which OSHA displays its approved collections under the Paperwork Reduction Act. The effective date of § 1926.453(a)(2) is January 27, 1998.

Authority and Signature

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

List of Subjects in 29 CFR Part 1926

Construction; Occupational safety and health; Reporting and recordkeeping requirements.

Signed at Washington, D.C., this 15th day of January, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

Accordingly, the Occupational Safety and Health Administration amends 29 CFR part 1926 as set forth below.

PART 1926—[AMENDED]

1. The authority citation for subpart A of part 1926 continues to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

§ 1926.5 [Amended]

2. In § 1926.5, the table is amended by adding the entry ''§ 1926.453(a)(2).....1218–0216'' in numerical order.

[FR Doc. 98–1788 Filed 1–26–98; 8:45 am]

BILLING CODE 4510–26–M

POSTAL SERVICE

39 CFR Part 20

Expansion of Global Priority Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On March 29, 1996, the Postal Service published in the **Federal Register**, 61 FR 14025, an interim rule with a request for comments which expanded Global Priority Mail service by increasing the number of acceptance points, increasing the number of destination countries, and adding weight variable rates for items weighing up to 4 pounds. The Postal Service now adopts the interim regulations, with amendments, as final.

EFFECTIVE DATE: January 27, 1998.

FOR FURTHER INFORMATION CONTACT: R. Jay Thabet, (202) 268–2269.

SUPPLEMENTARY INFORMATION: On March 29, 1996, the Postal Service published an interim rule expanding Global Priority Mail and requesting comments, 61 FR 14025. Global Priority Mail is an expedited airmail letter service providing fast, reliable, and economical delivery of all items mailable as letters or merchandise up to 4 pounds. Global Priority Mail items receive priority handling in the United States and destination countries. Service is limited to the 34 destination countries identified in the International Mail Manual 226.2. Service is available from designated post offices identified in the International Mail Manual 226.32.

The weight limit for Global Priority Mail items is 4 pounds. The Postal Service offers two sizes of preprinted flat-rate envelopes. The rates for these envelopes are based on a geographic rate zone regardless of the actual weight. Although these envelopes are valid for weights of up to 4 pounds, the practical limitations of the envelopes limit the weight to less than 4 pounds.

The interim rule increased the number of post offices where Global Priority Mail would be available, increased the number of destination countries, and added variable weight-based rates to increase customer convenience.

The Postal Service received one letter containing nine comments on the interim rule.

Comment one suggests that, for those states where all post offices within the state are on the list of acceptance sites, just the state should be listed without showing the different facilities. This suggestion does not take into account that there may arise a case where a post office within a state may not be able to accept Global Priority Mail at some time in the future. The present system of listing the acceptance facilities allows the Postal Service to delete post offices when appropriate.

Comment two suggests that ZIP Codes be listed in numerical order rather than in alphabetical order of the acceptance facility. While both numerical and alphabetical listings are valid, neither is more valid than the other. The Postal Service elects to retain the alphabetical listing.

Comment three states that, in New York State, Postal Codes 117/118 are no longer listed as acceptance sites, whereas they were listed as acceptance sites for the original test. This was a typographical error; ZIP Codes 117/118 are acceptance sites.

Comment four asks for an explanation of certain abnormalities in the rate structure for variable weights and the volume rates. The differences between weight steps does not have to be equal or linear or based totally on cost changes. The competitions' rates for similar products are a factor. The size and weight of the volume the USPS most wants to attract is another factor in the determination of weight level increases.

Comment five asks for an explanation for the relationship between rates for Canadian and European destinations. The expected traffic to each country group, the competition that we face going to that country group, and the cost to get into each country group were factors used to determine rates. In the example cited, competitors' rates and delivery costs in the country were the most influential.

Comment six states that the relationship between the flat rate envelopes and the variable weight rate should be clarified and the relationship between the flat rate envelope and the volume rate should be clarified. The flat rate developed for envelopes that the Postal Service provides is independent

of the variable weight rate and the volume rate. The Postal Service developed the flat rates as a convenience for the customer. To receive either the variable weight or volume rate options, the customer must provide the appropriate packaging. The envelopes the Postal Service provides are for the convenience of the customer and are not eligible for either the variable weight or volume rate options.

Comment seven suggests a change in wording to Chapter 2 of the International Mail Manual, part 226.62, to read * * * * sticker rate must have the DEC–10 sticker affixed to the address side of the package, for clarification purposes. The Postal Service accepts this comment and revises Chapter 2 of the International Mail Manual, part 226.62.

Comment eight notes that section 226.82 of the International Mail Manual does not state where the single piece rate packages can be mailed. In light of this comment the Postal Service revises Chapter 2 of the International Mail Manual, part 226.82, to state that single piece variable weight option may be deposited in the normal manner of deposit for Global Priority Mail.

Comment nine questions the legality of not providing Global Priority Mail service from every post office under the jurisdiction of the United States Postal Service. The United States Postal Service provides service throughout the entire United States as mandated by 39 USC 3623(d). There are some products and services that are not available at all postal retail units. Acceptance of passport applications is an example. In the case of Global Priority Mail, the service is offered at all post offices from which transportation is available which allows the mailpiece to reach the appropriate airmail facility in time to make the scheduled airline departure on the day after the mailpiece is deposited. If the transportation network at a given post office does not allow for the mailpiece to leave the United States on the day after deposit, that post office does not accept Global Priority Mail. This restriction is in place to preserve the integrity of a premium service for which the customer pays a premium fee.

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

The Postal Service amends part 226 of the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

PART 20—[AMENDED]

The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 407, 408.

2. The International Mail Manual is amended to incorporate part 226, Global Priority Mail, as follows:

226 Global Priority Mail

226.1 General

226.11 Definition

Global Priority Mail is an expedited airmail letter service providing fast, reliable, and economical delivery of all items mailable as letters or merchandise up to 4 pounds. Global Priority Mail items receive priority handling in the United States and in destination countries. Service is available only to destination countries identified in 226.2, from post offices identified in 226.3.

226.12 Permissible Items

All items sent as letter class mail (see 221.1) are accepted in Global Priority Mail provided that the contents are mailable and fit securely in the envelope. Global Priority Mail items may contain dutiable merchandise unless the country of destination specifically prohibits dutiable merchandise in letters (see 224.51). Any item that is prohibited in international mail is prohibited in Global Priority Mail. Refer to the ''Country Conditions of Mailing'' in the Individual Country Listings for individual country prohibitions.

226.13 Packaging

Items must fit comfortably within the flat-rate envelope without distorting or bursting the container. Do not use excessive tape to keep the envelopes from bursting. Use only one piece of tape to secure the flap.

226.2 Availability

Global Priority Mail is available to the following countries. Countries specifically identified will have service only to specific cities within those countries, as noted below:

COUNTRIES OF DESTINATION

Western Europe	Pacific Rim	North America	South America	Middle East
Austria	Australia	Canada	Brazil [4]	Israel.[6]
Belgium	China [2]	Mexico [3]	Chile [5]	Saudi Arabia.[7]
Denmark	Hong Kong			
Finland	Japan			
France (including Monaco)	Korea, Republic of			
Germany	New Zealand			
Great Britain and Northern Ireland [1]	Philippines			
Iceland	Singapore			
Ireland	Taiwan			
Liechtenstein	Thailand			
Luxembourg	Vietnam			
Netherlands, The				
Norway				
Portugal				
Spain				
Sweden				
Switzerland				

[1] Includes England, Northern Ireland, Scotland, Wales, Guernsey, Jersey, and the Isle of Man.

[2] Destinations in China are limited to Beijing, Dalian, Guangzhou, Qingdao, Shanghai, Shenzhen, Suzhou, Tianjin, Wuxi, Xiamen, and Zhuhai ONLY.

[3] Destinations in Mexico are limited to Mexico City, Guadalajara, and Monterrey ONLY.
[4] Destinations in Brazil are limited to Sao Paulo and Rio de Janeiro ONLY.
[5] Destinations in Chile are limited to Santiago, Valparaiso, and Viña del Mar ONLY.
[6] Destinations in Israel are limited to Jerusalem, Tel Aviv, and Haifa ONLY.
[7] Destinations in Saudi Arabia are limited to Riyadh, Jeddah, and Dammam ONLY.

226.3 Mailing Locations

226.31 Acceptance Offices and Pickup Service Locations

Global Priority Mail service is available only through the designated post offices and the additional post offices listed in 226.32. Pickup Service is available for an additional fee. (See 226.83.)

226.32 Service Areas

Service is available only from the metropolitan areas as defined by the ZIP Code ranges shown in Exhibit 226.32. If Global Priority Mail is presented at a non-participating retail unit, advise the customer that the item cannot be accepted as Global Priority Mail. Refer customer to the nearest Global Priority Mail retail acceptance unit. Within these service areas, prepaid items may be given to carriers, deposited in Express Mail collection boxes, or mailed at post offices, stations, and branches.

Exhibit 226.32 Global Priority Mail Acceptance Cities and Three-Digit ZIP Codes

ALABAMA

Anniston: 362
Birmingham: 352
Huntsville: 356, 357, 358
Mobile: 366
Montgomery: 361, 368

ARIZONA

Phoenix: 850, 852, 853
Tucson: 857

ARKANSAS

Little Rock: 722
West Memphis: 723

CALIFORNIA

Industry: 917, 918
Inglewood: 902, 903, 904, 905
Long Beach: 906, 907, 908
Los Angeles: 900, 901
North Bay: 949
Oakland: 945, 946, 947, 948,
Pasadena: 910, 911, 912
Salinas: 939
San Diego: 919, 920, 921
San Francisco: 940, 941, 943, 944
San Jose: 950, 951
Santa Ana: 926, 927, 928
Van Nuys: 913, 914, 915, 916

COLORADO

Brighton: 806
Colorado Springs: 808, 809
Denver: 800, 801, 802, 803
Longmont: 805
Pueblo: 810

CONNECTICUT

Hartford: 060, 061, 062
New Haven: 063, 064, 065, 066
Stamford: 068, 069
Waterbury: 067

DELAWARE

Wilmington: 197, 198, 199

DISTRICT OF COLUMBIA (Washington, DC)

Washington: 200, 202, 203, 204, 205

FLORIDA

Daytona Beach: 321
Fort Myers: 339
Ft. Lauderdale: 333
Gainesville: 326, 344
Jacksonville: 320, 322
Lakeland: 338
Manasota: 342
Miami: 331, 332
Mid-Florida: 327
Orlando: 328, 329, 347
South Florida: 330
St. Petersburg: 337
Tallahassee: 323
Tampa: 335, 336, 346
West Palm Beach: 334, 349

GEORGIA

Albany: 317
Athens: 306
Atlanta: 303, 311
Augusta: 298, 308, 309
Columbus: 318, 319
Macon: 310, 312
North Metro: 300, 301, 302, 305
Savannah: 299, 313, 314
Swainsboro: 304
Valdosta: 316
Waycross: 315

INDIANA

Bloomington: 474
Columbus: 472
Evansville: 424, 476, 477
Fort Wayne: 467, 468
Gary: 463, 464
Indianapolis: 460, 461, 462
Kokomo: 469
Lafayette: 479
Muncie: 473
South Bend: 465, 466
Terre Haute: 478
Washington: 475

ILLINOIS

Bloomington: 617
Carbondale: 629
Carol Stream: 601, 603
Centralia: 628
Chicago: 606, 607, 608
East St. Louis: 622
Effingham: 624
Champaign: 618, 619
Fox Valley: 605
Galesburg: 614
Kankakee: 609
La Salle: 613
Palatine: 600, 602
Peoria: 615, 616
Quincy: 623, 634, 635
Rockford: 610, 611
Rock Island: 612
Springfield: 625, 626, 627
South Suburban: 604

IOWA

Burlington: 526
Cedar Rapids: 522, 523, 524
Davenport: 527, 528
Des Moines: 500, 501, 502, 503, 509
Dubuque: 520
Mason City: 504
Ottumwa: 525
Sioux City: 510, 511
Waterloo: 506, 507

KANSAS

Fort Scott: 667
Kansas City: 660, 661, 662
Hays: 676
Salina: 674
Topeka: 664, 665, 666, 668
Wichita: 672

KENTUCKY

Ashland: 411, 412
Bowling Green: 421, 422
Campton: 413, 414
Elizabeth: 427
Louisville: 400, 401, 402, 471
Lexington: 403, 404, 405, 406
Owensboro: 423
Pikeville: 415, 416

LOUISIANA

Baton Rouge: 707, 708
New Orleans: 700, 701
Hammond: 704
Thibodaux: 703

MAINE

Bangor: 044, 046, 047
Portland: 040, 041, 042, 043, 045, 048, 049

MARYLAND

Baltimore: 210, 211, 212, 214, 219
Cumberland: 215, 267
Easton: 216
Frederick: 217
Salisbury: 218
Southern: 206, 207
Suburban: 208, 209

MASSACHUSETTS

Boston: 021, 022
Brockton: 020, 023, 024
Buzzards Bay: 025, 026
Middlesex-Essex: 018, 019
Pittsfield: 012
Springfield: 010, 011, 013
Worcester: 014, 015, 016, 017

MICHIGAN

Detroit: 481, 482
Flint: 484, 485
Gaylord: 497
Grand Rapids: 493, 494, 495
Jackson: 492
Kalamazoo: 490, 491

Lansing: 488, 489
Royal Oak: 480, 483
Saginaw: 486, 487
Traverse City: 496

MINNESOTA

Detroit Lakes: 565
Duluth: 558
Mankato: 560
Minneapolis: 553, 554
Rochester: 559
Saint Cloud: 563
St. Paul: 550, 551, 540
Thief River Falls: 567
Willmar: 562
Windom: 561

MISSISSIPPI

Grenada: 389
Gulfport: 395
Hattiesburg: 394
Jackson: 392
McComb: 396

MISSOURI

Cape Girardeau: 636, 637, 638, 639
Chillicothe: 646
Harrisonville: 647
Kansas City: 640, 641
Mid-Missouri: 650, 651, 652, 653
Saint Joseph: 644, 645
Springfield: 648, 654, 655, 656, 657, 658
St. Louis: 620, 630, 631, 633

MONTANA

Billings: 591

NEBRASKA

Lincoln: 683, 684, 685
Norfolk: 686, 687
Omaha: 515, 516, 680, 681

NEVADA

Las Vegas: 891

NEW HAMPSHIRE

Manchester: 030, 031, 032, 033, 034
Portsmouth: 038, 039

NEW JERSEY

Hackensack: 076
Kilmer: 088, 089
Monmouth: 077
Newark: 070, 071, 072, 073
Paterson: 074, 075
South Jersey: 080, 081, 082, 083, 084
Trenton: 085, 086, 087
West Jersey: 078, 079

NEW MEXICO

Albuquerque: 871

NEW YORK

Albany: 120, 121, 122, 123
Binghamton: 137, 138, 139
Bronx: 104
Brooklyn: 112
Buffalo: 140, 141, 142, 143
Elmira: 148, 149
Glen Falls: 128
Hicksville: 118
Jamestown: 147
Long Island: 111
Mid-Hudson: 124, 125, 126, 127
Mid Island: 117, 119
New York: 100, 101, 102
Plattsburgh: 129
Queens: 110, 113, 114, 116
Rochester: 144, 145, 146
Rockland: 109
Staten Island: 103
Syracuse: 130, 131, 132
Utica: 133, 134, 135
Watertown: 136
Westchester: 105, 106, 107, 108
Western Nassau: 115

NORTH CAROLINA

Asheville: 287, 288, 289
Charlotte: 280, 281, 282, 297
Greensboro: 270, 271, 272, 273, 274
Hickory: 286
Raleigh: 275, 276, 277

NORTH DAKOTA

Bismarck: 585
Dickinson: 586
Devils Lake: 583
Fargo: 580, 581
Grand Forks: 582
Jamestown: 584
Minot: 587
Williston: 588

OHIO

Akron: 442, 443
Athens: 457
Canton: 446, 447
Chillicothe: 456
Cincinnati: 410, 450, 451, 452, 470
Cleveland: 440, 441
Columbus: 430, 431, 432, 433
Dayton: 453, 454, 455
Lima: 458
Mansfield: 448, 449
Steubenville: 439
Toledo: 434, 435, 436
Youngstown: 444, 445
Zanesville: 437, 438

OKLAHOMA

Ardmore: 734
Clinton: 736
Durant: 747
Enid: 737
Lawton: 735
McAlester: 745
Muskogee: 744
Oklahoma City: 730, 731
Ponca City: 746
Poteau: 749
Shawnee: 748
Tulsa: 740, 741, 743
Woodard: 738

OREGON

Portland: 972

PENNSYLVANIA

Altoona: 166, 168
Bradford: 167
Dubois: 158
Erie: 164, 165
Greensburg: 156
Harrisburg: 170, 171, 172, 178
Johnstown: 155, 157, 159
Lancaster: 173, 174, 175, 176
Lehigh Valley: 180, 181, 183
New Castle: 160, 161, 162
Oil City: 163
Philadelphia: 190, 191
Pittsburgh: 150, 151, 152, 153, 154
Reading: 179, 195, 196
Scranton: 184, 185, 188
Southeastern: 189, 193, 194
Wilkes-Barre: 182, 186, 187

PUERTO RICO/VIRGIN ISLANDS

San Juan: 006, 007, 008, 009

RHODE ISLAND

Providence: 027, 028, 029

SOUTH CAROLINA

Charleston: 294
Columbia: 290, 291, 292
Florence: 295
Greenville: 293, 296

SOUTH DAKOTA

Aberdeen: 574
Dakota Central: 572, 573
Mobridge: 576
Pierre: 575
Rapid City: 577
Sioux Falls: 570, 571

TENNESSEE

Chattanooga: 307, 373, 374
Columbia: 384
Cookeville: 385
Jackson: 383
Johnson City: 376
Knoxville: 377, 378, 379
McKenzie: 382
Memphis: 380, 381, 386
Nashville: 370, 371, 372

TEXAS

Abilene: 768, 795, 796
Amarillo: 791
Austin: 786, 787, 789
Beaumont: 776, 777
Bryan: 778
Corpus Christi: 784
Dallas: 751, 752, 753
El Paso: 799
Fort Worth: 760, 761, 762, 764
Greenville: 754
Houston: 770, 772
Longview: 756
Lubbock: 794
Lufkin: 759
North Houston: 773, 774, 775
North Texas: 750
Palestine: 758
San Angelo: 769
San Antonio: 780, 781, 782, 788
Texarkana: 755
Tyler: 757
Waco: 765, 766, 767
Wichita Falls: 763

UTAH

Provo: 845, 846, 847
Salt Lake City: 840, 841, 843, 844

VERMONT

Burlington: 054, 056
White River Junction: 035, 036, 037, 050, 051, 052, 053, 057, 058, 059

VIRGINIA

Charlottesville: 228, 229, 244
Culpeper: 227
Farmville: 239
Northern Virginia: 201, 220, 221, 222, 223
Norfolk: 233, 234, 235, 236, 237
Richmond: 224, 225, 230, 231, 232, 238
Winchester: 226

WASHINGTON

Everett: 982
Olympia: 985
Seattle: 980, 981
Tacoma: 983, 984
Wenatchee: 988
Yakima: 989

WEST VIRGINIA

Bluefield: 246, 247, 248
Charleston: 250, 251, 252, 253
Huntington: 255, 256, 257
Martinsburg: 254
Wheeling: 260

WISCONSIN

Eau Claire: 547
Green Bay: 543
La Crosse: 546
Madison: 537
Milwaukee: 530, 531, 532
Oshkosh: 549
Racine: 534
Spooner: 548

WYOMING

Cheyenne: 820

226.4 Postage

226.41 Flat-Rate Envelopes Postage

Each Global Priority Mail flat-rate envelope is charged at a flat rate. The rate is based on the geographic rate zone regardless of its actual weight. Postage is required for each piece. (See Exhibit 226.41.)

Exhibit 226.41

FLAT-RATE ENVELOPE POSTAGE RATES

Destination	Small	Large
Western Europe and Middle East	$3.75	$6.95
Canada and Mexico	3.75	6.95
Pacific Rim and South America	4.95	8.95
Weight Limit 4 Lbs.		

226.42 Variable Weight Option Postage—Single Piece Rates

Global Priority Mail variable weight rates are calculated in half (or fraction thereof) increments based on the weight of each piece the destination geographic rate zone up to four pounds. (See Exhibit 226.42.)

Exhibit 226.42

VARIABLE WEIGHT STICKER OPTION—SINGLE PIECE RATES

Weight level	Western Europe and Middle East	Pacific Rim and South America	Canada and Mexico
½ lb	$7.00	$8.00	$5.95
1.0 lb	10.50	12.50	10.00
1.5 lbs	12.50	16.95	13.50
2.0 lbs	15.00	21.00	16.50
2.5 lbs	17.50	23.95	18.00
3.0 lbs	19.95	27.25	19.50
3.5 lbs	22.00	31.50	21.00
4.0 lbs	24.75	34.50	22.50
Weight Limit 4 Lbs.			

226.43 Global Priority Mail Sticker—Volume Rates

226.431 Minimum Quantity Requirement

The mailer must have a minimum of five or more pieces to one or more Global Priority Mail countries. The minimum does not apply to each geographic zone rate. (See Exhibit 226.43.)

226.432 Mailing Statement

Postage for volume rate mail and permit imprint must be computed on PS Form 3653, Global Priority Mail Statement of Mailings.

Exhibit 226.43

VARIABLE WEIGHT STICKER OPTION—VOLUME RATES

Weight level	Western Europe and Middle East	Pacific Rim and South America	Canada and Mexico
½ lb	$5.95	$6.95	$5.00
1.0 lb	8.50	10.00	7.50
1.5 lbs	10.00	13.50	10.00
2.0 lbs	12.00	16.95	12.50
2.5 lbs	14.00	19.25	13.50
3.0 lbs	16.95	21.95	14.50
3.5 lbs	19.95	25.50	15.50
4.0 lbs	22.50	27.75	16.50
Weight Limit 4 Lbs.			

226.5 Payment Methods

226.51 Postage Payment Methods

Nonidentical weight piece mailings must have the applicable postage affixed by adhesive stamps, meter stamps or if presented at a post office, postal validation imprinter (PVI labels). Identical weight piece mailings may be paid by meter stamps, adhesive stamps, PVI labels or permit imprint subject to certain standards. To use permit imprint, the mailing must consist of 200 or more pieces and be of identical weight. The 200-piece criterion for permit imprint applies to both volume rate and flat-rate mail. Mailers may use permit imprint with nonidentical weight items only if authorized by the USPS under a Manifest Mailing System (MMS), in DMM P710.

226.52 Postal Marking Related to Volume Rate Postage

When pieces are paid at the volume rate and paid by stamps or meter impression, each piece must be legibly marked with the words ''Volume Rate Global Priority Mail.'' If stamps are used the endorsement must appear on the address side of each piece and must be applied by a printing press, hand stamp or other similar printing device. If meter impression is used the endorsement must be in the ad plate or the slug area. If part of the slug, the abbreviation GPM Vol. Rate may be used. See DMM P030.4.14 for specification of size requirements.

226.53 Permit Imprint Content and Format

All permit imprints on Global Priority Mail must show city and state, ''Global Priority Mail,'' U.S. Postage Paid, and permit number. They may show the mailing date, amount of postage paid or the number of ounces for each postage.

226.54 Meter Stamps Content

At a minimum, a meter stamp must show the month, day, and year in the postmark, city and state designation of the licensing post office, the number, and the amount of postage. See DMM P030.4.6.

226.6 Preparation Requirements

226.61 Addressing

All items must bear the complete delivery address of the addressee and the full name (no abbreviations) of the destination country. See 122.

226.62 Marking

Global Priority Mail items must be mailed in special envelopes (EP–15A,

EP–15B) or with the Global Priority Mail sticker (DEC–10) provided by the Postal Service. (These supplies may be obtained by calling 800–222–1811.) Unmarked pieces are subject to the applicable LC/AO airmail regular rates and treatment. Pieces paid at the Global Priority Mail sticker rate must have the DEC–10 sticker affixed to the address side of the package.

226.63 Customs

A green customs label must be affixed if the package is 16 ounces or more, regardless of its contents. Only documents and correspondence under 16 ounces do not require a customs form.

226.7 Size and Weight Limits

226.71 Size Limits

226.711 Flat-Rate Envelope Sizes

a. Small Size—6 x 10 inches.

b. Large Size—9½ x 12½ inches.

226.712 Package Sizes for Variable Weight Option

a. Minimum length and height: 5½ x 3½ inches.

b. Minimum depth (thickness): .007 inches.

c. Maximum length: 24 inches.

d. Maximum length, height, depth (thickness) combined: 36 inches.

226.713 Rolls

a. Minimum length: 4 inches.

b. Minimum length plus twice the diameter combined: 6¾ inches.

c. Maximum length: 36 inches.

d. Maximum length plus twice the diameter combined: 42 inches.

226.72 Weight Limit

Items sent as Global Priority Mail in envelopes and the variable weight option must not exceed 4 pounds.

226.73 Special Services

Mailers may obtain certificates of mailing (see NO TAG). No other special services such as registry, insurance, restricted delivery, return receipt, or recorded delivery are available.

226.8 Mailer Preparation

226.81 Mailer Requirement

Global Priority Mail claimed at the volume rate must be separated by geographic rate zone (Western Europe, Pacific Rim, and Canada) when presented to the business mail entry unit unless otherwise authorized by the USPS. All pieces in a permit imprint mailing and metered mail must be facing the same direction.

226.82 Deposit of Mail

Global Priority Mail pieces paid by permit imprint and pieces claimed at the Global Priority Mail volume rates must be deposited at a business mail acceptance unit as authorized by the postmaster in the designated Global Priority Mail sites for weighing. Single piece variable weight option may be deposited in the normal manner of deposit for Global Priority Mail. Flat-rate envelopes with postage affixed may be deposited in any Express Mail Street collection box or other such place where Express Mail is accepted. Metered mail must be deposited in locations under the jurisdiction of the licensing post office except as permitted under DMM P030.

226.83 Pickup Service

On call and scheduled pickup service are available for Global Priority Mail from the designated Global Priority Mail acceptance cities. There is a charge of $4.95 for each pickup stop, regardless of the number of pieces picked up. (See DMM D010 for standards of pickup service.) Pickup is not available for Global Priority Mail pieces if paid by permit imprint or claimed at the volume rate.

Stanley F. Mires,

Chief Counsel, Legislative.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 382

[Docket No. R–158]

RIN 2133–AB19

Determination of Fair and Reasonable Guideline Rates for the Carriage of Bulk and Packaged Preference Cargoes on U.S.-Flag Commercial Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The regulations at 46 CFR part 382 prescribe the administrative procedures and methodology for determining fair and reasonable rates for the carriage of dry and liquid bulk and packaged preference cargoes on United States commercial cargo vessels. MARAD is issuing this rule to prescribe cost averaging as the methodology used for determining rates and to implement conforming procedural changes. MARAD is also reducing information collection under these regulations.

DATES: This final rule is effective January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Michael P. Ferris, Director, Office of Costs and Rates, Maritime Administration, Washington, DC 20590, Tel. (202) 366–2324.

SUPPLEMENTARY INFORMATION: Section 901(b)(1) of the Merchant Marine Act of 1936 (the Act), as amended (46 App. U.S.C. 1241(b)), cited as the Cargo Preference Act of 1954, requires that at least 50 percent of any equipment, materials or commodities purchased by the United States or for the account of any foreign nation without provision for reimbursement, or acquired as the result of funds or credits from the United States, shall be transported on privately owned U.S.-flag commercial vessels, to the extent that such vessels are available at fair and reasonable rates. In 1985, section 901 was amended to exclude certain programs from the application of cargo preference and to raise the U.S.-flag share to 75 percent on certain others. Upon request, MARAD provides fair and reasonable rates (also referred to as guideline rates) to U.S. shipper agencies. Section 901(b)(2) of the Act provides the authority for MARAD (by delegation from the Secretary of Transportation) to issue regulations governing the administration of section 901(b)(1). In 1989, MARAD issued regulations at 46 CFR part 382 (''Rule''), that initially became effective on January 1, 1990.

Under the 1990 Rule, MARAD established fair and reasonable rates, so-called guideline rates, based on each individual vessel's costs which applied to the ocean borne portion of cargo transportation. The guideline rate consisted of four components: (1) Operating costs; (2) capital costs; (3) port and cargo handling costs; and (4) brokerage and overhead. The operating cost component of the guideline rate for each participating vessel reflected actual historical vessel operating costs escalated to the current period by utilizing factors for wage and non-wage costs. All eligible annual operating costs are added together for each vessel and divided by the total number of operating days for that vessel to yield a daily operating cost.

Each vessel's actual reported fuel consumption at sea and in port forms the basis of the guideline rate's fuel cost segment. The actual fuel consumption of each vessel is multiplied by the corresponding projected number of voyage days at sea and in port to calculate total units of fuel consumed.

Current fuel prices are applied to fuel consumed to produce the fuel segment of the operating cost component. MARAD then adds the totals of the fuel and non-fuel operating cost segments to produce the operating cost component for the voyage.

The capital cost component is presently calculated individually for each participating bulk vessel and consists of an allowance for depreciation and interest, plus a reasonable return on investment. Depreciation is calculated by the straight-line method, based on a 20-year vessel economic life and utilizing a residual value of 2.5 percent. However, if the owner acquired an existing vessel, the vessel is depreciated by the straight-line method over the remaining period of its 20-year economic life, but not fewer than 10 years. Capitalized improvements are depreciated straight-line over the remainder of the 20-year period, but not fewer than 10 years.

For the purpose of calculating interest expense, MARAD assumes that original vessel indebtedness is 75 percent of the owner's capitalized vessel cost and that principal payments are made in equal annual installments over a 20-year period. To compute the interest cost, the owner's actual interest rate is applied to the constructed outstanding debt on the vessel. Where the owner has a variable interest rate, MARAD uses the owner's rate prevailing at the time of calculation, and if there is no interest rate available, MARAD selects an appropriate interest rate.

MARAD allows a return on capital cost (investment), with two components, return on equity and return on working capital. The rate of return is based upon a five-year average of the most recent rates of return for a cross section of transportation industry companies, including maritime companies. Equity in the vessel is assumed to be the vessel's constructed net book value less constructed indebtedness. Working capital is the dollar amount necessary to cover operating and voyage expenses. The annual depreciation, interest, return on equity and return on working capital are divided by 300 operating days to determine a daily amount. The total of these elements is multiplied by estimated voyage days to determine the capital cost component used in the fair and reasonable rate calculation.

The port and cargo handling cost component of the guideline rate is determined for each voyage on the basis of the actual cargo tender terms for the commodity, load and discharge ports, and lot size. Costs used to determine the port and cargo cost component are based on the most current data from all available sources and verified from data received on completed cargo preference voyages. The brokerage and overhead component of the guideline rate is the aggregate of the cost components for operating, capital and port and cargo handling, multiplied by an 8.5 percent allowance for broker's commissions and overhead. The total of these four components is then divided by cargo tons (which cannot be less than 70 percent of the vessel's cargo deadweight) to determine the guideline rate.

Under the 1990 rule, whenever a vessel carries preference cargo and subsequently transports additional cargo prior to its return to the United States, MARAD reexamines the guideline rate that it calculated for the preference voyage. This reexamination may result in the recalculation of the original guideline rate, incorporating the additional voyage itinerary, costs and revenues which occurred as a result of the carriage of the additional cargo. If a vessel is scrapped or sold after discharging a preference cargo, MARAD adjusts the guideline rate to reflect the termination of the voyage after discharge. If the rate received by the operator for the preference cargo exceeds the adjusted guideline rate for the one-way voyage, MARAD informs the shipper agency who may then require the operator to repay the difference in the ocean freight.

Advance Notice of Proposed Rulemaking

MARAD decided that revising the Rule could encourage development of a modern and efficient merchant marine and reduce government-wide cargo preference shipping costs. As a result, on April 19, 1995, MARAD issued an Advance Notice of Proposed Rulemaking (ANPRM) (60 FR 19559), soliciting comments from the public. In the ANPRM, MARAD identified three alternative methodologies, in addition to the existing rate methodology, that it was considering. The three alternatives were: Foreign Market, Cost Averaging, and Market Based.

Seven sets of comments were received in response to the ANPRM. Commenters represented U.S. shipper agencies, vessel operators and industry associations. Comments were offered in support of, and in opposition to all four alternatives, with no clear consensus. Commenters generally supported the need for guideline rate reform and were unanimous that any methodology must encourage investment in efficient vessels.

Public Meetings

After an initial review of the comments received on the ANPRM, MARAD believed it would be beneficial to meet with interested parties. MARAD held two meetings. On July 12, 1995, members of the shipping community and other interested parties met with MARAD. On July 14, 1995, MARAD met on the same subject with representatives of the United States Department of Agriculture (USDA) and the United States Agency for International Development (AID), the major government shipper agencies.

As a result of MARAD's experience in determining guideline rates and the information received from the ANPRM and meetings with interested parties, on February 28, 1997, MARAD published a Notice of Proposed Rulemaking (NPRM) to amend the Rule in order to improve the fair and reasonable rate-making process. The following is a discussion of proposed changes to 46 CFR part 382 and the comments that were received during the comment period.

Comments

Eight groups submitted comments in response to the NPRM of February 28, 1997. The respondents were the American Institute of Certified Public Accountants (AICPA), four U.S.-flag operators that frequently carry preference cargoes, a U.S. liner operator, the U.S. Agency for International Development (AID), and United States Department of Agriculture's Foreign Agricultural Service (USDA). To facilitate discussion of the comments, they will be discussed by subject matter.

General

General comments ran the gamut from supporting most of the proposals in the NPRM to urging MARAD not to adopt the rule. Some questioned the need for guideline rates or changes to the current procedures and their legality. One operator contended that when at least three bids are received for a preference cargo the lowest should be assumed to be fair and reasonable. Another operator conjectured that averaging will introduce arbitrary biases and that it is unfair for operators to be expected to accept low rates when the market is poor but still be held to ceiling rates if the market improves. The same operator postulated that some operators would not be able to recover costs at the averaging rate. In addition, several operators were concerned that their knowledge of their competitors' cost structure was insufficient for them to know how the averaging system would affect their rates.

The averaging methodology for calculating fair and reasonable guideline rates is supported by the legislative history of Section 901(b)(1) of the Act (Pub. L. 83–664 or the Cargo Preference Act of 1954).

The Cargo Preference Act of 1954 requires government agencies to take such steps as may be necessary and practicable to assure that at least 50 percent (75 percent for specified bulk agricultural products) of the gross tonnage of certain government-sponsored cargoes, ''which may be transported on ocean vessels shall be transported on privately-owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.''

House Report No. 80, 84th Cong., 1st Sess. 3 (1955) sets out the reasons for passage of the Cargo Preference Act of 1954, as follows:

> Without some form of assurance of participation by United States-flag vessels in the transportation of relief and aid cargoes, it became clear that the shipping of the recipient and other maritime nations with lower operating costs would be able to underbid American-flag vessels and eventually transport much, if not all, of these cargoes to the irreparable detriment of the American merchant marine.

H.R. Rep. No. 80 also addressed administration of the Cargo Preference Act of 1954 and, as relevant here, discussed the meaning of ''fair and reasonable rates.'' The question of how ''fair and reasonable rates for United States-flag commercial vessels'' should be calculated was referred to the Comptroller General of the United States by the House Merchant Marine and Fisheries Committee. The Comptroller General advised the Committee in a letter dated February 17, 1955, (B–95832), that—

> ''fair and reasonable rates'' as used in Pub. L. 664 * * * would appear to call for reasonable compensation to the operator, including a fair profit. However, it seems apparent that the statute contemplates *average* ''fair and reasonable rates,'' which may or may not be profitable, or even compensatory, to a high-cost operator.

Quoted in H. Rep. No. 80, *supra*, p. 18 (Emphasis in original).

The Committee agreed with the Comptroller General's construction of the law and added,

> * * * it should be understood that at any one particular time market rates may be considerably less than [the fair and reasonable rate ceiling], in which event the chartering agency should feel free to exercise sound business judgment to secure the lowest rates possible for the Government.

H. Rep. No. 80, *Supra* p. 18.

MARAD has sought to develop a cost-based system which rewards efficiency while holding rates in check during peak periods. Guideline rate procedures have never guaranteed profitability and the Agency believes that the Comptroller's opinion means that full cost (plus profit) recovery in the guideline rate is not required for all vessels. MARAD also believes that the averaging methodology is fully consistent with the Act and that it will be rare that an operator does not recover its costs after efficiently executing a preference voyage at the full guideline rate.

MARAD's goal in revising the Rule is to encourage a modern and efficient merchant marine while reducing government-wide cargo preference costs. A United States General Accounting Office (GAO) report entitled *CARGO PREFERENCE REQUIREMENTS—Objectives Not Significantly Advanced When Used in the U.S. Food Aid Programs*, published in September 1994, concluded that food aid programs were paying higher shipping rates because guideline rate procedures allowed less efficient operators to charge higher rates. The report hypothesized that using average operating costs for similar sized ships instead of an individual ship's operating costs ''should reduce food aid transportation costs.'' MARAD believes that changing the Rule to use average costs will be effective in encouraging efficient operation. In addition, administrative and technical changes made to the rule will help reduce time spent on the program by all parties in a period of scarce resources.

Finally, comments were received that relate to how the averaging system will affect each individual operator. One operator requested that MARAD consider providing operators with hypothetical rates based on recent cost information and also allow an additional comment period. Another requested that MARAD undertake a thorough effort to educate operators on the averaging process and its likely impact on guideline rates.

MARAD does not believe that an additional comment period will provide any significant benefit. However, before the final rule becomes effective, MARAD will contact each operator with current costs on file to explain the cost averaging system and discuss how it might affect rates. MARAD will also provide additional instructions and explanations in a brochure explaining guideline rate procedures to the general shipping community. In addition, MARAD will also provide the average category costs to operators and updates on an ongoing basis.

Averaging

MARAD proposed that the operating costs (including fuel consumption, capital costs and vessel speed) used in the construction of the guideline rate be averaged for all vessels within specific size categories. The averages would be computed twice a year, or more frequently, if necessary. The impact of the change to averaging would be a reduction in the guideline rate levels calculated for less efficient vessels and an increase in the guideline rate levels of the more efficient vessels. Although commenters generally supported the principle of averaging, it was unclear to one commenter whether capital costs would be averaged. Another believed that the rule should specify how MARAD will decide which vessels' costs will be averaged and develop a method to prevent use of irrelevant cost data. A third opposed averaging stating that it would be unpredictable and inefficient, penalizing newer vessels, capital improvements and steam-turbine driven vessels.

Under the averaging system, both vessel operating and capital costs will be averaged as will fuel consumption rates and vessel speed. Some wording changes have been made in the capital cost sections of the final rule to clarify that capital costs are averaged. In regard to steam-turbine vessels, it is true that any cost that is greater than the average creates a disadvantage to the operator of the higher cost vessel. MARAD shared the commenter's concern about impact on newer vessels that might enter the fleet and has provided a separate new vessel allowance. Because capital improvements are generally undertaken to create efficiencies in other cost areas, effective capital improvements should yield a long-term advantage to the operator.

Regarding the use of inappropriate data that could cause the average to be somehow distorted, MARAD will pay close attention to data provided to assure that it yields a meaningful average. Clearly, if a vessel carried preference cargo in this program during the prior year, it will be included in the average. For other vessels, an operator's program participation will be a factor in determining inclusion in the average. However, other factors such as the individual vessel's program participation and cost structure will also be considered.

Vessel Categories

MARAD proposed a four-category system based on cargo deadweight

capacity (CDWT) with the cargo capacity determining which category of costs were to be used. Six commenters raised issues concerning categories. The comments concerning categories fall into three basic areas: Mixing vessel types within a category, how and why the categories were selected, and alternative category suggestions.

Two commenters opposed assigning vessels to categories without regard to vessel type. One commenter stated that the cost structure of a LASH liner operation bears no resemblance to the cost structure of bulk operators. The other commenter argued that tug and barges are inappropriate for transoceanic voyages and should therefor not be included with vessels which are fully capable.

It is true that LASH liner operations have cost structures which are not comparable to bulk operations. However, from time to time LASH vessels have competed for and carried bulk and bagged commodities outside of liner operations. To the extent that LASH vessels are used outside of liner operations and subject to this rule, MARAD finds no reason to exclude this vessel type from the cost discipline that averaging by categories provides.

In regard to the appropriateness of transoceanic tug and barge movements, tugs and barges have regularly competed for transoceanic cargoes during the last several years. MARAD sees no reason why two vessel types competing for the same cargoes should not be subject to the same guideline rate methodology.

With respect to how size categories were selected, MARAD examined the sizes and costs of vessels that have carried preference cargo, the number of vessels of similar size, and the cargo amounts carried on individual voyages in the preference trade.

MARAD also considered the difference between vessel types (i.e., bulk carriers, tankers, tug/barges, and general cargo), and trading patterns in arriving at the proposed vessel categories. The analysis placed vessels in size categories where they compete primarily with each other and have similar aggregate cost structures.

MARAD's proposal to use cargo capacity rather than vessel size to determine which category of costs to use was not generally well received. Two commenters argued that the approach was less efficient and could result in inequities for cargoes just above and below the category break. After reviewing the comments and doing further analysis, MARAD has reconsidered this approach and now believes that categories based on vessel size would be the most effective and fair to all concerned because costs are more closely related to vessel deadweight than cargo deadweight.

One set of comments from industry and one from government proposed vessel category sizes different from MARAD's. Both proposed five different category sizes and one proposed categories broken down by vessel deadweight (DWT) in lieu of CDWT. MARAD's original proposal and the two alternatives are:

Category	MARAD (CDWT)	(CDWT) Alternative #1	(DWT) Alternative #2
I	<8,000 CDWT	<12,000 CDWT	<10,000 DWT.
II	8,000–19,999	12,000–24,999	10,000–19,999.
III	20,000–34,999	25,000–37,999	20,000–29,999.
IV	>35,000	38,000–50,000	30,000–49,999.
V	None	>50,000	=>50,000.

In response to the proposals, MARAD constructed guideline rates using the averaging method with all three different category size methods. The analysis showed a more even progression of rates from one cargo size to another using the MARAD categories and that there is little difference resulting from using CDWT instead of DWT to establish the MARAD categories. However, the review resulted in a modest shift in the break point between Category I and Category II from 8,000 CDWT to 10,000 DWT. Also, costs for vessels in the greater than 35,000 DWT category did not display major variations due to vessel size. Consequently, the final rule will have four categories based on vessel size.

Voyage Parameters

The parameters of the pro forma voyage used in the construction of the fair and reasonable guideline rate were addressed by five commenters. Three comments were received concerning MARAD's proposal for constructing voyages based upon MARAD selecting the most appropriate port range for the return leg of the preference voyage, rather than a return to the load port in all instances. Although one commenter objected to the change without stating a specific reason, two generally supported the change, as being in keeping with commercial practices. One suggested that the return leg always terminate in the U.S. Gulf, as that is where most cargo originates. The other suggested that the language in the rule be expanded to include specific reference to the practices of the owner and the prospects for subsequent employment.

MARAD believes that the method of voyage construction published in the NPRM can adequately address these concerns. Regarding always terminating in the U.S. Gulf, in certain circumstances, e.g., consecutive voyages from the U.S. West Coast, the U.S. Gulf would not be the appropriate termination area. The rule already authorizes MARAD to select ''the most appropriate'' port range, so expanding the language is not necessary.

Since speed would be averaged across vessel types, MARAD proposed that the separate weather delay factors in § 382.3(e)(6) be eliminated. However, one commenter pointed out that tug/barge units will still encounter greater weather delays than self propelled ships. As a result of comments received, MARAD reconsidered this item and the 10% delay factor for computing average speed for tugs has been retained in the final rule.

One commenter asserted that a critical problem with the transportation of bulk preference cargo is that the risk shifted to carriers by the use of ''full berth terms'' and other land-based transportation requirements in preference charter parties. In the NPRM, MARAD noted the differences in risk between load and discharge terms and indicated its intention to use delay factors which reflect the inherent risks, therefore no change has been made to the final rule.

Finally, a government commenter requested that MARAD continue to calculate one-way rates at the time of booking for vessels sold or scrapped prior to their return to the United States. The final rule continues to provide for a one-way rate, but with a more precise definition of the circumstances when it applies. The one-way rate will continue to be calculated at the same time as the full round-trip guideline rate.

Guideline Rate Adjustments

MARAD's proposal to eliminate backhaul adjustments elicited comments from three operators and two government shippers. The comments from the operators strongly favor MARAD's proposal, while the government shippers opposed it. MARAD believes the proposal to eliminate the backhaul adjustment provides the operator with a greater ability to increase its commercial carriage and U.S.-flag participation in the U.S. foreign trade. Further, MARAD believes that increased commercial carriage could help lower overall program costs, and therefore the proposal is unchanged in the final rule.

As a result of substitutions, voyage variations, add-on cargoes, and similar recalculations, MARAD averages two guideline rate calculations for each cargo actually fixed. MARAD intends to substantially reduce these recalculations and generally determine only one guideline rate for each preference cargo. The guideline rate based on the initially requested vessel and cargo will also be applicable to all other vessels in the same tonnage category that might actually carry the cargo and for cargo amounts plus or minus five percent of the original request. An exception would be made when a vessel eligible to receive the ''new vessel allowance'' is substituted for an older vessel, or vice versa.

Two government commenters and one operator also raised the issue of whether rates would be recalculated when an outbound commercial cargo is added on to a preference cargo. The government commenters argued that additional revenue sources should always trigger a recalculation. The other commenter noted that add-on commercial cargo is similar to the backhaul adjustment and its elimination from the guideline process would provide an incentive to bid on commercial cargo. MARAD will recalculate rates, if requested, for any add-on cargo which increases cargo size by more than five percent.

Cargo Size (Seventy Percent Limitation)

Three commenters provided views regarding MARAD's proposal to eliminate the seventy percent limitation in the current rule. This provision currently provides that, for the purposes of calculating guideline rates, calculated cargo tonnage shall not be less than 70 percent of the vessel's cargo capacity. All commenters agreed with MARAD's proposal noting that the seventy percent rule has limited competition. Therefore, § 382.3(f) of the final rule will provide that the determination of cargo tonnage in the guideline rate shall be based on the actual cargo tonnage booked or considered for booking on the voyage.

Capital Costs

Five changes designed to simplify or clarify rate calculations were proposed within this cost category. Comments pertaining to these changes and other issues related to capital cost were received from six of the eight commenters.

The first change adds a clarifying cross reference in § 382.3(b)(2)(ii). In the final rule the paragraph explicitly references paragraph (b)(2)(i) for the periods of depreciation to be used in determining interest expense in the guideline rate.

Three commenters expressed views on MARAD's second proposal, elimination of the 2.5 percent residual value in the calculation of depreciation. Although two commenters supported elimination, the third had a conceptional problem with the elimination of residual value in the depreciation calculation. Because MARAD believes that eliminating residual value simplifies the guideline rate process while conforming to industry practice, residual value is eliminated from the depreciation calculation in § 382.3(b)(2)(i) of the final rule.

The third proposed change to the capital cost calculation concerns situations where interest rates are not available for certain capitalized items. MARAD proposed the ten-year Treasury-bill (T-bill) rate plus one percent as an appropriate and readily available substitute. One commenter supported the change while a second contended that a change would probably result in a reduction for some operators. This concern is unfounded; the rate will not be substituted when the operator provides an interest rate. Accordingly, § 382.3(b)(2)(ii) is amended in the final rule to specify the ten-year T-bill rate plus one percent as the rate used in the fair and reasonable rate calculation when no interest rate is available or for vessels without mortgage debt.

The fourth proposed change, which was supported by the commenters who voiced a view, related to the interest rate used to calculate capital costs when an owner has a variable interest rate. In the final rule § 382.3(b)(2)(ii) has been amended to specify January 1 and July 1 as the dates on which the interest rates in effect would be used for the calculation of fair and reasonable rates.

The final proposed change to capital costs was the addition of a statement in the new § 382.3(b)(3) noting that the return on working capital is a voyage related capital cost element and thus not part of the averaged costs. This proposed change elicited comments from two persons. One agreed with the change. The second commenter appeared to misunderstand the proposal. The final rule includes the proposed change in new § 382.3(b)(3).

The rate of return used in the calculation of capital costs also elicited extensive responses from four commenters, even though no change was proposed. A government commenter objected to the ''policy of guaranteeing'' a return on investment, suggesting that if the ''guarantee'' cannot be eliminated, it be based on a rate of return for maritime companies only. The first part of this comment misinterprets the function of the fair and reasonable guideline rates in the preference market. Guideline rates provide a ceiling on market rates charged for the carriage of preference cargoes on U.S.-flag vessels. Far from ''guaranteeing'' a rate of return, a guideline rate limits the shipowner's profitability. In addition, the Comptroller's opinion specifically states that a reasonable profit should be included in the rate. Regarding the suggestion to base the rate of return on maritime companies only, MARAD believes that a maritime profitability index would be too narrow to assure a reasonable return during all periods.

In general, the three operator commenters expressed the opposite point of view from the above. They generally expressed the belief that a higher rate of return is necessary to compensate for a high risk investment in ocean shipping. One commenter suggested that the rate of return for working capital should be based on short term business loan rates such as prime plus a spread.

Although these comments have an element of truth, they also illustrate the dilemma of choosing an appropriate rate of return. MARAD believes that the suggestion to use a short term loan rate for the return on working capital is a reasonable suggestion. However, short-term loan rates are volatile and the suggestion ignores the question of a specific spread to use. In the end, the Agency believes the current procedures have worked well in the past and should continue to do so in the future. The final rule stipulates a rate of return on working capital and equity based on the five-year average of return on stockholders' equity for a cross section of transportation companies.

New Vessel Allowance

One goal of revising Part 382 has been to encourage newer and more efficient vessels to enter the cargo preference market. To this end, MARAD proposed including an allowance for acquisition capital in the guideline rates for both newly constructed vessels and vessels acquired prior to the fifth anniversary of their construction. The proposal provided that the allowance be included for a period of five years after acquisition by the owner. Comments were received from four persons on this provision. Commenters believed that the provision was insufficient and that a strong market would be necessary for the operator to benefit from the allowance. One commenter asserted that the allowance would only be received if MARAD paid it directly, while another supported the concept but only for newly constructed vessels. As a result of the comments, MARAD modified the new vessel allowance to provide a longer allowance period for newer vessel owners. In the final rule, the annual new vessel allowance will equal ten percent of the vessel's capitalized costs during the first year following construction or acquisition, and will decline by one percentage point each of the subsequent years until the vessel is ten years old. No allowance will be included for vessels more than ten years of age.

Information Collection Requirements

MARAD proposed reducing reporting and auditing requirements while continuing to recognize the agency's need for accurate cost and financial information. Two favorable comments were received on MARAD's proposals to reduce the amount and frequency of data reporting. To implement these two concepts, the final rule amends § 382.2(b)(8) to authorize aggregate schedule filings, and § 382.2(c) to change post-voyage filing to a semiannual requirement.

Two changes in reporting requirements were proposed to reduce the audit burden on operators, the Department of Transportation's Office of the Inspector General (OIG), and MARAD. The first change, intended to alleviate the need for auditing by the OIG, allowed an operator to have its submissions certified by an independent certified public accountant (CPA). One operator and the AICPA pointed out a problem with the specific phrase used by MARAD. The AICPA recommended replacement language specifying a report based on the independent CPA's performing an engagement consistent with professional standards, i.e., an attestation engagement. In addition, there was strong sentiment from three commenters for MARAD retaining the right to audit. It was never MARAD's intent to relinquish the right to request audits, but to alleviate some of the need for audit. However, it is MARAD's intention in deciding which operator's data to audit in any given year to factor the level of CPA review into its considerations. In consideration of the comments, the wording in § 382.2 of the final rule has been changed to include the language suggested by the AICPA.

The second proposed change in reporting requirements was to require the operator to use the accounting treatment it already uses for its own records and audited financial statements for its cost submissions to MARAD. One commenter believed that drydocking accruals should still be allowed even if a company expenses its drydocking costs. Another remarked that reporting consistency is critical when using averaging and MARAD should review the reported data and provide guidance to ensure consistent cost data. While it would be advantageous if all operators reported in the same manner and all operators accrued for drydocking costs, the Agency believes that the averaging process itself will even out the drydocking costs in much the same way as the accrual process.

MARAD also proposed three minor reporting changes. First, reporting the Official Coast Guard Identification Number (official number) would be required; second, the DWT requirement would be amended to require only summer DWT in metric tons and eliminate the requirement for Suez and Panama Canal net register tons; and, finally, the definition of ''operating day'' would be clarified. Only positive comments were received on these proposed changes and the proposals are included in the final rule.

Brokerage and Overhead

Part 382.3(b)(5)(d) specifies that ''allowance for broker's commission and overhead of 8.5 percent shall be added to the sum of the operating cost component, the capital cost component, and the port and cargo handling cost component.'' Two comments were received on this component of the rate. The first questioned whether 8.5% is an appropriate allowance. The second was whether brokerage and overhead could be allowed on pass through items. MARAD believes that the 6% allowance for overhead costs that is added to the 2.5% brokerage included in guideline rates is still appropriate. Regarding brokerage and overhead on pass through items, fair and reasonable guideline rates are for ocean transportation only and an allowance in the guideline rate for inland transportation items is outside the scope of this rulemaking.

Total Revenue Rates

When more than one cargo has been booked on a vessel subject to the guideline rate regulations or when there are multiple load and/or discharge ports, calculating individual rates for particular parcels and/or destinations, as currently required by § 382.3(f) and (g), is impossible. Accordingly, MARAD proposed calculating a ''Total Revenue Rate'' when this occurs. The guideline rate would be calculated normally, but the final rate would be expressed as gross revenue for the total voyage, rather than as a rate per ton. If the revenue from the sum of the individual parcels does not exceed the total revenue calculated in the guideline, the individual rates would be considered fair and reasonable.

A shipper agency expressed concern that total revenue rates could result in inequities to recipients or shipper agencies if a high fixture and a low fixture combine to result in an acceptable total revenue. One operator expressed the belief that using a total revenue rate for combined parcels penalizes the operator for initiative in combining parcels and another asked that the calculation method be specified and shown by example. Responses to these concerns are drawn from experience with the total revenue concept, which has been used under waiver authority.

Experience to date has not shown operators frequently blending a high fixture rate with a low one. Typically, combining cargoes allows an operator to spread fixed costs more widely and bid a highly competitive rate for each cargo. Using the total revenue approach allows MARAD to combine the fixed costs for the whole voyage with the variable costs for the individual parcels. But because the voyage's fixed costs and the parcels' variable costs are not derived from the same tonnage, a rate per ton is not meaningful.

MARAD does not believe that total revenue rates penalize operators for combining cargoes. Total revenue rates actually reflect the practices of the operators when they combine cargoes. Using a total revenue approach simply requires comparing all the costs for all parcels to be carried on the voyage to the total revenue proposed in the operator's bids, thereby obviating the need to artificially allocate fixed costs to one cargo or the other.

As requested, an example of a total revenue rate follows:

CARGO

Cargo	Amount metric tons	Type	Terms	Load port	Discharge port
Rice	10,000	Bagged	FBT	Galveston, TX	Durban, South Africa.
Wheat	10,000	Bulk	VLFO (4000/1000) SHEX	New Orleans, LA	Beira, Mozambique.
Corn	10,000	Bulk	FBT	New Orleans, LA	Mombassa, Kenya.

VOYAGE

Port	Activity	Port time	Distance	Sea time	Port costs	Cargo costs
New Orleans, LA	Load wheat and corn	8.38			$35,000	$25,000
	Bunker	1.00				
Galveston, TX	Load rice	8.49	390	1.25	35,000	180,000
Durban, South Africa	Discharge rice	10.18	8234	28.32	25,000	100,000
Beira, Mozambique	Discharge wheat	12.73	702	2.24	25,000	0
Mombassa, Kenya	Discharge corn	8.49	1149	3.67	25,000	60,000
	Bunker	1.00		0.00		
U.S. Gulf	Return	0.00	9986	31.92	0	0
Total Days		48.25		85.40	145,000	385,000

FAIR AND REASONABLE RATE CALCULATION

Fuel Costs	$415,000
Vessel Operating Costs	$1,500,000
Port Costs	$145,000
Cargo Costs	$365,000
Other Cargo Costs	$20,000
Capital Costs	$740,000
Brokerage & Overhead	$270,725
Total	$3,455,725,000
Total Revenue Rate	$3,455,725
Average Rate per ton	$115.19

FIXTURE AND FAIR AND REASONABLE RATE COMPARISON

Cargo	Rate bid	Amount	Revenue	Fair and reasonable rate
Rice	$125.00	10,000	$1,250,000	
Wheat	90.00	10,000	900,000	
Corn	95.00	10,000	950,000	
Total		30,000	3,100,000	[1] $3,455,725
Average	103.33			

[1] Since voyage revenue is less than total revenue from the fair and reasonable rate, the individual bids are considered fair and reasonable.

The preceding example details the areas where costs vary and overlap. In order to provide individual rates, both direct and overall voyage costs must be allocated to each cargo. This is very difficult to accomplish fairly. Also, as this example illustrates, individual fixture rates can be higher or lower than the average rate, and yet the operator's total effort yields revenue that is fair and reasonable. The only unique aspect of the total revenue rate is the elimination of the step which divides the total allowable costs by the cargo tons to derive a rate per ton.

MARAD believes that the total revenue approach represents the best method for protecting the interests of all parties when cargoes are combined. Furthermore, combining cargoes has become increasingly common in the past two years. Consequently, in the final rule, § 382.3 (f) and (g) will allow the use of either a cost per ton or other measure that MARAD determines appropriate.

Revised Rate Methodology

The guideline or fair and reasonable rate established by MARAD, which applies only to the ocean borne portion of cargo transportation, consists of four components: (1) Operating costs; (2) capital costs; (3) port and cargo handling costs; and (4) brokerage and overhead. The operating cost component of the fair and reasonable rate will reflect average vessel operating costs for vessels within the specified size categories based on the historical data submitted in accordance with § 382.2 of this rule. MARAD will update the operating costs to the current period, utilizing escalation factors for wage and non-wage costs. The averages for each category of vessels will be calculated at least twice per year. To the extent vessels are time chartered or leased,

operators will submit both operating and capital costs, including all capitalized costs and interest rates for vessels subject to capital leases.

Vessel costs will be placed in categories based on the vessel's summer deadweight tons (DWT). The categories will be as follows:

Category I—Less than 10,000 DWT
Category II—10,000—19,999 DWT
Category III—20,000—34,999 DWT
Category IV—Greater than 35,000 DWT

All eligible annual operating costs for vessels within a category will be added together and divided by the total number of operating days for those vessels to yield a daily operating cost. The cost will be indexed to the current year and multiplied by estimated total voyage days to yield the operating cost segment for the voyage.

Fuel consumption will be determined on the basis of actual reported fuel consumption at sea and in port for vessels within the same category. The average fuel consumptions of vessels in the category will be multiplied by the projected number of voyage days at sea and in port to yield total fuel consumed. MARAD will obtain current spot market fuel prices from published sources at bunkering ports, consistent with sound commercial practice, and apply them to fuel consumed to produce the fuel segment of the operating cost component. The total of the fuel and non-fuel operating cost segments will be added together to yield the operating cost component for the voyage.

The capital cost component will be an average based on vessels in the applicable size category. It will consist of an allowance for depreciation and interest and a reasonable return on investment. Depreciation for vessels in a category will be straight-line based on a 20-year economic life. However, if the owner acquired an existing vessel, the vessel will be depreciated on a straight-line basis over the remaining period of its 20-year economic life, but not fewer than 10 years. Capitalized improvements will be depreciated straight-line over the remainder of the 20-year period, but not fewer than 10 years, commencing with the capitalization date for those improvements.

For the purpose of calculating interest expense, MARAD will assume that original vessel indebtedness is 75 percent of the owner's capitalized vessel costs and that principal payments are made in equal annual installments over the economic life of the vessel. To compute the interest cost, the owner's actual interest rates will be applied to the vessel's outstanding constructed debt, using the depreciation schedule in § 382.3(b)(2)(ii). Where the owner has a variable interest rate, the owner's rate prevailing when the average capital cost component is calculated will be used. In cases where there is no interest rate available, and for operators without vessel debt, MARAD will use the ten-year T-bill rate plus one percent.

Return on investment will have two components, return on equity and return on working capital. The rate of return will be based upon a five-year average of the most recent rates of return for a cross section of transportation industry companies, including maritime companies. Equity used will be the vessels' constructed net book values less constructed principal amounts. Working capital will be voyage based and be the dollar amount necessary to cover operating and voyage expenses.

A new vessel allowance will be included in the capital component of newly built vessels and vessels acquired when five years of age or less. This allowance, which will be paid until the vessel is ten years old, will equal ten percent of the vessel's capitalized costs during the first year following construction or acquisition, and will decline by one percentage point each of the subsequent years. The voyage allowance will be the annual amount divided by 300 operating days and multiplied by estimated voyage days.

The average annual depreciation, interest, and return on equity for vessels in the category will be divided by 300 operating days to determine a daily amount. The total of these elements will be multiplied by estimated voyage days and added to the return on working capital and the new vessel allowance to determine the capital cost component used in the fair and reasonable rate calculation.

The port and cargo handling cost component will be determined for each voyage on the basis of vessels in the category and the actual cargo tender terms for the commodity, load and discharge ports, and lot size. The costs will include applicable fees for wharfage and dockage of the vessel, canal tolls, cargo loading and discharging, and all other voyage costs associated with the transportation of preference cargo. Costs used to determine the port and cargo cost component will be based on the most current data from all available sources and verified from data received on completed cargo preference or commercial voyages.

To determine the brokerage and overhead component of the fair and reasonable rate, MARAD will add the cost components for operating, capital, and port and cargo handling and multiply that sum by an 8.5 percent allowance for broker's commissions and overhead. The total of these four components, expressed as total revenue or as a rate per ton, whichever is most applicable, will be the fair and reasonable rate.

If a vessel is scrapped or sold after discharging a preference cargo, and the vessel does not return to the United States as a U.S.-flag vessel, the guideline rate will be adjusted to reflect the termination of the voyage after cargo discharge. If the rate received by the operator for the preference cargo exceeds the adjusted guideline rate for the one-way voyage, the operator may be required to repay the difference in ocean freight to the shipper agency.

In special circumstances, certain procedures prescribed in this rule may be waived, provided the procedures adopted are consistent with the Act and with the intent of these regulations.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review); DOT Regulatory Policies and Procedures; Pub. L. 104–121

This rulemaking is not considered an economically significant regulatory action under section 3(f) of E.O. 12866. It is not considered to be a major rule for purposes of Congressional review under Pub. L. 104–121. It is anticipated that savings to the Government of less than $1 million per year will result. Accordingly, the program will not have an annual effect on the economy of $100 million or more. While this rule does not involve any change in important Departmental policies, it is considered significant under DOT Regulatory Policies and Procedures and E.O. 12866 because it addresses a matter of considerable importance to the maritime industry and may be expected to generate significant public interest. Accordingly, the Office of Management and Budget has reviewed this rule.

When the NPRM was published, MARAD estimated the potential savings to the Government from this rulemaking by recalculating 167 rates for the years 1992 through 1995 using the revised methodology. This sample reflected the operators and countries in the complete data base. Extrapolating from the sample showed that averaging could have saved three million dollars in ocean freight for preference cargoes during the period. The comments received on the NPRM expressed concern that this analysis was flawed because it contained vessels which have since been either scrapped or withdrawn from the preference trade.

In response, MARAD recomputed the average costs for 1993 and 1994 using only vessels that are currently available for the preference trade. Table I shows the costs derived for each category from the reduced sample which were then used to calculate guideline rates using the averaging method. Table II summarizes the results of these calculations and shows the percentage savings that would have been realized using averaging.

TABLE I.—DAILY COSTS USED IN GUIDELINE RATE AVERAGES FOR CY 1993 AND 1994

Categories	Year	Operating costs	Capital costs	Fuel (at sea)*	Fuel (import)*	Speed (knots)	Sample size
Category I	1993	$4,087	$1,224	$1,600	$222	6.25	8
(<10,000 vdwt)	1994	3,321	1,294	1,600	195	6.25	8
Category II	1993	6,077	3,337	3,468	275	8.25	15
(10–19,999 vdwt)	1994	6,207	3,543	3,137	260	8.37	15
Category III	1993	11,447	5,435	3,270	443	12.66	4
(20–35,000 vdwt)	1994	10,686	4,604	4,366	674	13.79	6
Category IV	1993	11,943	6,355	4,963	526	13.54	13
(>35,000 vdwt)	1994	12,757	6,138	4,492	680	13.36	14

Extrapolating the estimated 1.05% savings based on actual fixtures during 1993 and 1994 to the period 1993 to August 1997, yields a savings of nearly one million dollars as a result of averaging. This savings estimate is approximately one-third the savings estimated with the ship mix used in the initial analysis. The reason for this is that declining levels of cargoes since 1994 have forced operators to bid very low rates to obtain cargoes, thus forcing many inefficient vessels out of the trade. Nevertheless, a million dollar savings is significant.

TABLE II.—SAVINGS IN SAMPLE RATES FROM USING AVERAGING SYSTEM FOR RATE CALCULATION

	Sample size	Fixture revenue	Averaging savings	Averaging vs guideline	Metric tons
Category I	18	6,098,662	($96,481)	($692,251)	91,956
Category II	22	20,953,285	0	($1,017,582)	296,068
Category III	10	20,155,736	($611,594)	($835,651)	224,247
Category IV	26	59,655,091	($416,255)	($429,445)	1,003,997
Sample total	76	106,862,774	($1,124,330)	($2,974,929)	1,616,268
	.....	.....	– 1.05%	– 2.32%	.....

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation would not have a significant economic impact on a substantial number of small entities. There are approximately twenty-five vessel operators that participate in this program, none of which are small entities.

Environmental Assessment

This final rule has no environmental impact and an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking reduces the current requirement for the collection of information. The Office of Management and Budget (OMB) has reviewed and approved the information collection and record keeping requirements (approval number 2133–0514) in the current rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Public comments were requested in the NPRM at 62 FR 9150, published February 28, 1997. Closing date for comments was April 29, 1997. No comments were received regarding this information collection. A subsequent 30-day notice was published July 21, 1997 by the Office of the Secretary of Transportation at 62 FR 39046. Comments were due on or before August 20, 1997. No comments were received as a result of this notice.

In accordance with the Paperwork Reduction Act of 1995, MARAD received an extension from OMB of approval for three years for this information collection.

Unfunded Mandates

Under the Unfunded Mandate Reform Act (Pub.L. 104–4) the Maritime Administration must consider whether this rule will result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). The Act also requires that the Maritime Administration identify and consider a reasonable number of regulatory alternatives and, from those alternatives, select the least costly, most cost-effective, or least burdensome alternative that will achieve the objectives of the rule. As stated above, by this rule the Maritime Administration is reducing regulatory burden, i.e., collection of information, on the public. This final rule does not result in an annual expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and is the least burdensome alternative that will achieve the objective of the rule.

List of Subjects in 46 CFR Part 382

Agricultural commodities, Government procurement, Loan programs—foreign relations, Maritime carriers, Reporting and record keeping requirements.

Accordingly, 46 CFR Chapter II is hereby amended by revising part 382, to read as follows:

PART 382—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF BULK AND PACKAGED PREFERENCE CARGOES ON U.S.-FLAG COMMERCIAL VESSELS.

Sec.
382.1 Scope.
382.2 Data submission.
382.3 Determination of fair and reasonable rates.
382.4 Waivers.

Authority: 46 App. U.S.C. 1114, 1241(b); 49 CFR 1.66.

§ 382.1 Scope.

The regulations in this part prescribe the type of information that shall be submitted to the Maritime Administration (MARAD) by operators interested in carrying bulk and packaged preference cargoes, and the method for calculating fair and reasonable rates for the carriage of dry (including packaged) and liquid bulk preference cargoes on U.S.-flag commercial vessels, except vessels engaged in liner trades, which is defined as service provided on an advertised schedule, giving relatively frequent sailings between specific U.S. ports or ranges and designated foreign ports or ranges.

§ 382.2 Data submission.

(a) *General.* The operators shall submit information, described in paragraphs (b) and (c) of this section, to the Director, Office of Costs and Rates, Maritime Administration, Washington, D.C. 20590. To the extent a vessel is time chartered, the operator shall also submit operating expenses for that vessel. All submissions shall be certified by the operators. A further review based on the independent CPA performing an engagement consistent with professional standards, i.e., an attestation engagement, is recommended. Submissions are subject to verification, at MARAD's discretion, by the Office of the Inspector General, Department of Transportation. MARAD's calculations of the fair and reasonable rates for U.S.-flag vessels shall be performed on the basis of cost data provided by the U.S.-flag vessel operator, as specified herein. If a vessel operator fails to submit the required cost data, MARAD will not construct the guideline rate for the affected vessel, which may result in such vessel not being approved by the sponsoring Federal agency.

(b) *Required vessel information.* The following information shall be submitted not later than April 30, 1998, for calendar year 1997 and shall be updated not later than April 30 for each subsequent calendar year. In instances where a vessel has not previously participated in the carriage of cargoes described in § 382.1, the information shall be submitted not later than the same date as the offer for carriage of such cargoes is submitted to the sponsoring Federal agency, and/or its program participant, and/or its agent and/or program's agent, or freight forwarder.

(1) Vessel name and official number.

(2) Vessel DWT (summer) in metric tons.

(3) Date built, rebuilt and/or purchased.

(4) Normal operating speed.

(5) Daily fuel consumption at normal operating speed, in metric tons (U.S. gallons for tugs) and by type of fuel.

(6) Daily fuel consumption in port while pumping and standing, in metric tons (U.S. gallons for tugs) and by type of fuel.

(7) Total capitalized vessel costs (list and date capitalized improvements separately), and applicable interest rates for indebtedness (where capital leases are involved, the operator shall report the imputed capitalized cost and imputed interest rate).

(8) Operating cost information, to be submitted in the format stipulated in 46 CFR 232.1, on Form MA–172, Schedule 310. Operators are encouraged to provide operating cost information for similar vessels that the operator considers substitutable within a category, as defined in § 382.3(a)(1), in the aggregate on a single schedule. Information shall be applicable to the most recently completed calendar year.

(9) Number of vessel operating days pertaining to data reported in paragraph (b)(8) of this section for the year ending December 31. For purposes of this part, an operating day means any day on which a vessel or tug/barge unit is in a seaworthy condition, fully manned, and either in operation or standing ready to begin pending operations.

(c) *Required port and cargo handling information.* The port and cargo handling costs listed in this paragraph shall be provided semiannually for each cargo preference voyage terminated during the period. The report shall identify the vessel, cargo and tonnage, and round-trip voyage itinerary including dates of arrival and departure at port or ports of loading and discharge. The semiannual periods and the information to be submitted are as follows:

Period	Due date
April 1–September 30	January 1.
October 1–March 31	July 1.

(1) *Port expenses.* Total expenses or fees, by port, for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expenses, and any other appropriate port expense.

(2) *Cargo expense.* Separately list expenses or fees for stevedores, elevators, equipment, and any other appropriate expenses.

(3) *Extra cargo expenses.* Separately list expenses or fees for vacuvators and/or cranes, lightering (indicate tons moved and cost per ton), grain-to-grain cleaning of holds or tanks, and any other appropriate expenses.

(4) *Canal expenses.* Total expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses. Indicate waiting time and time of passage.

(d) *Other requirements.* Unless otherwise provided, operators shall use generally accepted accounting principles and MARAD's regulations at 46 CFR part 232, Uniform Financial Reporting Requirements, for guidance in submitting cost data. Notwithstanding the general provisions in 46 CFR 232.2(c) for MARAD program participants, each operator shall submit cost data in the format that conforms with the accounting practices reflected in the operator's trial balance and, if audited statements are prepared, the audited financial statements. Data requirements stipulated in paragraph (b) of this section that are not included under those reporting instructions shall be submitted in a similar format. If the operator has already submitted to MARAD, for other purposes, any data required under paragraph (b) of this section, its submission need not be duplicated to satisfy the requirements of this part.

(e) *Presumption of confidentiality.* MARAD will initially presume that the material submitted in accordance with the requirements of this part is privileged or confidential within the meaning of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). In the event of a subsequent request for any portion of that data under the FOIA, MARAD will inform the submitter of such request and allow the submitter the opportunity to comment. The submitter shall claim or reiterate its claim of confidentiality at that time by memorandum or letter, stating the basis for such assertions of exemption from disclosure. The Freedom of Information

Act Officer, or the Chief Counsel of MARAD, will inform the submitter of the intention to disclose any information claimed to be confidential, after the initial FOIA request, or after any appeal of MARAD's initial decision, respectively.

(Approved by the Office of Management and Budget under control number 2133–0514)

§ 382.3 Determination of fair and reasonable rate.

Fair and reasonable rates for the carriage of preference cargoes on U.S.-flag commercial vessels shall be determined as follows:

(a) *Operating cost component*—(1) *General.* An operating cost component for each category, based on average operating costs of participating vessels within a vessel size category, shall be determined, at least twice yearly, on the basis of operating cost data for the calendar year immediately preceding the current year that has been submitted in accordance with § 382.2. The operating cost component shall include all operating cost categories, as specified in 46 CFR 232.5, Form MA–172, Schedule 310, Operating Expenses. For purposes of these regulations, charter hire expenses are not considered operating costs. MARAD shall index such data yearly to the current period, utilizing the escalation factors for wage and non-wage costs used in escalating operating subsidy costs for the same period.

(2) *Fuel.* Fuel costs within each category shall be determined based on the average actual fuel consumptions, at sea and in port, and current fuel prices in effect at the time of the preference cargo voyage(s).

(3) *Vessel categories.* Vessels shall be placed in categories by deadweight capacities (DWT), as follows:

Group I—under 10,000 DWT
Group II—10,000—19,999 DWT
Group III—20,000—34,999 DWT
Group IV—35,000 DWT and over.

(b) *Capital Component*—(1) *General.* An average capital cost component for each category shall be constructed, at least twice yearly, consisting of vessel depreciation, interest, and return on equity.

(2) *Items included.* The capital cost component shall include:

(i) *Depreciation.* The owners' capitalized vessel costs, including capitalized improvements, shall be depreciated on a straight-line basis over a 20-year economic life, except vessels purchased or reconstructed when their age was greater than 10 years old. To the extent vessels are chartered or leased, the operator shall submit the capitalized cost of the vessel owner and imputed interest rate. If these items are not furnished, MARAD will construct these amounts. When vessels more than 10 years old are acquired, a depreciation period of 10 years shall be used. Capitalized improvements made to vessels more than 10 years old shall be depreciated over a 10-year period. When vessels more than 10 years old are reconstructed, MARAD will determine the depreciation period.

(ii) *Interest.* The cost of debt shall be determined by applying each vessel owner's actual interest rates to the outstanding vessel indebtedness. MARAD shall assume that original vessel indebtedness is 75 percent of the owners' capitalized vessel costs, including capitalized improvements, and that annual principal payments are made in equal installments over the economic life of the vessels as determined in accordance with paragraph (b)(2)(i) of this section. Where an operator uses a variable interest rate, the operator's actual interest rate at the time of calculation of the average capital cost component shall be used. The ten-year Treasury bill (T-bill) rate plus one percent on the first business day of the year or the first business day on or after July 1 shall be used for operators without vessel debt and when the actual rate is unavailable.

(iii) *Return on equity.* The rate of return on equity shall be computed in the same manner as described in paragraph (b)(3) of this section. For the purpose of determining equity, it shall be assumed that the vessel's constructed net book value, less outstanding constructed principal, is equity. The constructed net book values shall equal the owners' capitalized cost minus accumulated straight-line depreciation.

(3) *Return on working capital.* For each voyage a return on working capital shall be included as a voyage related capital cost element, and thus not part of the averaged costs. Working capital shall equal the dollar amount necessary to cover 100 percent of the averaged operating costs and estimated voyage costs for the voyage. The rate of return shall be based on an average of the most recent return of stockholders' equity for a cross section of transportation companies, including maritime companies.

(4) *New vessel allowance.* Newly constructed vessels and vessels acquired during or before their fifth year of age will receive an additional allowance for acquisition capital as part of the capital cost element. For the first year following construction or acquisition by the operator, a daily amount equal to ten percent of capitalized acquisition costs, divided by 300 operating days, shall be included. This amount shall be reduced by one percent of capitalized acquisition costs each subsequent year. No allowance shall be included after the tenth year following construction.

(5) *Voyage component.* The annual average depreciation, interest, and return on equity for vessels in each category shall be divided by 300 vessel operating days to yield the daily cost factors. Total voyage days shall be applied to the daily cost factors and totaled with the return on working capital and new vessel allowance for the voyage to determine the daily capital cost component.

(c) *Port and cargo handling cost component.* MARAD shall calculate an estimate of all port and cargo handling costs on the basis of the reported cargo tender terms. The port and cargo handling cost component shall be based on vessels in the category and the most current information available verified by information submitted in accordance with § 382.2(c), or as otherwise determined by MARAD, such as by analysis of independent data obtained from chartering agencies.

(d) *Brokerage and overhead component.* An allowance for broker's commission and overhead expenses of 8.5 percent shall be added to the sum of the operating cost component, the capital cost component, and the port and cargo handling cost component.

(e) *Determination of voyage days.* The following assumptions shall be made in determining the number of preference cargo voyage days:

(1) The voyage shall be round-trip with the return in ballast to a port or port range selected by MARAD as the most appropriate, unless the vessel is scrapped or sold after discharge of the preference cargo and does not return to the United States as a U.S.-flag vessel. In this event, only voyage days from the load port to the discharge port, including time allowed to discharge, shall be included.

(2) Cargo is loaded and discharged as per cargo tender terms interpreted in accordance with the ''International Rules For the Interpretation of Trade Terms'' (INCOTERMS) published by the International Chamber of Commerce.

(3) Total loading and discharge time includes the addition of a factor to account for delays and days not worked.

(4) One extra port day is included at each anticipated bunkering port.

(5) An allowance shall be included for canal transits, when appropriate.

(6) Transit time shall be based on the average speed of vessels in the category. When calculating the vessels' average speed, individual vessel speeds will be

reduced by five percent for self-propelled vessels and ten percent for tugs/barges to account for weather conditions.

(f) *Determination of cargo carried.* The amount of cargo tonnage used to calculate the rate shall be based on the tender offer or charter party terms. In instances when separate parcels of preference cargo are booked or considered for booking on the same vessel, whether under a single program or different programs, a guideline rate shall be provided based on the combined voyage.

(g) *Total rate.* The guideline rate shall be the total of the operating cost component, the capital cost component, the port and cargo handling cost component, and the broker's commission and overhead component. The fair and reasonable rate can be expressed as total voyage revenue or be divided by the amount of cargo to be carried, as prescribed in paragraph (f) of this section, and expressed as cost per ton, whichever MARAD deems most appropriate.

§ 382.4 Waivers.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in keeping with the circumstances of the present, so long as the procedures adopted are consistent with the Act and with the intent of this part.

By order of the Maritime Administrator.

Dated: January 21, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–1786 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 97–411]

Universal Service Support Mechanisms

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission authorized the Administrator of the universal service support mechanisms to require payment of quarterly contributions to universal service in equal monthly installments. This action was intended to ease contributor's cash flow problems.

EFFECTIVE DATE: February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Law, (202) 418–7400.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this Third Order on Reconsideration (Order), we reconsider, on our own motion, the Commission's decisions governing the amount of money that may be collected during the first six months of 1998 for the federal universal service support mechanisms for schools and libraries and rural health care providers. We direct the administrator to collect only as much as required by demand, but in no event more than $25 million per quarter for the first and second quarters of 1998 to support the rural health care universal service support mechanism. We direct the administrator to collect only as much as required by demand, but in no event more than $625 million for the first six months of 1998, to support the schools and libraries universal service support mechanism. These actions will reduce the financial burdens on universal service contributors without jeopardizing the sufficiency of the support mechanisms. The Commission may revise the collection caps if we receive evidence of additional demand for services. The rules adopted in this Order will become effective February 26, 1998.

II. Background

1. In the *NECA Report and Order* (62 FR 41294 (Aug. 1, 1997)), the Commission established the administrative structure of the federal universal service support mechanisms. The Commission directed the National Exchange Carrier Association (NECA) to create an independent subsidiary, the Universal Service Administrative Company (USAC), to administer temporarily portions of the support mechanisms. The Commission also directed NECA to create two independent corporations, Schools and Libraries Corporation and Rural Health Care Corporation, to administer portions of the schools and libraries and rural health support mechanisms. USAC, Schools and Libraries Corporation, and Rural Health Care Corporation are required to submit to the Commission quarterly projections of demand and administrative expenses for their respective support mechanisms.

2. The schools and libraries and rural health care support mechanisms are newly created and have no historical data upon which to estimate accurately the demand for services in the initial months of the support mechanisms. The Commission specified that the administrator should collect $100 million per month for the first three months of 1998 for the schools and libraries support mechanism and ''adjust future contribution assessments quarterly based on its evaluation of schools and library demand for funds, within the limits of the spending caps. . . .'' The Commission further held that, between January 1, 1998 and June 30, 1998, the administrator ''will only collect as much as required by demand, but in no case more than $1 billion.'' For the rural health care support mechanism, the Commission directed the administrator to collect $100 million for the first three months of 1998. In addition, the Commission instituted annual caps on both support mechanisms, $2.25 billion for the schools and libraries support mechanism and $400 million for the rural health care support mechanism. In setting forth a collection schedule, the Commission sought to ensure that ''funds will be available as needed while avoiding the potential problems arising from the accumulation of large amounts of funds in a federal universal service fund.''

III. Discussion

3. We conclude that we should adjust downward the rate of collections for the schools and libraries and rural health care support mechanisms during the first six months of 1998. We anticipate that this action will not jeopardize the sufficiency of the support mechanisms. The annual caps were designed to estimate the maximum, rather than the actual, amount of demand for the schools and libraries and rural health care universal service support mechanisms. Based on what we have learned about the status of preparatory arrangements being made by schools, libraries, and rural health care providers to obtain the benefit of the universal service support mechanisms, we have no reason to believe that demand will reach the maximum projection levels in the initial implementation stages of these new support mechanisms. We do not want to impose unnecessary financial burdens on service provider contributors to universal service by requiring the administrator to collect funds that exceed demand. We also wish to ensure the successful implementation of the schools and libraries and rural health care support mechanisms. Accordingly, we find that it better serves the public interest to reduce the collection amounts specified in the Order (62 FR 32862 (June 17, 1997)) for the first six months of 1998, as described below.

4. *Rural Health Care.* The rural health care support mechanism supports the

difference, if any, between the urban and the rural rates for a telecommunications service of a bandwidth up to and including 1.544 Mbps. The rural health care support mechanism also provides limited support to health care providers that do not have toll-free access to the Internet. In the initial stages of implementing the rural health care support mechanism, we anticipate that demand will not exceed $25 million per quarter during the first six months of 1998. We therefore amend our previous decision, and direct the administrator to collect only as much as required by demand, but in no event more than $25 million per quarter for the first and second quarters of 1998 for the rural health care universal service support mechanism.

5. *Schools and Libraries.* The schools and libraries support mechanism provides discounts to eligible schools and libraries for commercially available telecommunications services, internal connections, and access to the Internet. Because many schools and libraries will not begin the installation of internal connections until the summer when students are not present in instructional buildings, we anticipate that initial demand for the schools and libraries support mechanism will not reach projected maximums. We therefore conclude that demand from schools and libraries in the second quarter of 1998 is unlikely to exceed substantially demand in the first quarter. Accordingly, we direct the administrator to collect only as much as required by demand, but in no event more than $625 million for the first six months of 1998.

IV. Procedural Matters

6. According to the Administrative Procedure Act, substantive rules shall not become effective until 30 days after their publication in the **Federal Register** unless there is good cause to waive that requirement. We find that good cause exists to waive the 30-day requirement because the rules adopted herein are critical to the expeditious and efficient implementation of the new federal universal service support mechanisms. The Commission's regulations implementing section 254 will take effect January 1, 1998. The rules adopted herein are necessary to calculate the first quarter 1998 universal service contribution factors and primarily affect the administrator of the support mechanisms. In order to collect contributions in February 1998, the administrator must know what the contribution factors will be before beginning the billing process in January 1998. The rules, therefore, do not place additional burdens on the administrator. They enable the administrator to carry out its existing responsibilities. In addition, certain carriers must file tariffs in December 1997 that reflect the contribution factors. Moreover, the rules adopted herein reduce the financial burdens imposed on universal service contributors by minimizing the amounts collected in the first six months of 1998. Thus, we find that good cause exists to make the rules adopted herein effective upon their publication in the **Federal Register**.

V. Supplemental Final Regulatory Flexibility Analysis

7. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking and Order Establishing Joint Board (NPRM). In addition, the Commission prepared an IRFA in connection with the Recommended Decision, seeking written public comment on the proposals in the NPRM and Recommended Decision. (See 61 FR 63778, 63796). A Final Regulatory Flexibility Analysis (FRFA) was included in the *Order.* The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Order conforms to the RFA, as amended.

A. Need for and Objectives of This Report and Order and the Rules Adopted Herein

8. The Commission is required by section 254 of the Act, as amended by the 1996 Act, to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principle goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we reconsider one aspect of those rules. In order to reduce financial burdens on all contributors to universal service, we reconsider, on our own motion, the amounts that will be collected during the first six months of 1998 for the schools, libraries, and rural health care support mechanisms.

B. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA

9. Other than those described in the *Order,* no additional comments were filed in response to the IRFAs described above.

C. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order will Apply

10. Because the rules adopted herein apply to the administrator of the support mechanisms, the rules will not directly affect small entities. It is possible, however, that small entities will indirectly be affected by these rules. In the FRFA at paragraphs 890–922 of the *Order,* we described and estimated the number of small entities that would be affected by the new universal service rules. The rules adopted herein may apply to the same telecommunications carriers and entities affected by the universal service rules. We therefore incorporate by reference paragraphs 890–922 of the Order.

D. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent With Stated Objectives

11. In the FRFA to the *Order,* we described the projected reporting, recordkeeping, and other compliance requirements and significant alternatives and steps taken to minimize significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Administration section of the *Order.* Because the rules adopted herein may only marginally affect those requirements, we incorporate by reference paragraphs 980–981 of the *Order,* which describe those requirements and provide the following analysis of the new requirements adopted herein. Under the rules adopted herein, the administrator is instructed to collect during the first six months of 1998 no more than $625 million for the schools and libraries support mechanism and $50 million for the rural health care support mechanism.

VI. Ordering Clauses

12. Accordingly, *It is ordered* that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403, and 405, section 1.108 of the Commission's rules, 47 CFR 1.108, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, part 54 of the Commission's rules, 47 CFR part 54, is amended as set forth

in the rule changes, effective February 26, 1998.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons set forth in the preamble, part 54 of title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 USC Secs. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.507 Cap.

2. Section 54.507 is amended by revising the second sentence of paragraph (a) to read as follows:

(a) * * * First, no more than $625 million shall be collected or spent for the funding period from January 1, 1998 through June 30, 1998. * * *

* * * * *

§ 54.623 Cap.

3. Section 54.623 is amended by adding a new sentence at the end of paragraph (a) to read as follows:

(a) * * * No more than $50 million shall be collected or spent for the funding period from January 1, 1998 through June 30, 1998.

* * * * *

[FR Doc. 98–1833 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–17; RM–8170]

Radio Broadcasting Services; Rosendale, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document dismisses a Petition for Reconsideration filed by the State University of New York directed to the *Memorandum Opinion and Order* in this proceeding. 61 FR 14981 (April 4, 1996). With this action, the proceeding is terminated.

EFFECTIVE DATE: January 27, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order* in MM Docket No. 93–17, adopted January 5, 1998, and released January 9, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3805, 1231 M Street, NW., Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1841 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–210; RM–9166]

Radio Broadcasting Services; Soldiers Grove, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290A to Soldiers Grove, Wisconsin, as that community's first local FM broadcast service in response to a petition filed by Lyle Robert Evans d/b/a Rural Radio Company. *See* 62 FR 54006, October 17, 1997. The coordinates for Channel 290A at Soldiers Grove are 43–28–16 and 90–40–21. There is a site restriction 11.8 kilometeres (7.3 miles) northeast of the communtiy. With this action, this proceeding is terminated. A filing window for Channel 290A at Soldiers Grove, Wisconsin, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–210, adopted December 17, 1997, and released January 9, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Soldiers Grove, Channel 290A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1840 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 96–232; 97–35; RM–8868; RM–8900; RM–9055; RM–9056]

Radio Broadcasting Services; Calhan, Canon City, Pueblo and Pueblo West, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants allotment proposals in the above-referenced, interrelated proceedings regarding the communities of Pueblo, Pueblo West, Canon City and Calhan, Colorado, in response to petitions for rule making filed on behalf of Pueblo Broadcasters, Inc. (MM Docket No. 96–232; RM–8868) and Calhan Radio, Inc. (MM Docket No. 97–35; RM–8900), as well as counter-proposals filed in each proceeding by Pueblo Broadcasters, Inc. (RM–9055 and RM–9056 respectively), as set forth *infra* (see Supplementary Information). *See* 61 FR 65008, December 10, 1996, and 62 FR 4224, January 29, 1997. With this action the proceeding is terminated.

DATES: Effective March 2, 1998. A filing window for Channel 284A at Calhan, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order involving two consolidated, interrelated proceedings consisting of MM Docket No. 96–232 and MM Docket No. 97–35, adopted December 31, 1997, and released January 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

The Commission, at the request of Pueblo Broadcasters, Inc., reallots Channel 283C2 from Pueblo to Pueblo West, Colorado, as a Class C1 channel, and modifies the authorization for Station KYZX(FM), to specify operation on Channel 280C1 at Pueblo West, pursuant to the provisions of § 1.420 (g) and (i) of the Commission's Rules (MM Docket No. 96–232; RM–8868; RM–9055). The allotment of Channel 280C1 to Pueblo West will provide that community with its first local aural transmission service without depriving Pueblo of local FM service. Additionally, to accommodate the reallotment and upgrade at Pueblo West, Channel 283A is substituted for Channel 280A at Canon City, Colorado, and the license for Station KSTY(FM) is modified accordingly. The latter substitution will enable Station KSTY(FM) to increase its effective radiated power to six kilowatts and expand its coverage area. Further, in response to the counterproposal request of Pueblo Broadcasters, Inc., Channel 284A is allotted to Calhan, Colorado, rather than Channel 280A as requested by Calhan Radio, Inc., to provide a first local aural transmission service to that community, and to accommodate the allotment of Channel 280C1 to Pueblo West (MM Docket No. 97–35; RM–8900; RM–9056). Coordinates used for Channel 280C1 at Pueblo West are 38–34–52 and 104–31–52; coordinates used for Channel 283A at Canon City are 38–23–35 and 105–21–07; coordinates used for Channel 284A at Calhan are 39–01–42 and 104–15–44.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Calhan, Channel 284A.

3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 280A and adding Channel 283A at Canon City.

4. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 283C2 at Pueblo.

5. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Pueblo West, Channel 280C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1838 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–45; RM–8961]

Radio Broadcasting Services; Tylertown, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of TRL Broadcasting Company, allots Channel 297A at Tylertown, Mississippi, as the community's second local FM service. *See* 62 FR 06929, February 14, 1997. Channel 297A can be allotted to Tylertown in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.3 kilometers (3.3 miles) southeast in order to avoid short-spacing conflicts with the licensed operation of Station WBBU(FM), Channel 297A, Baker, Louisiana, and Station WKXI(FM), Channel 298C1, Magee, Mississippi. The coordinates for Channel 297A at Tylertown are 31–05–27 NL and 90–05–47 WL. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 2, 1998. A filing window for Channel 297A at Tylertown, Mississippi, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–45, adopted January 7, 1998, and released January 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 297A at Tylertown.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1837 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–466; RM–7327, RM–7987, RM–7988, RM–8705]

Radio Broadcasting Services; Hondo, Hollywood Park, Dilley, Bandera, Pleasanton, Karnes City, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies the petition for reconsideration filed by Reding Broadcasting Company of the Report and Order, 57 FR 56515 (November 30, 1992), in which the Commission dismissed Reding's counterproposal proposal requesting the substitution of 253C2 for Channel 252A at Pleasanton, Texas and the modification of Station KBUC-FM's (formerly KBOP-FM) license accordingly, the substitution of Channel 276A for Channel 252A at Bandera, Texas; the allotment of Channel 276C2 to Karnes City, Texas; and the substitution of Channel 290A for Channel 253A at Hondo, Texas. This document affirms the Report and Order's determination that Reding's counterproposal was unacceptable for filing because under the Commission's Rules and the FM Agreement between the United States and Mexico in effect at the time of filing, Reding's proposals for Channel 276A at Bandera, and Channel 290A at Hondo were short-spaced to Mexican FM allotments. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 27, 1998.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No 90–466, adopted December 30, 1997, and released January 9, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Suite 140, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1839 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–52; RM–8987 and RM–9098]

Radio Broadcasting Services; Kellnersville and Two Rivers, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 246A to Two Rivers, Wisconsin, as that community's second local FM broadcast service in response to a petition filed by First Congregational Services. *See* 62 FR 6929, February 14, 1997. The coordinates for Channel 246A at Two Rivers are 44–09–06 and 87–34–06. The counterproposal filed by Value Radio Corporation proposing the allotment of Channel 246A at Kellnersville, Wisconsin, has been dismissed. With this action, this proceeding is terminated. A filing window for Channel 246A at Two Rivers will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–52, adopted January 7, 1998, and released January 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel 246A at Two Rivers.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1893 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–221; RM–9181]

Radio Broadcasting Services; Satellite Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 253A to Satellite Beach, Florida, as that community's first local service in response to a petition filed by Satellite Beach Community Broadcasters. *See* 62 FR 58937, October 31, 1997. The coordinates for Channel 253A at Satellite Beach are 28–10–24 and 80–36–12. With this action, this proceeding is terminated. A filing window for Channel 253A at Satellite Beach, Florida, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–221, adopted January 7, 1998, and released January 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Satellite Beach and Channel 253A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1891 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE59

Endangered and Threatened Wildlife and Plants; Emergency Rule To List the San Bernardino Kangaroo Rat as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). This subspecies occurs primarily in alluvial scrub habitats with appropriate vegetative cover and substrate composition. The historic range of the San Bernardino kangaroo rat has been reduced by approximately 96 percent due to agricultural and urban development. All of the remaining populations of the San Bernardino kangaroo rat are threatened by habitat loss, degradation, and fragmentation due to sand and gravel mining operations, flood control projects, urban development, and vandalism. In addition, the three largest remaining populations of the San Bernardino kangaroo rat are threatened by habitat loss resulting from a change in the natural stream flow regime including seasonal flooding and associated modification of plant succession patterns. The threat of vandalism to large portions of the remaining habitat may be imminent. Threats have been made indicating that habitat would be destroyed if the Service attempted to list the San Bernardino kangaroo rat. Because of the need to make protective measures afforded by the Act immediately available to this subspecies and its habitat, the Service finds that an emergency rule action is justified. This emergency rule provides Federal protection pursuant to the Act for this subspecies for a period of 240 days. A proposed rule to list the San Bernardino kangaroo rat, requesting data and comment from the public, is being published concurrently in this same **Federal Register** issue under the proposed rule section.

DATES: This emergency rule is effective on January 27, 1998, and expires on September 24, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, at the above address (telephone 760/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The San Bernardino kangaroo rat (*Dipodomys merriami parvus*) is one of 19 recognized subspecies of Merriam's kangaroo rat (*D. merriami*), a widespread species distributed throughout arid regions of the western United States and northwestern Mexico (Hall 1981, Williams *et al.* 1993). In coastal southern California, *D. merriami* is the only species of kangaroo rat with four toes on each of its hind feet. The San Bernardino kangaroo rat has a body length of about 95 millimeters (mm) (3.7 inches (in)) and a total length of 230 to 235 mm (9 to 9.3 in). The hind foot measures less than 36 mm (1.4 in) in length. The body color is weakly ochraceous (yellow) with a heavy overwash of dusky brown. The tail stripes are medium to dark brown and the foot pads and tail hairs are dark brown. The animal's flanks and cheeks are dusky (Lidicker 1960). The San Bernardino kangaroo rat is considerably darker and much smaller than either of the other two subspecies of Merriam's kangaroo rat in southern California, *D. merriami merriami* and *D. merriami collinus*. Lidicker (1960) noted that the San Bernardino kangaroo rat is one of the most highly differentiated subspecies of *D. merriami* and that ''it seems likely that it has achieved nearly species rank.'' This differentiation is likely due to its apparent isolation from other members of *D. merriami*.

The San Bernardino kangaroo rat, a member of the family Heteromyidae, was first described by Rhoades in 1894 under the name *Dipodomys parvus* from specimens collected by R.B. Herron in Reche Canyon, San Bernardino County, California (Hall 1981). Elliot reduced *D. parvus* to a subspecies of *D. merriami* (*D. merriami parvus*) in 1901. The San Bernardino kangaroo rat appears to be separated from Merriam's kangaroo rat (*D. merriami merriami*) at the northernmost extent of its range near Cajon Pass by a 8 to 13 kilometer (km) (5 to 8 mile (mi)) gap of unsuitable habitat. The San Bernardino kangaroo rat may have in the distant past also intergraded with *D. merriami collinus* to the south in the vicinity of Menifee (Lidicker 1960, Hall 1981).

The historical range of this subspecies extends from the San Bernardino Valley in San Bernardino County to the Menifee Valley in Riverside County (Lidicker 1960, Hall 1981). Within this range, the San Bernardino kangaroo rat was known from over 25 localities (McKernan 1993). From the early 1880's to the early 1930's, the San Bernardino kangaroo rat was a common resident of the San Bernardino and San Jacinto valleys of southern California (Lidicker 1960).

In most heteromyids, soil texture is a primary factor in determining species' distributions (Brown and Harney 1993). San Bernardino kangaroo rats are found primarily on sandy loam substrates, characteristic of alluvial fans and flood plains, where they are able to dig simple, shallow, burrows (McKernan 1997). Based on the distribution of suitable (i.e., sandy) soils and the historical collections of this subspecies, the historical range is thought to have encompassed an area of approximately 128,000 hectares (ha) (320,000 acres (ac)) (Service, unpub. GIS maps, 1997). Although the entire area of the historical range would not have been occupied due to variability in vegetation and soils, the San Bernardino kangaroo rat was widely distributed across this area. By the 1930's, the habitat had been reduced to approximately 11,200 ha (28,000 ac)(McKernan 1997).

Currently, the San Bernardino kangaroo rat occupies approximately 1,299 ha (3,247 ac) of suitable habitat divided unequally among seven locations, which are widely separated from one another (McKernan 1997). Four of these locations (City Creek (8 ha (20 ac)), Etiwanda (2 ha (5 ac)), Reche Canyon (2 ha (5 ac)), and South Bloomington (.8 ha (2 ac)) support only small, remnant, populations. The

remaining three locations (the Santa Ana River (690 ha (1,725 ac)), Lytle and Cajon washes (456 ha (1,140 ac)), and San Jacinto River (140 ha (350 ac)) contain the largest extant concentrations of kangaroo rats and blocks of suitable habitat.

The three largest remaining blocks of occupied habitat (i.e., Santa Ana River, Lytle/Cajon creeks, and San Jacinto River) (1,286 ha (3,215 ac)) are distributed across a mosaic of approximately 5,479 ha (13,697 ac) of typically suitable, alluvial soils, which are dominated by sage scrub and chaparral. Virtually all remaining vegetative associations (except about 1,286 ha (3,215 ac)) are more mature than the open, early successional habitat structure required by the San Bernardino kangaroo rat. Existing and proposed hydrological modifications eliminate habitat renewal and obstruct population recovery over these highly fragmented wash habitats (Hanes *et al.* 1989, McKernan 1997). Thus, the residual 4 percent of historical habitat (5,479 ha (13,697 ac)), supports only about 1,286 ha (3,215 ac), that are ever likely to provide habitat, absent habitat renewal through large-scale flood or intensive management intervention. It is estimated that 400 ha (1,000 ac) are likely to support suitable habitat in the future, considering that 54 percent of remaining flood plain habitats are proposed for development in the foreseeable future.

Currently, the San Bernardino kangaroo rat is found primarily associated with a variety of sage scrub vegetation, where the common element is the presence of sandy soils (McKernan 1997). Where the San Bernardino kangaroo rat occurs in alluvial scrub, the subspecies reaches its highest densities in early and intermediate seral stages (McKernan 1997). Alluvial scrub includes elements from chaparral, coastal sage, and desert communities. Three successional phases of alluvial scrub have been described: pioneer, intermediate, and mature alluvial scrub, depending on elevation and distance from the main channels, and the time since previous flooding (Smith 1980, Hanes *et al.* 1989). Vegetative cover generally increases with distance from the active stream channel. The pioneer, or youngest phase, is subject to frequent disturbance, and vegetation is usually disturbed by annual floods (Smith 1980, Hanes *et al.* 1989). The intermediate phase, defined as the area between the active channel and mature terraces, is subject to periodic flooding at longer intervals. The vegetation on intermediate terraces is relatively open, and supports the highest densities of the San Bernardino kangaroo rat. The mature phase is rarely affected by flooding and supports the highest plant cover (Smith 1980). These flood events break out of the main river channel randomly, resulting in a braided appearance to the floodplain. This dynamic nature to the habitat leads to a situation where not all the alluvial scrub habitat is suitable for the kangaroo rat at any point in time. The San Bernardino kangaroo rat, like other subspecies of Merriam's kangaroo rat, prefers open habitats characterized by low shrub canopy cover (mostly 7 to 22 percent) and rarely occurs in dense vegetation (McKernan 1997). The older seral stages of the floodplain often are not suitable for this subspecies.

The range of the San Bernardino kangaroo rat is partially overlapped by the distribution of the Stephens' kangaroo rat (*Dipodomys stephensi*) and is entirely overlapped by the range of the Pacific kangaroo rat (*D. simulans*). Where these species occur in proximity, they are usually concentrated in different areas. The Stephens' kangaroo rat typically is associated with open, arid, grassland associations (Lackey 1967, O'Farrell *et al.* 1986, O'Farrell and Uptain 1987, O'Farrell 1990), and occurs on a variety of soil types. The Pacific kangaroo rat typically inhabits denser shrub cover on a variety of soil types. All three of these species can be identified from one another based on morphological characters.

Home ranges for the Merriam's kangaroo rat average 0.33 hectares (ha) (0.8 ac) for males and 0.31 ha (0.8 ac) for females (Behrends *et al.* 1986). Long sallies (bursting movements) of 100 meters (m) (328 feet (ft)) or more beyond these ranges are not uncommon. Although outlying areas of their home ranges may overlap, adults actively defend small core areas near their burrows (Jones 1993). Home range overlap between males and between males and females is extensive, but female-female overlap is slight (Jones 1993).

McKernan (1993) has found pregnant San Bernardino kangaroo rat females from February through October, and immatures from April through September. Some females may produce more than one litter per year. Litter size averages between 2 and 3 young (Eisenberg 1993).

Similar to other kangaroo rats, the San Bernardino kangaroo rat is primarily granivorous and often stores large quantities of seeds in surface caches (Reichman and Price 1993). Green vegetation and insects are also important seasonal food sources. Insects, when available, have been documented to constitute as much as 50 percent of a kangaroo rat's diet (Reichman and Price 1993). Females are known to increase ingestion of foods with higher water content during lactation, presumably to compensate for the increased water loss associated with milk production (Reichman and Price 1993). *Dipodomys merriami* is known for its ability to live indefinitely without water on a diet consisting entirely of dry seeds (Reichman and Price 1993).

Previous Federal Action

The San Bernardino kangaroo rat was designated by the Service as a category 2 candidate species for Federal listing as endangered or threatened in 1991 (56 FR 58804). Category 2 comprised taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threat(s) were not available to support a proposed rule. Based on a review of status and distribution of the San Bernardino kangaroo rat, the subspecies was upgraded to a category 1 candidate for listing in 1994 (59 FR 58982). Category 1 candidate species were those where the Service had sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. Upon publication of the February 28, 1996, notice of review (61 FR 7596), the Service ceased using category designations and included the San Bernardino kangaroo rat as a candidate species. The San Bernardino kangaroo rat was retained as a candidate species in the September 19, 1997, notice of review (62 FR 49401).

The processing of this proposed rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475) and extended on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Tier 1), second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals and fourth priority (Tier 4) to designating critical habitat and processing delistings and reclassifications. This emergency rule constitutes a Tier 1 action.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. These factors and their application to the San Bernardino kangaroo rat *(Dipodomys merriami parvus)* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

All occupied habitat of the subspecies, which encompasses approximately 1,300 ha (3,250 ac), is threatened by the direct and indirect effects of sand and gravel mining, highway construction, flood control operations, urban and industrial development, water conservation activities, and vandalism (McKernan 1997, Service unpub. GIS maps 1997).

Loss and fragmentation of San Bernardino kangaroo rat habitat is expected to continue as southern California's human population expands. In the 1950's, the population of Riverside and San Bernardino counties combined was about 400,000. Over 2.5 million people reside in this region, and by the year 2000, the human population of San Bernardino and Riverside counties is expected to increase to nearly 4 million (California Department of Finance 1993). Further habitat losses resulting from development or alteration of the landscape will likely have a significant adverse effect on the viability of remaining San Bernardino kangaroo rat populations. Additionally, habitat loss from intentional destruction of San Bernardino kangaroo rat habitat has been threatened if the species were to be listed.

Santa Ana River

The largest remaining population of the San Bernardino kangaroo rat occurs along the Santa Ana River. The flood plain terrace habitat encompasses about 1,637 ha (4,092 ac), of which approximately 690 ha (1,725 ac) are occupied by the San Bernardino kangaroo rat (McKernan 1997). The occupied habitat extends more or less continuously from the vicinity of Norton Air Force Base to the Greenspot Road Bridge north of Mentone (Service unpub. GIS maps 1997, McKernan 1997). Approximately 66 percent of flood plain terrace habitat is directly at risk due to the combined activities of the Army Corps of Engineers, United States Bureau of Land Management (BLM), San Bernardino Valley Water Conservation District, San Bernardino County Flood Control District, and two private sand mining operations (Service unpub. GIS maps 1997).

At least 80 percent of the remaining occupied habitat along the Santa Ana River is indirectly at risk because of the projected changes in hydrology due to Seven Oaks Dam (Service unpub. GIS maps 1997) being constructed by the Army Corps of Engineers (U.S. Army Corps of Engineers 1988). An indirect effect of operation of the Seven Oaks Dam will be the long-term succession of various stages of alluvial scrub, including much of a 775-acre mitigation area, into even aged stands of habitat scrub through time due to a reduction in scouring and deposition of fresh sands by floods. Curtailed hydrologic disturbance, where soil moisture is adequate, will allow shrub densities that exceed the low to moderate densities tolerated by the subspecies to develop (Hanes *et al.* 1989, McKernan 1997).

Past and ongoing activities of the San Bernardino County Flood Control District pose a threat to approximately 400 ha (1,000 ac) of alluvial scrub habitat in this area. Based on the distribution of soils and vegetative cover, approximately 176 ha (440 ac) of this area is occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). Activities that impact this subspecies and its habitat include the construction of levees and sediment removal. The area at risk due to these activities supports approximately 25 percent of the population along the Santa Ana River (Service unpub. GIS maps 1997, McKernan 1997).

The BLM and San Bernardino Valley Water Conservation District lands are managed, in part, for the development or operation of water spreading basins for groundwater recharge. Although the San Bernardino kangaroo rat can occupy portions of areas modified by spreading basins, the flooded area is essentially lost to this animal due to the periodic presence of standing water and the degradation of habitat. Based on the distribution of soils and vegetative cover, approximately 140 ha (350 ac) of this area is occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). The area affected by spreading basins represents approximately 20 percent of the population along the Santa Ana River (Service unpub. GIS maps 1997, McKernan 1997). The San Bernardino Valley Water Conservation District and BLM are coordinating with the Service and others to develop a regional conservation plan that attempts to reconcile conflicts among competing land uses, including the conservation of the San Bernardino kangaroo rat. However, this conservation plan has not been finalized and is not currently in effect. Though 371 ha (927 ac) of BLM land potentially are available for water percolation ponds, no ponds have been constructed recently.

Sand and gravel mining poses a significant and imminent threat to the San Bernardino kangaroo rat. Two sand mining operations collectively threaten approximately 552 ha (1,381 ac) of alluvial scrub habitat in this area (Lilburn 1997a and 1997b, P&D Technologies 1988, Service unpub. GIS maps 1997). Based on the distribution of soils and vegetative cover, a minimum of 150 ha (375 ac) of approved and proposed project areas is occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). The area affected by sand mining represents approximately 22 percent of the population along the Santa Ana River (Service unpub. GIS maps 1997, McKernan 1997).

One proposed sand and gravel mining expansion is expected to receive certification under the California Environmental Quality Act (CEQA) in the next 2–4 months. A grading permit would be issued shortly thereafter. This project would further fragment habitat. In addition, this operator has repeatedly and publicly threatened to destroy habitat if the Service proposes to list the kangaroo rat.

Additional impacts will occur due to a large pipeline project (P&D Technologies 1992). Approximately 60 ha (150 ac) of alluvial scrub in the Santa Ana River will be impacted by this project. Based on the distribution of soils and vegetative cover, a minimum of 24 ha (60 ac) of this project area is occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). This project has been reviewed and certified under the CEQA and, therefore, poses an imminent threat. The area directly threatened by this pipeline project represents 3 percent of the Santa Ana River population. The indirect effects of this project include further fragmentation of kangaroo rat habitat.

Other activities that threaten the San Bernardino kangaroo rat in this region include the closure of Norton Air Force Base (San Bernardino County) and the proposed development of this site into the San Bernardino International Airport (U.S. Department of the Air Force 1993). Habitat for the San Bernardino kangaroo rat on Norton Air Force Base will be reduced by

approximately 2 to 5 percent (Conservation Management Plan 1997).

Lytle and Cajon Creeks

The second largest remaining population of the San Bernardino kangaroo rat occurs along Lytle and Cajon creeks, from near Interstate 15 downstream on both drainages for approximately 8 km (5 mi) (McKernan 1997). This area contains approximately 2,688 ha (6,722 ac) of alluvial scrub habitat, of which approximately 456 ha (1,140 ac) are occupied. Of the alluvial scrub habitat, approximately 47 percent is directly threatened by the combined activities associated with sand mining operations, State Route 30, San Bernardino County Flood Control District, and urban development (e.g., The Villages at Lytle Creek) (Service unpub. GIS maps 1997). Based on an evaluation of soils and vegetative cover, a minimum of 34 percent of the occupied habitat in this area is threatened due to the combined effects of these activities (Service unpub. GIS maps 1997).

The joint draft environmental impact report for The Villages at Lytle Creek and a sand mining operation (T&B Planning Consultants 1996) describe some of the threats facing the San Bernardino kangaroo rat in this area. The proposed urban community, The Villages at Lytle Creek, will remove approximately 728 ha (1,821 ac) of alluvial scrub habitat (Michael Brandman Associates 1994, T&B Planning Consultants 1996). Based on the distribution of soils and vegetative cover, at least 132 ha (330 ac) of this project area is occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). In addition to the upland development, the document discloses the proposed channelization of a portion of Lytle Creek. The area affected by The Villages at Lytle Creek represents approximately 29 percent of the remaining occupied habitat of the Lytle/Cajon population.

Proposed improvements to State Route 30 also threaten the San Bernardino kangaroo rat in the Lytle and Cajon Creek area. Approximately 2.8 ha (7 ac) of habitat will be directly removed due to this project (San Bernardino Association of Governments 1996). Based on the distribution of soils and vegetative cover, all of the project area in this area (i.e., 2.8 ha (7 ac)) is occupied by the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). The area affected by State Route 30 represents approximately 0.1 percent of the occupied habitat in this area.

San Bernardino County Flood Control District (District) constructed a levee and parking lot for Glen Helen Regional Park. The construction of the levee continues to impact approximately 22 ha (55 ac) of habitat by precluding scouring events and the reestablishment of alluvial scrub vegetation. Given the attributes of the area, the entire site was likely occupied by the San Bernardino kangaroo rat prior to construction of the levee. The levee also threatens habitat occupied by the San Bernardino kangaroo rat on the opposite side of the Cajon Creek due to the alteration in the hydrological system. The levee likely will divert flood flows into the opposite bank and cause erosion of the Calmat conservation bank, which was established to help conserve listed and sensitive species in the area. The total amount of occupied habitat anticipated to be lost is, at a minimum, approximately 44 ha (110 ac) (Service unpub. GIS maps 1997). The area affected by flood control activities equates to approximately 10 percent of the occupied habitat in this area.

San Jacinto River

The third largest remaining population of San Bernardino kangaroo rat occurs in Riverside County. Here, the vast majority of alluvial floodplain has been impacted by flood control activities, agricultural and urban development, and sand and gravel mining in this area. Approximately 295 ha (737 ac) of alluvial scrub remains in this area and approximately 140 ha (350 ac) is occupied along the San Jacinto River.

Flood control activities that impact this species include grading of occupied habitat. Evidence of extensive grading exists throughout the remaining alluvial scrub vegetation within the flood control berms along the San Jacinto River in the vicinity of the City of San Jacinto (Arthur Davenport, Service, pers. obs. 1995). Flood control structures that impact this species include concrete channels and flood confining berms. The construction of a concrete channel appears to have isolated a small population of San Bernardino kangaroo rat located along Bautista Creek from the rest of the population along the San Jacinto River. The construction of berms too far into the flood plain is detrimental to the San Bernardino kangaroo rat in that the construction of the berms causes a loss of habitat by increasing the severity of scouring and land erosion.

Continuing, intermittent, agricultural activities, such as dry-land farming along the edges of the San Jacinto River in the vicinity of Hemet and the City of San Jacinto, also impact the San Bernardino kangaroo rat. Patches of suitable and occupied habitat occurring outside the flood control berms are occasionally disced due to agricultural activities (Arthur Davenport, pers. obs. 1995). Discing adversely affects the subspecies by destroying its burrows and habitat.

Urban and commercial development into the flood plain of the San Jacinto River continues to threaten the San Bernardino kangaroo rat. Although flood control berms have been in place for years, suitable and occupied habitat occurs outside the berms. Though degraded due to agricultural activities, occupied habitat outside the berms is critical to the maintenance of the species along the San Jacinto River because it provides a source population for recolonization of habitat within the berms following flood events.

The San Bernardino kangaroo rat is also impacted by the maintenance and expansion of spreading basins within its habitat. Maintenance of spreading basins results in the destruction of habitat and San Bernardino kangaroo rats that occur along the margins (Arthur Davenport, pers. obs. 1995). Similarly, the expansion of spreading basins results in a direct loss of suitable and occupied habitat. Eastern Municipal Water District has proposed ''reconstructing'' previously authorized groundwater recharge facilities in the San Jacinto River (U.S. Army Corps of Engineers 1997), including a new location for the recharge area. This project encompasses approximately 2.6 ha (6.5 ac) of alluvial scrub, and impacts approximately 2 percent of occupied habitat in the area (140 ha (350 ac)).

Both sand and gravel mining threaten the San Bernardino kangaroo rat in the San Jacinto River area. The operations of sand mining continue to impact occupied habitat. One mine site consists of 100 ha (250 ac) and occurs entirely in the flood plain of the San Jacinto River (Army Corps of Engineers 1996, Pre-discharge Notification 96–00397–RRS). Based on the distribution of soils and vegetative cover, a minimum of 40 ha (100 ac) of the project site is occupied by the San Bernardino kangaroo rat. Sand mining affects approximately 28 percent of the occupied habitat in the San Jacinto River area.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

This factor is not known to be applicable.

C. Disease or Predation.

Disease is not known to be affecting the San Bernardino kangaroo rat at this

time. However, fragmentation of habitat is likely to promote higher levels of predation by urban-associated animals (e.g., domestic cats) as the interface between natural habitat and urban areas is increased (Churcher and Lawton 1987). Domestic cats are known to be predators of native rodents (Hubbs 1951, George 1974), and predation by cats has been documented for the San Bernardino kangaroo rat (McKernan, pers. comm., 1994).

D. The Inadequacy of Existing Regulatory Mechanisms

The decline of the San Bernardino kangaroo rat is partially due to the inherent weakness of the existing laws and regulations that could serve to protect the animal and its habitat. Existing regulatory mechanisms that may provide some protection for the San Bernardino kangaroo rat include: (1) The CEQA and National Environmental Policy Act (NEPA); (2) the California Natural Community Conservation Planning Program; (3) the Surface Mining and Reclamation Act (SMCRA); (4) the Act in those cases where the San Bernardino kangaroo rat occurs in habitat occupied by other listed species; (5) the California Endangered Species Act (CESA); (6) conservation provisions under the Federal Clean Water Act; (7) land acquisition and management by Federal, State, or local agencies or by private groups and organizations; and (8) local laws and regulations. Many of these have limited protection authority since the San Bernardino kangaroo rat is not federally listed.

The majority of the known populations of the San Bernardino kangaroo rat occur on privately owned land. Local lead agencies responsible under CEQA and NEPA have made determinations that have, or would, adversely affect this taxon and its habitat. Examples of projects that have been completed or are currently undergoing the review process under CEQA and/or NEPA and will impact this species include Seven Oaks Dam, State Route 30 Improvement Project, Metropolitan Water District Inland Feeder Pipeline, Calmat Company, Sunwest Materials, Robertson's Ready Mix, San Jacinto Aggregates, and The Villages at Lytle Creek. Past, present, and proposed mitigation for impacts to this species and its habitat have been inadequate to stop or reverse its decline. CEQA decisions are also subject to over-riding social and economic considerations.

In 1991, the State of California established a Natural Community Conservation Planning Program (NCCP) to address conservation needs throughout the State. The initial focus of the program is the coastal sage scrub community. Within this program, the California Department of Fish and Game (CDFG) included the long-term conservation of alluvial scrub, which is in part occupied by the San Bernardino kangaroo rat. However, participation in NCCP is voluntary. San Bernardino and Riverside counties have signed planning agreements (Memoranda of Understanding (MOUs)) to develop multispecies plans that meet NCCP criteria, but have not enrolled in the NCCP program during the interim. The MOUs do not provide protection to candidate species during the planning process.

Reclamation of mined areas in the State of California is required under the Surface Mining and Reclamation Act (SMCRA). The County of San Bernardino also requires that mining companies submit a reclamation plan for County approval. The primary purpose of these ordinances is to provide for erosion control measures and to restore slopes to a moderate slope. However, reclamation is not likely to resolve the problem of maintaining or mitigating for the loss of species or ecosystem functions in a biologically meaningful way because of change in topography and altered hydrology. The feasibility of artificially creating a viable alluvial scrub plant community suitable for the San Bernardino kangaroo rat has not yet been demonstrated.

The BLM designated an Area of Critical Environmental Concern (ACEC) in the Santa Ana River in 1994. The ACEC is composed of three parcels of land that total 304 hectares (760 acres). The purpose of the ACEC is to protect and enhance the habitat of federally listed plant species occurring in the area, such as Santa Ana River wooly-star (*Eriastrum densifolium* ssp. *sanctorum*), and sensitive species such as the San Bernardino kangaroo rat, while providing for the administration of existing valid rights (BLM 1996). Although the establishment of the ACEC is important in regard to conservation of sensitive habitats and species in this area, the administration of valid existing rights conflicts with BLM's conservation abilities in this area. Existing rights include a withdrawal of Federal lands in this area for water conservation through an act of Congress, February 20, 1909 (Public, No. 248). The entire ACEC is included in this withdrawn land and may be available for water conservation measures such as the construction of percolation basins, subject to compliance with the Act.

The San Bernardino kangaroo rat is not protected under the CESA. The Federal and State Acts together can afford some measure of protection to the San Bernardino kangaroo rat in those areas where the species coexists with other species already listed as threatened or endangered. *Eriastrum densifolium* ssp. *sanctorum* (Santa Ana River woolly star) and *Dodecahema leptoceras* (slender-horned spineflower) are listed as endangered under the Act and the CESA, and the coastal California gnatcatcher (*Polioptila californica californica*) is listed as threatened under the Act. All three species can occur in habitats similar to those preferred by the San Bernardino kangaroo rat. However, the distribution of *D. leptoceras* and *E. densifolium* ssp. *sanctorum* is spotty and discontinuous, and only overlaps with a small portion of the habitat occupied by the San Bernardino kangaroo rat. The coastal California gnatcatcher, although known to occur within alluvial scrub habitat, has largely been extirpated from San Bernardino County within the range of the San Bernardino kangaroo rat and, therefore, occurrence with the listed species provides little ancillary protection. In Riverside County, coastal California gnatcatchers are not currently known to occur at any sites occupied by the San Bernardino kangaroo rat.

The San Bernardino kangaroo rat could potentially be affected by projects requiring a permit from the Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. Although the objective of the Clean Water Act is to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (Pub. L. 92–500), no specific provisions exist that adequately address the need to conserve candidate species. A majority of the remaining populations occur outside areas delineated as waters of the United States and, therefore, are not regulated. Moreover, numerous activities for which the Corps potentially has jurisdiction, including sand and gravel mining and flood control projects, have proceeded without their overview (see Factor A).

As a result of Fish and Wildlife Coordination Act activities, the Corps, in 1988, initiated a section 7 consultation on *Eriastrum densifolium* ssp. *sanctorum* for the proposed Seven Oaks Dam project on the Santa Ana River. About 310 ha (775 ac) of alluvial scrub habitat has been designated for preservation as mitigation for impacts to *Eriastrum densifolium* ssp. *sanctorum* resulting from the construction of the dam. Approximately 80 ha (200 ac) of this appears to be currently suitable for

the San Bernardino kangaroo rat (Service unpub. GIS maps 1997). However, the preserved area represents less than 7 percent of the alluvial scrub found in the entire Santa Ana River basin and approximately 12 percent of the basin habitat occupied by the San Bernardino kangaroo rat. Thus, the mitigation preserve, while providing some benefit, is likely not adequate to conserve the subspecies.

Local and county zoning designations are subject to change and do not specifically address the conservation and management needs of the San Bernardino kangaroo rat. However, numerous jurisdictions in western Riverside and San Bernardino counties are beginning a multi-species habitat conservation planning process, including coastal sage scrub-associated species and benefit to the kangaroo rat may result. Commitments for funding and implementation of the strategy and appropriate changes in land-use regulations to protect potential preserves during the planning process have not been made.

The Riverside County Habitat Conservation Agency is implementing an approved habitat conservation plan for the federally endangered Stephens' kangaroo rat that involves the establishment of permanent preserves in western Riverside County (Riverside County Habitat Conservation Agency 1996). Because the San Bernardino kangaroo rat occupies a largely different habitat type than that of the Stephens' kangaroo rat, the conservation plan for the Stephens' kangaroo rat will not benefit the San Bernardino kangaroo rat. Despite extensive surveys, no current records of San Bernardino kangaroo rats occur within any of the reserves established for Stephens' kangaroo rat (A. Davenport, pers. comm. 1997).

E. Other Natural or Manmade Factors Affecting Its Continued Existence.

Habitat for the San Bernardino kangaroo rat has been severely reduced and fragmented by development and related activities in the San Bernardino and San Jacinto Valleys. Habitat fragmentation results in loss of habitat, reduced habitat patch size, and an increasing distance between patches of habitat. As discussed by Andren (1994) regarding highly fragmented landscapes, reduced habitat patch size and isolation will exacerbate the effect of habitat loss on a species' persistence. That is, the loss of species, or decline in population size, will be greater than expected from habitat loss alone. The loss of native vertebrates, including rodents, due to habitat fragmentation is well documented (Soulé *et al.* 1992, Andren 1994, Bolger *et al.* 1997).

Isolated populations are subject to extirpation by manmade or natural events, such as floods and drought. Furthermore, small populations may experience a loss of genetic variability and experience inbreeding depression (Lacy 1997). Contributing to the fragmentation of San Bernardino kangaroo rat habitat are railroad tracks, roads, and flood control channels. These structures appear to function as movement barriers to the San Bernardino kangaroo rat, preventing movement between areas of suitable habitat.

All remaining population segments are at risk due to their small size and isolation. This is especially true for the four smallest populations (i.e., City Creek, Reche Canyon, Etiwanda, and South Bloomington). Urbanization exists throughout most of the San Bernardino kangaroo rat's range and the remaining larger blocks of occupied habitat (i.e., Santa Ana River, Lytle/Cajon, and San Jacinto River) now function independently of each other. This isolation of occupied patches places the entire population of San Bernardino kangaroo rat at risk because recolonization of suitable habitat following local extirpation has been precluded. The extirpation of populations from local catastrophes, such as flooding, is becoming more probable as urban development further constricts the remaining populations to the active portion of the flood plain. The largest remaining populations are now restricted entirely to flood plain habitats and vulnerable to extirpation by naturally occurring events.

Flood control structures alter both the magnitude and distribution of flooding. In the absence of flood scouring, sediments and organic matter accumulate over time, contributing to senescence of the alluvial scrub community and its conversion to coastal sage scrub or chaparral (Smith 1980, Wheeler 1991, Jigour and McKernan 1992). The dense canopy of these communities does not provide the open environment required by San Bernardino kangaroo rat, thereby reducing the habitat suitability for the species (Beatley 1976, McKernan 1997). Within the active channels, the confined flood events scour too frequently to maintain suitable San Bernardino kangaroo rat habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this subspecies in developing this rule. Based on this evaluation, the Service finds that the emergency action is to list the San Bernardino kangaroo rat as endangered. This taxon is endangered by one or more of the following factors: Habitat destruction, degradation, and fragmentation resulting from sand and gravel mining, flood control projects, urban development, vandalism, and inadequate regulatory mechanisms. Because of these factors, the San Bernardino kangaroo rat is in imminent danger of extinction throughout all or a significant portion of its range. Threatened status does not appear appropriate considering the extent of decline of the populations of this taxon and the vulnerability of those populations remaining.

Reasons for Emergency Determination

Under section 4(b)(7) of the Act and 50 CFR 424.20, the Secretary may determine a species to be endangered or threatened by an emergency rule that shall cease 240 days following publication in the **Federal Register**. The reasons why this rule is necessary are discussed below. If at any time after this rule has been published the Secretary determines that substantial evidence does not exist to warrant such a rule, it shall be withdrawn.

As discussed under Factor A, of the seven remaining populations, only three are of relatively large (viable) size. Much of the remaining habitat for the San Bernardino kangaroo rat is potentially threatened by vandalism as well as construction of approved projects. Threats of vandalism to San Bernardino kangaroo rat habitat have been made. Intentional herbicide application and grading were mentioned as possible ways to eliminate suitable habitat. Along the Santa Ana River, at least 80 percent of the remaining occupied habitat is indirectly at risk because of the projected changes in hydrology due to Seven Oaks Dam. Approximately 25 percent of the population along the Santa Ana River is further threatened by levee construction and maintenance and sediment removal activities of the San Bernardino County Flood Control District. About 20 percent of the habitat is managed, in part, for operation of water spreading basins. Finally, two proposed sand mining operations collectively threaten approximately 22 percent of the population along the Santa Ana River. These proposed sand and gravel mining expansions are expected to receive certification under the CEQA in 2–4 months. A grading permit would be issued shortly thereafter. The projects and sand and gravel mining operations also have the effect of fragmenting the habitat, further reducing the security of this species.

Along Lytle Creek and Cajon Wash, a minimum of 34 percent of the occupied habitat in this area is threatened due to the combined effects of sand and gravel mining, flood control activities, and the proposed development of The Villages at Lytle Creek. At least 28 percent of the occupied habitat in the San Jacinto River area is threatened by urban development, flood control activities, agricultural activities or sand and gravel mining.

Attempts to work with stakeholders have met with little success. When advised of the sensitivity of alluvial scrub habitats in the San Bernardino region in 1992, one local official threatened to destroy existing habitat areas by aerial herbicide application (Edna Rey, Service, pers. comm., 1997). Finally, the Service has been informed that an area of approximately 1,440 ha (3,560 ac) (approximately 26 percent) of the total remaining alluvial scrub habitat may be at risk of vandalism. Statements have been made advising the Service repeatedly that an attempt to list the San Bernardino kangaroo rat would elicit preemptive grading to protect corporate assets (Pete Sorensen, Service, pers. comm. 1996).

An emergency posing a significant risk to the well-being and continued survival of the San Bernardino kangaroo rat exists as the result of the immediate threat of destruction of a significant portion of the subspecies' remaining habitat by sand and gravel mining activities. For these reasons, the Service finds that the San Bernardino kangaroo rat is in imminent danger of extinction throughout all or a significant portion of its range and warrants immediate protection under the Act.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is designated to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the San Bernardino kangaroo rat. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat designation for the San Bernardino kangaroo rat is not prudent because an increase in the degree of threat to the species is expected. This subspecies is found in fragmented habitat composed of various sage scrub shrub vegetation in the presence of sandy soils. The designation of critical habitat, including the required publication of maps providing precise locations, would bring unnecessary attention to those areas of the range that are occupied by this kangaroo rat and encourage acts of vandalism or intentional destruction of habitat. This attention would likely lead to an increase in activities (such as discing or blading) by landowners who do not want listed species on their property (see Factor A, above). Therefore, given the limited/habitat specific distribution of the San Bernardino kangaroo rat, and the possibility that a significant portion of the species' remaining habitat could be rapidly vandalized and destroyed, the Service concludes that it is not prudent to designate critical habitat for that reason alone.

The designation of critical habitat is also not prudent due to an expected lack of benefit to the species. Although a majority of San Bernardino kangaroo rat habitat occurs on privately owned lands, many activities that pose threats to the continued existence of this subspecies are funded, permitted, or carried out by Federal agencies (e.g., section 404 of the Clean Water Act, flood control, impoundment, and other stream and wetland modification projects). Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat in any action authorized, funded or carried out by such agency. This requirement is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Any action that would adversely modify San Bernardino kangaroo rat critical habitat would likely jeopardize the continued existence of the subspecies because the biological threshold for either determination would be the same. Thus, if the San Bernardino kangaroo rat is listed, activities occurring on all lands under Federal jurisdiction or ownership that may adversely affect the San Bernardino kangaroo rat would prompt the requirement for consultation pursuant to section 7(a)(2) of the Act and the implementing regulations pertaining thereto, regardless of whether critical habitat has been designated. Furthermore, the designation of critical habitat would have no regulatory effect on activities that are not subject to a Federal nexus.

The Service acknowledges that critical habitat designation, in some situations, may provide some value to the species by identifying areas important for species conservation and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat may also benefit this subspecies by alerting Federal action agencies to potential sites for reintroduction and allow them to evaluate proposals that may affect these areas. However, in this the case, any benefit provided by designation of critical habitat for the San Bernardino kangaroo rat would be accomplished more effectively through the recovery process and the jeopardy prohibition of section 7. Designating critical habitat for this kangaroo rat would not address vegetation seral stage management or control urban development, all of which need to be addressed in the recovery of this subspecies.

Accordingly, the Service concludes that designation of critical habitat would not be beneficial to the species and could increase the degree of threat from taking. Therefore, designation of critical habitat for the San Bernardino kangaroo rat is not prudent at this time.

The Service will continue in its efforts to obtain more information on the San Bernardino kangaroo rat biology and ecology, including essential habitat characteristics particularly in regard to stream flow regimes, current and historical distribution, and existing and potential sites that can contribute to conservation of the species. The information resulting from this effort will be used to identify measures needed to achieve conservation of the species, as defined under the Act. Such measures could include, but are not

limited to, development of conservation agreements with the State, other Federal agencies, local governments, private landowners and organizations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants and animals are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies expected to have involvement with the San Bernardino kangaroo rat or its habitat include the Corps and the Environmental Protection Agency due to their permit authority under section 404 of the Clean Water Act. The Federal Aviation Administration has jurisdiction over areas with potentially suitable San Bernardino kangaroo rat habitat in the vicinity of Redlands Municipal Airport and Norton Air Force Base in San Bernardino County. The Federal Highway Administration will likely be involved through potential funding of highway construction projects near Devore, Rancho Cucamonga, Rialto, and San Bernardino (San Bernardino County). Because the San Bernardino kangaroo rat occurs on Norton Air Force Base (San Bernardino County), the base will likely be involved through the transfer of Federal lands to a non-Federal entity and the conversion of this area to a civilian airport. The BLM has jurisdiction over a portion of the habitat occupied by the San Bernardino kangaroo rat along the Santa Ana River. The Forest Service will likely be involved because populations of the San Bernardino kangaroo rat occur within or near the boundaries of the Cleveland National Forest and San Bernardino National Forest. The Bureau of Reclamation may be involved through the potential funding of water reclamation and flood control projects. The Bureau of Indian Affairs may be involved with this taxon at Soboba Indian Reservation (Riverside County). The Federal Housing Administration could potentially be involved through loans for housing projects in the region. The Federal Energy Regulatory Commission could be involved in projects affecting existing or proposed transmission lines in the Santa Ana River or Etiwanda Creek areas.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general trade prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practical at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of listing on proposed and ongoing activities within a species' range, and to assist the public in identifying measures needed to protect the species. The Service believes that, based on the best available information, the following actions would not be likely to result in a violation of section 9:

(1) Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, dead specimens of this taxa that were collected prior to the date of publication in the **Federal Register** of the final regulation adding this taxa to the list of endangered species;

(2) Road kills or injuries by vehicles on designated public roads.

Potential activities involving the San Bernardino kangaroo rat that the Service believes likely would be considered a violation of section 9 include, but are not limited to, the following:

(1) Take of San Bernardino kangaroo rat without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State fish and wildlife conservation laws and regulations;

(2) Possess, sell, deliver, carry, transport, or ship illegally taken San Bernardino kangaroo rats;

(3) Interstate and foreign commerce (commerce across State and international boundaries) and import/export (as discussed earlier in this section) without appropriate permits;

(4) Destruction or alteration of San Bernardino kangaroo rat habitat by discing, grading, sand or gravel mining, flooding, vehicle operation, or other activities that result in the destruction or significant degradation of vegetative composition, substrate composition, or other activity that impacts breeding, feeding, or availability of cover;

(5) Alteration of hydrology that results in adverse modification of San Bernardino kangaroo rat habitat (e.g., establishment of inappropriate stages of vegetation).

Questions regarding whether specific activities will constitute a violation of section 9 or to obtain approved guidelines for actions within the kangaroo rat habitat should be directed to the Service's Carlsbad Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE. 11th Avenue, Portland, Oregon

97232–4181 (telephone 503/231–6241; facsimile 503/231–6243).

National Environmental Policy Act

The Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section (4)(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of references cited in this rule is available upon request from the Carlsbad Field Office of the U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Arthur Davenport of the Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Kangaroo rat, San Bernardino.	*Dipodomys merriami parvus.*	U.S.A. (CA)	NA	E	631	NA	NA
*	*	*	*	*	*		*

Dated: January 20, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–2011 Filed 1–26–98; 8:45 am]

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Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 97–060–1]

RIN 0579–AA88

Karnal Bunt Status of the Mexicali Valley of Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the wheat diseases regulations by recognizing a wheat-growing area within the Mexicali Valley of Mexico as being free from the wheat disease Karnal bunt. Surveys conducted by Mexican plant health authorities in that area of the Mexicali Valley since 1990 have shown the area to be free from Karnal bunt, and Mexican authorities are enforcing restrictions designed to protect the area from the introduction of Karnal bunt. This proposed change would have the effect of removing certain restrictions on the importation into the United States of wheat seed, straw, and other wheat products from the Karnal bunt free area of the Mexicali Valley.

DATES: Consideration will be given only to comments received on or before March 30, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–060–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–060–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Petit de Mange, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, USDA, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; fax (301) 734–5786; e-mail: jpdmange@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Wheat Diseases'' (7 CFR 319.59 through 319.59–2, referred to below as the regulations), restrict the importation into the United States of certain seeds, plants, and plant products from certain countries or localities in order to prevent the introduction of foreign strains of flag smut and Karnal bunt, two fungal diseases of wheat (*Triticum* spp.). Specific provisions relating to foreign strains of flag smut are located in paragraph (a) of § 319.59–2 of the regulations, and specific provisions concerning Karnal bunt are found in paragraph (b) of that section.

Under § 319.59–2(b) of the regulations, wheat seeds, plants, straw (except straw without heads that has been processed or manufactured into articles such as decorative wall hangings, clothing, or toys), chaff, and products of the milling process other than flour (i.e., bran, thistle sharps, and pollards) are designated as prohibited articles if they are from Afghanistan, India, Iraq, Mexico, or Pakistan, which are countries in which Karnal bunt is considered to exist. Prohibited articles may be imported into the United States only by the U.S. Department of Agriculture for experimental or scientific purposes in accordance with § 319.59–2(c).

The Government of Mexico has requested that the Animal and Plant Health Inspection Service (APHIS) recognize the Mexicali Valley area of Mexico as free from Karnal bunt. In support of its request, the Mexican Government submitted the results of annual surveys conducted in the wheat-producing areas of the Mexicali Valley since 1990 by Mexico's national plant protection organization, Sanidad Vegetal.

APHIS has reviewed the documentation submitted by the Government of Mexico in support of its request and conducted an on-site evaluation of Mexico's plant health programs in the Mexicali Valley with regard to Karnal bunt. The evaluation consisted of a review of Mexico's Karnal bunt survey activities, laboratory and testing procedures for the examination of samples collected during the surveys, and the administration of laws and regulations intended to prevent the introduction of Karnal bunt into the Mexicali Valley's wheat-growing areas from the rest of Mexico and from outside the country. After reviewing the documentation provided by Mexico and the data gathered during the on-site visit, we believe that Mexico has demonstrated, in accordance with the standards established by the North American Plant Protection Organization for pest-free areas, that the wheat-growing areas of the Mexicali Valley are free from Karnal bunt. We believe, therefore, that there is no longer any biological justification for that area of Mexico to be listed with the countries and localities considered to be affected with Karnal bunt.

Therefore, we are proposing to amend § 319.59–2(b) of the regulations by adding an exception for the Karnal bunt free area of the Mexicali Valley to the entry for Mexico on the list of countries and localities affected with Karnal bunt. This proposed action would mean that wheat seed, straw, and the other wheat products described in § 319.59–2(b)(1) of the regulations from the Karnal bunt free area of the Mexicali Valley would no longer be considered prohibited articles under the wheat diseases regulations. However, the importation of wheat plants into the United States from the Karnal bunt free area of the Mexicali Valley would continue to be prohibited under the regulations in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' (7 CFR 319.37 through 319.37–14). Specifically, § 319.37–2(a) lists Poaceae (vegetative parts of all grains and grasses) from all foreign places except Canada as prohibited articles due to a wide diversity of plant diseases.

For the purposes of the regulations, we would define the Karnal bunt free area of the Mexicali Valley as those portions of the municipality of Mexicali, in the State of Baja California, and the municipality of San Luis Rio Colorado, in the State of Sonora, that constitute the Distrito de Desarrollo Rural 002, Rio

Colorado (Rural Development District 002, Colorado River). The area described in that definition encompasses the wheat-growing area of the Mexicali Valley that has been the subject of the ongoing Karnal bunt surveys described above and falls completely within the area into which the movement of potential Karnal bunt host material is prohibited by Mexican plant health regulations to prevent the introduction of Karnal bunt.

Because the remainder of Mexico has not been recognized as being free from Karnal bunt, we would include two additional conditions on the importation into the United States of wheat seed, straw, and other wheat products from the Mexicali Valley.

First, we would require that the articles be offered for entry at the port of Calexico, CA, which is staffed by APHIS inspectors and lies across the border from the northern boundary of the Karnal bunt free area of the Mexicali Valley. That port of entry is served by both a main road and a rail line that pass through the Karnal bunt free area, so any wheat or other articles from the Karnal bunt free area would remain within that area during their movement to the United States for entry. Once the articles arrive at the port of Calexico, CA, the shipment would have to be made available to an APHIS inspector for examination and would remain at the port of entry until an inspector released the shipment or authorized its further movement pending release.

Second, we would require that wheat or other articles offered for entry be accompanied by a phytosanitary certificate issued by Mexico's national plant protection organization. That certificate would have to include a statement confirming that the wheat or other articles were grown in the designated Karnal bunt free area of the Mexicali Valley and remained in that area prior to and during their movement to the United States. The phytosanitary certificate would be reviewed by an APHIS inspector at the port of entry to ensure that the wheat or other articles offered for entry into the United States were indeed grown and harvested in the area of Mexico that has been shown to be free of Karnal bunt and did not leave that area while in transit to the port of entry.

Other Changes

As part of this proposed rule, we would make several other changes to update the regulations. First, we would remove the authority citation that appears at the beginning of ''Subpart—Wheat Diseases.'' The authority that applies to all of part 319, including the subpart, is cited at the beginning of the part.

We are proposing to amend § 319.59(a) to correct three erroneous references within that paragraph to other paragraphs in the subpart. Specifically, there are two references to provisions in § 319.59–2(b) that provide for the importation of otherwise prohibited articles; those provisions are actually located in paragraph § 319.59–2(c). The third erroneous reference is to articles designated in § 319.59–2(a) as prohibited articles. Although that paragraph does contain a list of prohibited articles, there is also a list of prohibited articles in § 319.59–2(b). We would, therefore, change that reference so that it refers to prohibited articles designated in § 319.59–2 (a) and (b).

We are also proposing to amend paragraph (b) of § 319.59, which provides for the disposition of articles that have been refused importation in accordance with the requirements of the regulations. That paragraph currently states that such articles shall be promptly removed from the United States or abandoned by the importer for destruction. Although the phrase ''abandoned by the importer for destruction'' could be construed as indicating that the importer would be relieved of any further responsibility for the articles after abandoning them, the importer is actually responsible for the costs of destruction. We are, therefore, proposing to amend the paragraph to make it clear that when an article is to be destroyed rather than reexported, the costs of destroying the article are the responsibility of the importer.

We are proposing to update the list of countries in § 319.59–2(a)(2) by removing a reference to the ''Union of Soviet Socialist Republics'' and adding the 15 successor States to the former Soviet Union in its place. We would also update several country names that are currently included on the list of countries.

Finally, we are proposing to make minor changes for the sake of consistency in two other subparts in part 319, namely ''Subpart—Foreign Cotton and Covers'' (§§ 319.8 through 319.8–27) and ''Subpart—Packing Materials'' (§§ 319.69 through 319.69–5). Each of those subparts contains a list of countries that is intended to agree with the list of countries found in § 319.59–2 of the regulations. However, after the lists in those two subparts were established, they were not updated to reflect subsequent amendments to ''Subpart—Wheat Diseases.'' Therefore, we would amend § 319.8–10(d) and § 319.69(b)(1) to remove the inaccurate lists of countries and replace them with a reference to § 319.59–2 of the regulations, where the updated lists of countries and localities considered affected with foreign strains of flag smut and Karnal bunt are located.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This proposed rule would amend the wheat diseases regulations by recognizing a wheat-growing area within the Mexicali Valley of Mexico as being free from the wheat disease Karnal bunt. This proposed change is based on surveys conducted by Mexican plant health authorities in that area of the Mexicali Valley since 1990 that have shown the area to be free from Karnal bunt, and on the enforcement by Mexican authorities of restrictions designed to protect the area from the introduction of Karnal bunt. This proposed change would have the effect of removing certain restrictions on the importation into the United States of wheat seed, straw, and other wheat products from the Karnal bunt free area of the Mexicali Valley.

This proposed rule would primarily affect wheat growers in the United States. There were 292,464 farms growing wheat in the United States in 1992, and 96 percent of those farms would be considered small entities. (According to the standard set by the Small Business Administration for agricultural producers, a producer with less than $0.5 million annually in sales qualifies as a small entity.) We have, therefore, examined the potential economic impact of the proposed action on small entities, as required by the Regulatory Flexibility Act, and in doing so, have assessed the anticipated costs and benefits of the proposed action, as required by Executive Order 12866.

The United States produced an average of 2,330 million bushels of wheat per year between 1992 and 1996. Of this amount, hard red winter wheat (grown primarily in Kansas, Oklahoma, and Texas) accounted for about 39 percent of production; hard red spring wheat (grown primarily in North Dakota, Minnesota, and Montana) accounted for about 24 percent of production; soft red winter wheat (grown primarily in Missouri, Illinois, and Ohio) accounted for about 19 percent of production; white wheat (grown primarily in Washington and Oregon) accounted for about 14 percent

of production; and durum wheat (grown primarily in North Dakota, Arizona, California, and Montana) accounted for about 4 percent of production.

The United States is a net exporter of wheat, accounting for about 11.4 percent of world wheat production and approximately 32 percent of world wheat exports. Of the average 2,330 million bushels of wheat produced per year between 1992 and 1996, an average of 51 percent of that wheat was exported from the United States, while wheat imports have accounted for less than 1 percent of the total U.S. wheat supply in recent years.

Mexico produced an average of about 137 million bushels of wheat per year between 1994 and 1996, most of which was grown in the States of Baja California, Guanajuato, Sinaloa, and Sonora. Mexico is a net importer of wheat, having imported in 1996 an amount of wheat equal to about 53 percent of production while exporting less than 4 percent of production; imports made up about 35 percent of Mexico's total wheat supply in 1996.

The Mexicali Valley, from which wheat could be exported to the United States under this proposed rule, is located in two of Mexico's leading wheat-producing States, Baja California and Sonora. The Mexicali Valley produced 445,967 metric tons of wheat in 1995; about 53 percent (236,171 metric tons) of that wheat was shipped to markets elsewhere in Mexico. Nearly all of the Mexicali Valley's wheat is sown in October and November and harvested from late May to early July. Table 1 below shows the classes of wheat grown in the Mexicali Valley between 1994 and 1996 and the average production share and use distribution of each class.

TABLE 1.—WHEAT CLASS, PRODUCTION SHARE, AND USE DISTRIBUTION OF MEXICALI VALLEY WHEAT; 1994–1996 AVERAGES

Wheat class	Production share (percent)	Use distribution (percent)			
		Food	Feed	Seed	Other
Hard Red Winter	61.3	65.0	25.0	3.2	6.8
White	36.2	61.5	24.6	2.6	11.3
Durum	2.2	38.5	2.1	58.8	0.6
Soft Red Winter	0.3	33.2	13.9	36.0	16.9

Between 1994 and 1997, producers in the Mexicali Valley shipped an average of 9 million bushels each year to other markets in Mexico; we have used that amount in Table 2, below, as an estimate of the total amount of wheat potentially available for export to U.S. markets. Table 2 summarizes the estimated economic impacts in the United States, based on a price elasticity of −0.63, of different levels of wheat exports from the Mexicali Valley and from the estimated producer losses and consumer gains that would result. For example, a 20 percent diversion of Mexicali Valley wheat production from markets in other countries or the domestic Mexican market to the United States would be expected to result in a price decrease of 0.09 percent in the United States. U.S. producers would lose about $5.92 million (which, when distributed among the 292,464 wheat farms noted above, amounts to about $20.25 per farm), while consumers would gain about the same amount, for a net benefit in this scenario of about $3,000. At the other end of the spectrum, a 100 percent diversion of Mexicali Valley wheat production from other markets to the United States would be expected to result in a price decrease of 0.45 percent in the United States. U.S. wheat producers would lose about $29.56 million (or about $101.00 per farm), while consumers would gain about $29.64 million, for a net benefit in this scenario of about $74,500. In all cases, consumer gains slightly outweigh producer losses.

TABLE 2.—POTENTIAL IMPACT IN THE UNITED STATES OF THE REDIRECTION OF MEXICALI VALLEY WHEAT TO U.S. MARKETS (PRICE ELASTICITY IS −0.63)

	Percentage of Mexicali Valley-origin wheat shipments diverted from other (domestic or export) markets to the U.S. market:				
	20	40	60	80	100
Imports (millions of bushels)	1.8	3.6	5.4	7.2	9.0
Percent change in price	(0.09)	(0.17)	(0.27)	(0.36)	(0.45)
Percent change in quantity	(0.04)	(0.08)	(0.13)	(0.17)	(0.22)
Decrease in producer surplus (millions of dollars)	(5.92)	(11.83)	(17.75)	(23.66)	(29.56)
Increase in consumer surplus (millions of dollars)	5.92	11.84	17.77	23.70	29.64
Total surplus (millions of dollars)	0.003	0.0119	0.0268	0.0477	0.0745

How likely even a 20 percent diversion of Mexicali Valley wheat to the U.S. market would be, however, is unclear. The production area of the Mexicali Valley is closer to markets in the United States than it is to markets in central Mexico, which means that lower transportation costs may encourage Mexicali Valley producers to ship their wheat to the United States. However, the Mexican government is considering a transportation subsidy for growers in northwestern Mexico to offset the transportation advantage that growers in central Mexico have in marketing their crops in Mexico City. Such a subsidy may encourage Mexicali Valley producers to sell their wheat in Mexico.

Prices for Mexicali Valley wheat may well prove to be a determining factor with regard to the level of potential exports, as the costs of production in the Mexicali Valley are much higher than U.S. production costs. The cost of Mexicali Valley wheat averaged

between $2.47 and $3.54 per bushel, with total economic costs (which include fertilizers, irrigation, harvest costs, interest on credit, etc.) ranging between $227.60 to $247.50 per acre. The cost of wheat grown in the United States, on the other hand, averaged $2.47 per bushel, with total economic costs averaging $155 per acre. With its higher production costs and the added cost of transportation across the border into the United States, it may prove difficult for Mexicali Valley wheat to compete in the U.S. market.

The actual extent of any decrease in wheat prices in the United States resulting from action proposed in this document would depend to a great degree upon the size of the price elasticity of demand, the magnitude of the change in supply, and the size of the baseline price. For lower price elasticities, both losses and gains would be higher. We expect that the amount of wheat exported from the Mexicali Valley would not be large and would not, therefore, change wheat production and consumption patterns in the United States. Further, the increase in wheat supplies in the United States from an increase in imports from Mexico would likely be offset to some extent by an increase in exports of wheat from the United States to Mexico. Nevertheless, allowing the importation of wheat from the Mexicali Valley would likely have a net positive impact on the overall economy, since consumer benefits at any level of imports would be slightly higher than producer losses.

The only significant alternative to this proposed rule would be to make no changes in the wheat diseases regulations, i.e., to continue to prohibit the importation of wheat and wheat products from Mexico. We have rejected that alternative because we believe that Mexico has demonstrated that the wheat-growing areas of the Mexicali Valley are free from Karnal bunt, which means that there is no longer any biological justification for that area of Mexico to be listed with the countries and localities considered to be affected with Karnal bunt. Maintaining a prohibition on the importation of wheat and wheat products from the Mexicali Valley in light of that area's demonstrated freedom from Karnal bunt would run counter to the United States' obligations under international trade agreements and would likely be challenged through the World Trade Organization. Conversely, our proposal to declare the wheat-growing areas of the Mexicali Valley free from Karnal bunt would likely have a beneficial effect on international trade in general, and trade between the United States and Mexico in particular, by reaffirming the United States' continuing commitment to using scientifically valid principles as the basis for regulation.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97–060–1. Please send a copy of your comments to: (1) Docket No. 97–060–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the wheat diseases regulations by recognizing a wheat-growing area within the Mexicali Valley of Mexico as being free from the wheat disease Karnal bunt. This proposed change would have the effect of removing certain restrictions on the importation into the United States of wheat seed, straw, and other wheat products from the Karnal bunt free area of the Mexicali Valley.

Because the remainder of Mexico is still considered to be affected with Karnal bunt, we would require that a phytosanitary certificate accompany wheat and other wheat-related articles offered for entry from the Karnal bunt free area of the Mexicali Valley. That certificate would have to be issued by Mexican plant health authorities, and would have to state that the wheat or other articles had been grown in the designated Karnal bunt free area of the Mexicali Valley.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond, (such as 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.)

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.2 hours per response.

Respondents: Mexican plant health authorities, growers/exporters of wheat products in the Mexicali Valley.

Estimated number of respondents: 20.

Estimated number of responses per respondent: 5.

Estimated annual number of responses: 100.

Estimated total annual burden on respondents: 120 hours.

Copies of this information collection can be obtained from Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is proposed to be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

§ 319.8–10 [Amended]

2. In Subpart—Foreign Cotton and Covers, § 319.8–10(d) would be amended by removing the words ''§ 319.59 (notice of quarantine No. 59 relating to the flag smut disease)'' and adding the words ''§ 319.59–2(a)(2)'' in their place, and footnote 5 and its reference in the text would be removed.

§ 319.8–11 [Amended]

3. In Subpart—Foreign Cotton and Covers, § 319.8–11(a) introductory text, footnote 6 and its reference in the text would be redesignated as footnote 5.

§ 319.8–17 [Amended]

4. In Subpart—Foreign Cotton and Covers, § 319.8–17(d), footnote 7 and its reference in the text would be redesignated as footnote 6.

5. The authority citation for ''Subpart—Wheat Diseases'' would be removed.

§ 319.59 [Amended]

6. In Subpart—Wheat Diseases, § 319.59 would be amended as follows:

a. In paragraph (a), in the first sentence, the reference ''§ 319.59–2(b)'' would be removed and the reference ''§ 319.59–2(c)'' would be added in its place.

b. In paragraph (a), in the last sentence, the reference ''§ 319.59–2(a)'' would be removed and the reference ''§ 319.59–2(a) and (b)'' added in its place, and the reference ''§ 319.59–2(b)'' would be removed and the reference ''§ 319.59–2(c)'' added in its place.

c. In paragraph (b), in the first sentence, the words ''abandoned by the importer for destruction'' would be removed and the words ''destroyed as deemed necessary by an inspector at the expense of the importer'' would be added in their place.

d. In paragraph (b), in the last sentence, the words ''abandoned for destruction by'' would be removed and the words ''destroyed as deemed necessary by an inspector at the expense of'' would be added in their place.

7. In Subpart—Wheat Diseases, § 319.59–2 would be amended as follows:

a. In the introductory text of paragraph (a), the words ''in paragraph (b)'' would be removed and the words ''in paragraph (c)'' added in their place.

b. In paragraph (a)(1)(i), the word ''*Triticums*'' would be removed and the word ''*Triticum*'' added in its place.

c. Paragraph (a)(2) would be revised to read as set forth below.

d. In paragraph (b)(2), the words ''(except for that portion of the Mexicali Valley described in paragraph (b)(3) of this section),'' would be added after the word ''Mexico''.

e. A new paragraph (b)(3) would be added to read as set forth below.

f. In paragraph (c)(2), the reference ''7 CFR 319.37–14(b)'' would be removed and the reference ''§ 319.37–14(b)'' added in its place.

§ 319.59–2 Prohibited articles.

(a) * * *

(2) Afghanistan, Algeria, Armenia, Australia, Azerbaijan, Bangladesh, Belarus, Bulgaria, Chile, China, Cyprus, Egypt, Estonia, Falkland Islands, Georgia, Greece, Guatemala, Hungary, India, Iran, Iraq, Israel, Italy, Japan, Kazakstan, Kyrgyzstan, Latvia, Libya, Lithuania, Moldova, Morocco, Nepal, North Korea, Oman, Pakistan, Portugal, Romania, Russia, Spain, Tajikistan, Tanzania, Tunisia, Turkey, Turkmenistan, South Africa, South Korea, Ukraine, Uzbekistan, and Venezuela.

(b) * * *

(3) The following area of the Mexicali Valley in Mexico has been determined to be free from Karnal Bunt: Those portions of the municipality of Mexicali, in the State of Baja California, and the municipality of San Luis Rio Colorado, in the State of Sonora, that are included in the Distrito de Desarrollo Rural (Rural Development District) 002 Rio Colorado. Except for wheat (*Triticum* spp.) plants, which are prohibited importation under § 319.37–2(a), any articles described in paragraph (b)(1) of this section that are from that designated area may be imported into the United States subject to the following conditions:

(i) The articles are offered for entry at the port of Calexico, CA; and

(ii) The articles offered for entry are made available for examination by an inspector and remain at the port until released, or authorized further movement pending release, by an inspector; and

(iii) The articles are accompanied by a phytosanitary certificate issued by the Mexican national plant protection organization that certifies that the articles are from the area of the Mexicali Valley described in this paragraph and remained within that area prior to and during their movement to the United States.

* * * * *

8. In Subpart—Packing Materials, § 319.69(b)(1) would be revised to read as follows:

§ 319.69 Notice of quarantine.

* * * * *

(b) * * *

(1) Cereal straw, hulls, and chaff (such as oats, barley, and rye) from all countries, except rice straw, hulls, and chaff, which are prohibited importation from all countries by paragraph (a)(1) of this section, and except wheat straw, hulls, and chaff, which are restricted importation by § 319.59 from any country or locality listed in § 319.59–2.

* * * * *

Done in Washington, DC, this 21st day of January 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–1808 Filed 1–26–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1209

[FV–97–705RO]

Mushroom Promotion, Research, and Consumer Information Order; Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This action gives notice that a referendum will be conducted to determine whether mushroom producers and importers favor continuance of the Mushroom Promotion, Research, and Consumer Information Order (Order). In order to continue, the Order must be approved by a majority of producers and importers voting in the referendum and that majority must represent more than 50 percent of the mushrooms produced and imported by those voting in the referendum. This action announces the voting period, representative period, and agents.

DATES: The referendum will be conducted by mail ballot from February 24 through March 13, 1998. Faxed ballots will be accepted. The representative period for establishing voter eligibility shall be the period from July 1, 1996, through June 30, 1997.

ADDRESSES: Copies of the Mushroom Promotion, Research, and Consumer Information Order may be obtained from: Referendum Agent, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Room 2535-S, Stop Code 0244, Washington, DC 20090–6456, telephone number (888) 720–9917, fax (202) 205–2800.

FOR FURTHER INFORMATION CONTACT: Stacey L. Bryson, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Room 2535-S,

Stop Code 0244, Washington, DC 20090–6456, telephone (202) 720–6930 or (888) 720–9917.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among mushroom producers and importers to determine whether the continuance of the Mushroom Promotion, Research, and Consumer Information Order (Order) [7 CFR 1209] is favored by persons voting in the referendum. The Order is authorized under the Mushroom Promotion, Research, and Consumer Information Act (Act) [7 U.S.C. 6101–6112].

The representative period for establishing voter eligibility for the referendum shall be the period from July 1, 1996, through June 30, 1997. Paragraph (b)(2) of § 1926 of the Act requires that the Order be approved by a majority of producers and importers voting in the referendum which majority, on average, annually produces and imports into the United States more than 50 percent of mushrooms annually produced and imported by all those persons voting in the referendum. Only mushroom producers and importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period will be eligible to vote in the referendum. Persons who have received an exemption from assessment for the entire representative period are ineligible to vote. The referendum shall be conducted by mail ballot from February 24 through March 13, 1998. Faxed ballots will be accepted.

Section 1926 of the Act provides that the Secretary of Agriculture (Secretary) shall conduct a referendum effective 5 years after the date on which the Order became effective. The Order became effective on January 8, 1993. The referendum must be conducted among mushroom producers and importers to ascertain whether they favor continuation, termination, or suspension of the Order. Persons voting in the referendum will certify their eligibility to vote and will designate their status either as a mushroom producer or importer. Producers and importers will be required to certify the pounds of mushrooms they either produced or imported during the representative period.

The Order shall continue in effect if it is approved by a simple majority of producers and importers voting in the referendum and that majority represents more than 50 percent of the mushrooms produced and imported by those voting in the referendum. If the Secretary determines that suspension or termination of the Order is favored by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum, the Secretary shall terminate or suspend the collection of assessments under the Order and suspend or terminate activities under the Order as soon as practicable.

In accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13], the referendum ballot has been approved by the Office of Management and Budget (OMB) and has been assigned OMB number 0581–0093. There are approximately 138 eligible voters. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot. The total burden on the total number of voters will be 34.5 hours.

Referendum Order

It is hereby directed that a referendum be conducted among mushroom producers and importers to determine whether they favor the continuance of the Order. The representative period for establishing voter eligibility for the referendum shall be the period from July 1, 1996, through June 30, 1997. A referendum shall be conducted by mail ballot from February 24 through March 13, 1998. Faxed ballots will be accepted.

By interim final rule, referendum procedures were published in the **Federal Register** on December 23, 1997 [62 FR 66973]. Comments concerning the provisions of the rule must be received by January 22, 1998. The Procedure for the Conduct of Referenda in Connection with the Mushroom Promotion, Research, and Consumer Information Order [7 CFR 1209.300–1209.307] shall be used to conduct the referendum. Ballots will be mailed to all known mushroom producers and importers on or before February 17, 1998. Eligible voters who do not receive a ballot by mail may call the following toll-free telephone number to receive a ballot: 1 (888) 720–9917. All ballots will be subject to verification. Ballots must be received by the referendum agents by mail or fax no later than March 13, 1998, to be counted.

Stacey L. Bryson and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535–S, Stop Code 0244, P.O. Box 96456, Washington, D.C. 20090–6456, are designated as the referendum agents of the Secretary of Agriculture to conduct the referendum.

Ballots to be cast in the referendum, and any related material relevant to the referendum, will be mailed by the referendum agents to all known mushroom producers and importers. Only mushroom producers and importers who either produced or imported, on average, over 500,000 pounds of mushrooms annually during the representative period will be eligible to vote in the referendum. Persons who have received an exemption from assessment for the entire representative period are ineligible to vote.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 6101–6112.

Dated: January 21, 1998.

Enrique E. Figueroa,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 98–1908 Filed 1–26–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 97–099–1]

EIA; Handling Reactors at Livestock Markets

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations pertaining to livestock facilities under State or Federal veterinary supervision to require that any livestock facility accepting equines classified as reactors to equine infectious anemia must quarantine these animals at all times at least 200 yards from all equines that are not reactors to this disease. Currently, livestock facilities accepting reactors to equine infectious anemia are required to quarantine the reactors that will remain at the facility for longer than 24 hours at least 200 yards away from all other animals. This proposed amendment would help to prevent the interstate spread of equine infectious anemia, a contagious, vector-borne disease affecting equines.

DATES: Consideration will be given only to comments received on or before March 30, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–099–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–099–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, National Animal Health Programs Staff, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–5970; or E-mail: jdavis@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in subchapter C, ''Interstate Transportation of Animals (Including Poultry) and Animal Products,'' of chapter I, title 9, of the Code of Federal Regulations contain provisions designed by the Animal and Plant Health Inspection Service (APHIS) to prevent the dissemination of animal diseases in the United States. Part 71 of subchapter C includes general provisions. Section 71.20 pertains to APHIS approval of livestock facilities, which include stockyards, livestock markets, buying stations, concentration points, or any other premises under State or Federal veterinary supervision where livestock are assembled. Section 71.20(a) includes an agreement that livestock facilities must execute to obtain APHIS approval, and subparagraph (16) of the agreement pertains to livestock facilities that accept horses. (According to the definitions in § 71.1, ''horses'' includes ''horses, asses, mules, ponies, and zebras.'' Throughout this document, the same definition applies.) According to § 71.20(a)(16), approved livestock facilities may elect either to accept or not accept horses that are reactors to equine infectious anemia (EIA).

EIA is a contagious, potentially fatal disease affecting horses that is spread by infected blood coming into contact with the blood in a healthy animal. Therefore, humans can spread EIA from horse to horse through unsafe vaccination or blood-testing practices; naturally, the disease is spread by insect vectors. Although, theoretically, EIA could be spread by any type of blood-consuming insect, such as mosquitoes and deer flies, the disease is generally spread by large horse flies. EIA spreads when a blood-consuming insect is interrupted during a feeding on an infected animal and then resumes feeding on an uninfected animal while the infected blood is still on the insect's mouthparts. While mosquitoes have finely structured mouthparts that directly penetrate small blood vessels, the mouthparts of horse flies and deer flies include scissorlike blades that cut and slash the horse's skin leaving relatively large amounts of blood on the mouthparts. Research has shown that deer flies and smaller species of horse flies are not as easily disrupted from their bloodmeals on horses as are large horse flies. The large flies cause painful bites that trigger a physiological response from the horse. If disrupted by the horse while feeding, the horse fly may then move to another horse to complete the bloodmeal.[1]

Regulations pertaining to the interstate movement of animals affected with EIA are located in 9 CFR part 75. According to these regulations, EIA reactors may be moved interstate only for immediate slaughter, to a diagnostic or research facility, to the animal's home farm, or to an approved stockyard for sale for immediate slaughter. Approximately 1,600 horses in the United States test positive for EIA each year. Currently, 40 percent of these animals move through livestock markets on their way to slaughter.

Section 71.20(a)(16)(ii) currently specifies that approved livestock facilities must place any EIA reactor in a quarantined pen at least 200 yards from all non-EIA-reactor horses and other animals, unless the EIA reactor will be moving out of the facility within 24 hours of arrival. The purpose of quarantining the EIA reactors is to prevent EIA transmission: Because the types of flies that transmit EIA generally remain in the immediate vicinity of the horses with which they are associated, quarantining EIA reactors at least 200 yards away from healthy horses is effective in preventing EIA spread. However, as described above, the regulations currently allow an EIA reactor to be mixed in with healthy horses if the EIA reactor will be at the livestock facility for less than 24 hours. While in the past such short-term mixing of healthy and infected horses was not believed to contribute significantly to EIA spread, we now believe that allowing healthy horses to come into close contact with EIA reactors for any length of time could allow for infection of the healthy horses. Therefore, to help prevent the interstate spread of EIA, we are proposing to prohibit the mixing of healthy and infected horses at approved livestock facilities for any period of time. Thus, we are proposing to amend the quarantine requirement in § 71.20(a)(16)(ii) to remove the quarantine exception for EIA reactors that will be in the approved livestock facility for less than 24 hours. EIA reactors would need to be quarantined at least 200 yards away from non-EIA-reactor horses at all times.

Currently, § 71.20(a)(16)(ii) also requires that EIA reactors be quarantined at least 200 yards away from all other animals in the approved livestock facility. This requirement exists because it was formerly believed that insect vectors could spread EIA to healthy horses as far as 200 yards away from reactors if other animals were located between the reactors and the healthy horses. We previously believed that a fly could move from a reactor to feed on a nonequine animal or animals located nearby and then move on to a healthy horse, infecting it. However, as stated previously, we now know that EIA transmission by insect vector occurs only when an insect is feeding on an infected horse, is interrupted during the feeding, and then moves on to feed on a healthy horse while the infected blood is still on the insect's mouthparts. Horse flies are not known to feed on nonequine animals when horses are available because these flies prefer the relatively supple skin of horses. Moreover, the likelihood that blood from an infected horse would still be on the insect's mouthparts after the insect had fed on another animal is slight. For these reasons, we now believe that the possibility of disease transmission occurring under these circumstances is extremely unlikely. We are proposing to amend § 71.20(a)(16)(ii) to remove the words ''or other animals.'' We believe that, in the interest of preventing EIA spread, it is only necessary to require EIA reactors to be quarantined at least 200 yards away from all equines that are not reactors.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not

[1] Information regarding research on EIA transmission may be obtained by contacting Dr. Tim Cordes, Senior Staff Veterinarian, Equine Programs, VS, APHIS, USDA, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–3279; or e-mail: tcordes@aphis.usda.gov.

significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The regulations in 9 CFR part 71 require that any horses classified as EIA reactors and accepted by a facility for sale are to be placed in quarantined pens at least 200 yards from all non-EIA-reactor horses or other animals, unless moving out of the facility within 24 hours of arrival. The proposed rule would remove the ''less-than-24-hours'' exemption: Quarantine would be required regardless of the length of time between an EIA reactor's arrival and departure from a facility. The proposed rule would also amend the regulations by requiring that EIA reactors be quarantined at least 200 yards away from all equines that are not reactors, rather than at least 200 yards away from all other animals.

Facilities that buy and sell horses are included in the Small Business Administration's SIC (Standard Industrial Classification) category ''Livestock Services, Except Veterinary.'' Firms in this category with annual receipts of less than $5 million are considered small entities. It is likely that most, if not all, of the approximately 200 facilities that buy and sell horses are ''small'' under this definition.

Most facilities that buy and sell horses already have quarantine pens, in accordance with current regulations. The estimated 20 percent that do not have quarantine pens could build or modify existing pens for quarantine use at a relatively minor cost: APHIS estimates that, at most, construction of a quarantine pen would cost about $1,000.

However, costs of quarantine pen construction are not attributable to this proposed rule because quarantine, per se, is not a new requirement. Only those facilities that accept EIA reactors and that always move all EIA reactors within 24 hours of arrival would need to construct or modify pens for quarantine purposes as a consequence of this proposed rule. As no facility can always be certain of movement of EIA reactors within 24 hours, no costs should be incurred strictly because of this proposed rule. Moreover, by requiring all EIA reactors at approved livestock facilities to be quarantined, the horse industry in general would benefit from a further reduction in the risk of EIA transmission.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (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 to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 71 is proposed to be amended as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 71.20 [AMENDED]

2. In § 71.20, paragraph (a) would be amended in paragraph (16)(ii) of the sample agreement by removing the words ''or other animals, unless moving out of the facility within 24 hours of arrival''.

Done in Washington, DC, this 20th day of January 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–1778 Filed 1–26–98; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 1998–3]

Definition of ''Member'' of a Membership Association

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking; technical correction.

SUMMARY: On December 22, 1997, the Commission published a Notice of Proposed Rulemaking (''NPRM'') setting out proposed revisions to its rules defining who qualifies as a ''member'' of a membership association. The term is defined twice in the Commission's rules, and the definitions are identical. The NPRM sought comment on three alternative definitions, but inadvertently omitted one portion of one alternative from one of the parallel definitions. This technical revision to the NPRM corrects that oversight.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On December 22, 1997, the Commission published a Notice of Proposed Rulemaking seeking comment on three alternative revisions (Alternatives A, B and C) to its rules defining who qualifies as a ''member'' of a membership association. 62 FR 66832. Each Alternative describes a range of financial and organizational attachments that would be sufficient to confer membership status.

A membership association can solicit contributions from its members to a separate segregated fund established by the association, and can include express electoral advocacy in communications to its members. 2 U.S.C. 441b(b)(2)(A), 441b(b)(4)(C). The Commission's rules for both activities are identical. Those governing solicitations are found at 11 CFR 114.1(e), and those governing communications are found at 11 CFR 100.8(b)(4)(iv).

In keeping with the statutory and regulatory scheme, the Commission intended that all three alternatives would apply to both 11 CFR 100.8(b)(4)(iv) and 114.1(e). However, the NPRM as published inadvertently omitted Alternative C for paragraph 114.1(e)(2)(ii), although it included it for parallel paragraph 100.8(b)(4)(iv)(B)(2). *See* 62 FR 66837, 66838 (Dec. 22, 1997). Under Alternative C, a person would be considered a ''member'' of a

membership association if the person was required to pay on a regular basis a specific amount of annual dues that are predetermined by the association.

Accordingly, the Commission is publishing this technical correction to the NPRM.

§ 114.1 [Corrected]

On page 66838 of the December 22, 1997 **Federal Register**, at the bottom of the first column, following proposed *Alternative* B for paragraphs (e)(2)(ii)–(iv), insert the following:

Alternative C for paragraph (e)(2)(ii).

(2) Are required to pay on a regular basis a specific amount of annual dues that are predetermined by the association.

Dated: January 22, 1998.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–1890 Filed 1–26–98; 8:45 am]

BILLING CODE 6715–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–99–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–31 series airplanes.

This proposal would require a one-time visual inspection to determine if all corners of the forward service door doorjamb have been modified previously, various follow-on repetitive inspections, and modification, if necessary. This proposal is prompted by reports of fatigue cracks found in the fuselage skin and doubler at the corners of the forward service door doorjamb. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by March 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–99–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracks in the fuselage skin and doubler at the corners of the forward service door doorjamb on Model DC–9–31 series airplanes. These cracks were discovered during inspections conducted as part of the Supplemental Structural Inspection Document (SSID) program, required by AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996). Investigation revealed that such cracking was caused by fatigue-related stress. Fatigue cracking in the fuselage skin or doubler at the corners of the forward service door doorjamb, if not detected and corrected in a timely manner, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997. The service bulletin describes the following procedures:

1. Performing a one-time visual inspection to determine if the corners of the forward service door doorjamb have been modified;

2. For airplanes on which the modification specified in Service Bulletin DC9–53–288 has not been accomplished: Performing a low frequency eddy current (LFEC) or x-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the forward service door doorjamb;

3. Conducting repetitive inspections, or modifying the corner skin of the doorjamb of the forward service door and performing follow-on action high frequency eddy current (HFEC) inspections, if no cracking is detected;

4. Performing repetitive HFEC inspections to detect cracks on the skin adjacent to any corner that has been modified; and

5. Modifying any crack that is found to be 2 inches or less in length at all corners that have not been modified and performing follow-on repetitive HFEC inspections.

Accomplishment of the modification will minimize the possibility of cracks in the fuselage skin and doubler.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection to determine if all corners of the forward service door doorjamb have been modified previously, various follow-on repetitive inspections, and modification, if necessary. The one-time visual inspection, follow-on repetitive inspections, and modification would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between the Proposed Rule and the Relevant Service Information

Operators should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 64 McDonnell Douglas Model DC–9–31 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 51 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed one-time visual inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the one-time visual inspection of the proposed AD on U.S. operators is estimated to be $3,060, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the LFEC or x-ray inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary LFEC or x-ray inspection is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the HFEC inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary HFEC inspection is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the modification, it would take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,800 per airplane. Based on these figures, the cost impact of any necessary modification is estimated to be $6,600 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 97–NM–99–AD.

Applicability: Model DC–9–31 series airplanes, as listed in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the fuselage skin or doubler at the corners of the forward service door doorjamb, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: The words ''repair'' and ''modify/modification'' in this AD and the referenced service bulletin are used interchangeably.

Note 4: This AD will affect Principal Structural Element (PSE) 53.09.033 of the DC–9 Supplemental Inspection Document (SID).

(a) Prior to the accumulation of 50,000 total landings, or within 3,225 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if the corners of the forward service door doorjamb have been modified. Perform the inspection in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(b) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have not been modified,* prior to further flight, perform a low frequency eddy currrent (LFEC) or x-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the forward service door doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(1) Group 1, Condition 1. If no crack is detected during any LFEC or x-ray inspection required by paragraph (b) of this AD, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, in accordance with the service bulletin.

(i) *Option 1.* Repeat the LFEC inspection required by this paragraph thereafter at intervals not to exceed 3,225 landings, or the x-ray inspection required by this paragraph thereafter at intervals not to exceed 3,075 landings; or

(ii) *Option 2.* Prior to further flight, modify the corner skin of the forward service door

doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a high frequency eddy current (HFEC) inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(A) If no crack is detected on the skin adjacent to the modification during the HFEC required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Group 1, Condition 2. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is 2 inches or less in length: Prior to further flight, modify/repair the corners of the doorjamb of the forward service door in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) Group 1, Condition 3. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is greater than 2 inches in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(c) Group 2, Condition 1. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have been modified* previously in accordance with the McDonnell Douglas DC–9 Structural Repair Manual, using a steel doubler, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(1) *Option 1.* Prior to the accumulation of 6,000 landings after accomplishment of that modification, or within 3,225 landings after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by paragraph (c)(1) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 3,000 landings.

(ii) If any crack is detected during any HFEC inspection required by paragraph (c)(1) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(2) *Option 2.* Prior to further flight, modify the corner skin of the forward service door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during the HFEC required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(d) Group 2, Condition 2. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have been modified* previously in accordance with McDonnell Douglas DC–9 Structural Repair Manual, using an aluminum doubler, prior to the accumulation of 28,000 landings after accomplishment of that modification, or within 3,225 landings after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(1) If no crack is detected on the skin adjacent to the modification during the HFEC required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) Group 2, Condition 3. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have been modified* previously, but not in accordance with McDonnell Douglas Structural Repair Manual, prior to further flight, repair the corners in accordance with a method approved by the Manager, Los Angeles ACO.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–1858 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–45]

Proposed Amendment to Class E Airspace; Blacksburg, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Blacksburg, VA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Virginia Tech Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–45, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International

Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–45.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR Part 71 to amend the Class E airspace area at Blacksburg, VA. A GPS RWY 12 SIAP has been developed for the Virginia Tech Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommdate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated Spetember 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporated by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Powers, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AEA VA E5 Blacksburg, VA [Revised]

Virginia Tech Airport, Blacksburg, VA
(Lat. 37°12′28″N., long 80°24′29″W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Virginia Tech Airport and within 4 miles each side of the 297° bearing from the airport extending from the 10-mile radius to 17 miles northwest of the airport, excluding the portions that coincide with the Roanoke, VA, and Dublin, VA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on December 9, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–1925 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–46]

Proposed Amendment to Class E Airspace; Danville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Danville, VA. The amendment of the Instrument Landing System (ILS) and the Very High Frequency Omnidirectional Range (VOR) Standard Instrument Approach Procedures (SIAP) at Danville Regional Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AG) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–46, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace

Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–46.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR Part 71 to amend the Class E airspace area at Danville, VA. The ILS RWY 2 SIAP and the VOR RWY 20 SIAP for Danville Regional Airport have been amended. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the amended SIAPs and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AEA VA E5 Danville, VA [Revised]

Danville Regional Airport, Danville, VA
(Lat. 36°34′24″N., long. 79°20′07″W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Danville Regional Airport.

* * * * *

Issued in Jamaica, New York, on December 9, 1997

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–1926 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–47]

Proposed Revocation of Class E Airspace; Pennington Gap, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the Class E airspace area at Lee County Airport, Pennington Gap, VA. The Nondirectional Radio Beacon (NDB) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) was canceled on September 11, 1997. This was the only SIAP to Lee County, Airport. Consequently, the need for Class E airspace no longer exists for Instrument Flight Rules (IFR) operations at the airport. Adoption of this proposal would result in the affected area reverting to Class G airspace.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–47, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordon, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–47.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA proposes to amend 14 CFR part 71 to remove the Class E airspace extending upward from 700 feet above the surface at Lee County Airport, Pennington Gap, VA. The NDB or GPS A SIAP has been canceled, negating the need for airspace to accommodate IFR operations. The area will be removed from appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AEA VA E5 Pennington Gap, VA [Removed]

* * * * *

Issued in Jamaica, New York, on December 29, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–1927 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–48]

Proposed Amendment to Class E Airspace; Galax, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Galax, VA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Twin County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–48, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building ı111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–48.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace area at Galax, VA. A GPS RWY 18 SIAP has been developed for the Twin County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designation and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AEA VA E5 Galax, VA [Revised]

Twin County Airport, VA
(lat. 36°45′58″N., long. 80°49′25″W.)

That airspace extending upward from 700 feet above the surface within a 13-mile radius of Twin County Airport, excluding the portion that coincides with the Stuart, VA, Dublin, VA, and Marion, VA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on December 29, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–1928 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–49]

Proposed Amendment to Class E Airspace; Wilmington, DE

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Wilmington, DE. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at New Castle County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–49, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, New York 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–49.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace area at Wilmington, DE. A GPS RWY 9 SIAP has been developed for the New Castle County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AEA DE E5 Wilmington, DE [Revised]

New Castle County Airport, DE
(lat. 39°40′43″N., long. 75°36′24″W.)
Summit Airpark, DE
(lat. 39°31′13″N., long. 75°43′14″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of New Castle County Airport and within 4 miles each side of the 258° bearing from the airport extending from the 6.7-mile radius to 10 miles west of the airport and within a 6.6-mile radius of Summit Airpark and within 2.2 miles each side of a line bearing 345° from a point a lat. 39°23′36″N., long. 75°40′35″W., extending from said point to the 6.6-mile radius of Summit Airpark, excluding the portion that coincides with the Toughkenamon, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on December 29, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–1929 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–50]

Proposed Amendment to Class E Airspace; Andover, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Andover, NJ. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Aeroflex-Andover Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–50, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–50.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace area at Andover, NJ. A GPS RWY 3 SIAP has been developed for the Aeroflex-Andover Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AEA NJ E5 Andover, NJ [Revised]

Aeroflex-Andover Airport, NJ
(lat. 41°00′31″N., long. 74°44′17″W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Aeroflex-Andover Airport, excluding the portion that coincides with the Sussex, NJ, Blairstown, NJ, and New York, NY, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on December 29, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–1930 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Parts 721 and 722

Removal of Rules on Standards of Conduct and Reporting Procedures on Defense Related Employment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule; removal.

SUMMARY: The Department of the Navy (DON) is removing rules for employee standards of conduct and reporting procedures for defense-related employment (32 CFR Parts 721 and 722). Both rules have been superseded, and in that they no longer have any effect, are removed immediately. Providing for a comment period before final action in this case would be unnecessary, impracticable, and contrary to public interest. However, DON will accept and consider comments from interested persons in evaluating the effect of this action.

DATES: *Effective Date of Removal:* January 27, 1998.

Comment date: Comments on this removal action should be submitted in writing to the address shown below on or before March 30, 1998.

ADDRESSES: Interested parties should submit written comments to Department of the Navy, Office of the Judge Advocate General, Administrative Law Division (Code 13), 200 Stovall Street, Alexandria, Virginia, 22332–2400.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mike Quinn, (703) 604–8200.

SUPPLEMENTARY INFORMATION:

A. Background

On April 12, 1989, President Bush issued Executive Order (E.O.) 12674, ''Principles of Ethical Conduct for Government Officers and Employees.'' Section 201(a) of E.O. 12674 made the Office of Government Ethics (OGE) responsible for promulgating ''a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable.''

The OGE issued uniform standards of ethical conduct for all employees of the executive branch, codified at 5 CFR Part 2635, on August 7, 1992 (57 FR 35006). These regulations became effective on February 3, 1993.

Section 301(a) of E.O. 12674 allows agency heads to supplement, where necessary and appropriate, the OGE standards of conduct. The Secretary of Defense, in consultation and conjunction with the OGE, issued supplemental ethical rules applicable to all Department of Defense (DOD) Components in August 1993. These supplemental rules, codified in 32 CFR Parts 83 and 84, state that the DOD ''shall have a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, post-employment rules, enforcement, and training.'' See, 32 CFR 83.4(a) and 84.1(a).

With promulgation of the OGE regulations and the DOD ''Joint Ethics Regulation,'' the DON's standards of conduct contained in 32 CFR part 721 have been completely superseded. The Secretary of the Navy formally cancelled the DON's standards of conduct instruction on April 11, 1997. For these reasons, the Navy is now removing and reserving 32 CFR part 721.

Similarly, the rule contained in 32 CFR part 722 no longer has any meaning or effect. Part 722 contains requirements and procedures for the filing of form DD 1787 by certain present, former or retired DON personnel in reporting employment with DOD prime contractors. Authority for this rule was formerly found in 10 U.S.C. 2397. The National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–106, Sec. 4304) repealed this statutory provision. The reporting requirement that this Part implements no longer exists.

B. Determination to Remove Without Prior Public Comment

This removal action is being issued as a final rule, without a public comment period, as an exception to the DON's standard practice of soliciting comments during the rulemaking process. Providing a period of public comment in this case would be unnecessary, impracticable, and contrary to the public interest. This determination is based on several factors. First, removal of these Parts is entirely administrative and corrective in nature, not requiring the exercise of agency discretion. Second, this action has already been substantially delayed, and further delay is unwarranted. Finally, to allow these Parts to remain in the Code of Federal Regulations any longer may mislead and confuse the public and past or present DON employees regarding applicable ethics rules and post-government employment reporting requirements.

C. Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

Removal of these Parts does not meet the definition of ''significant regulatory action'' for purposes of E.O. 12866.

Regulatory Flexibility Act

Removal of these Parts will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

Removal of these rules will not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR Part 1320).

List of Subjects

32 CFR Part 721

Conflict of interests, Government employees, Military personnel, Reporting and recordkeeping requirements.

32 CFR Part 722

Conflict of interests, Government contracts, Government employees, Military personnel, Reporting and recordkeeping requirements.

PARTS 721 AND 722—[REMOVED AND RESERVED]

Under the authority of Sec. 4304, Public Law 104–106, 110 Stat. 186, and E.O. 12674, and for the reasons set forth in the preamble, remove and reserve parts 721 and 722 of title 32 of the Code of Federal Regulations.

Dated: January 13, 1998.

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–1922 Filed 1–26–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[USCG–98–3350]

Review of Cap Increases; Response Plans for Marine Transportation-related (MTR) Facilities and Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: Current Coast Guard response plan regulations for MTR facilities and tank vessels contain requirements for on-water oil removal capacity (referred to as caps) that plan-holders transporting or transferring groups I through IV petroleum oil are required to meet in planning for a worst case discharge. The original caps were set in 1993 and were scheduled to increase by 25% on February 18, 1998, provided the Coast Guard completed a review of the cap increases and determined the cap increases were practicable. The Coast Guard's review of the cap increases is on-going. Therefore, the Coast Guard will not implement the cap increases as originally scheduled, and the 1993 caps will remain in effect pending the results of the review. The Coast Guard requests comments on the practicability of the cap increases.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, [USCG–98–3350], U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this request for information. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access the public docket on the internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: LCDR John Caplis, Project Manager, Office of Response (G–MOR), at 202–267–6922; e-mail:

jcaplis@comdt.uscg.mil. Note: Comments to the docket may only be accepted by mail to the address under **ADDRESSES.** This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Regulatory History

The regulatory history for these regulations are recounted in the preambles of the final rules entitled ''Vessel Response Plans'' (61 FR 1052, January 12, 1996) and ''Response Plans for Marine Transportation-Related Facilities'' (61 FR 7890, February 29, 1996).

Background and Purpose

One important goal of the Oil Pollution Act of 1990 (OPA 90) is to increase the overall oil spill response capability in the United States. To achieve this goal, minimum on-water oil removal capacities were developed through two rulemakings and public meetings, including Negotiated Rulemaking Committee meetings. As a result, 33 CFR 154.1045(m) and 33 CFR 155.1050(o) set out caps which an owner or operator must ensure available, through contract or other approved means, in planning for a worst case discharge. These caps were established taking into account 1993 technology and availability of response resources.

In 1993, the Coast Guard set the caps at the present levels based on the following reasons. First, in many geographic areas of the U.S., on-water recovery capability and containment and protection resources simply did not exist for responding to a large spill—especially from a very large or ultra large crude carrier. Second, the Coast Guard believed Congress intended to encourage the development and enlargement of the response community, but not to cause significant, adverse economic impacts. To support this, the Coast Guard set a nationwide criteria as opposed to geographic-specific criteria as an incentive to improve the overall response capability in the United States. Third, the caps acknowledged a reasonable and practical limit to the amount of 1993 technology resources that could be constructively used during the first stages of a spill response. Lastly, the Coast Guard intended that the caps would ensure a baseline recovery capability, and would not limit the resources brought to bear during an actual oil discharge. Owners or operators were and still are expected to activate the response resources necessary for the particular circumstances of any spill, regardless of what has been contracted for the advance.

The 1998 cap, a 25% increase from the 1993 levels, was proposed as a planning target for increasing response capabilities. This increase was discussed by the Vessel Response Plan Negotiated Rulemaking Committee as an incentive to expand response capabilities within the United States to an obtainable and desirable level by 1998. The Coast Guard concurred with the recommendation from the Committee to evaluate the proposed cap increase before the increase would be implemented to determine if it remains practicable.

The Coast Guard believes that in certain geographic areas existing response capabilities already exceed the 1998 proposed cap. Several states have enacted state requirements that meet or exceed the 1998 caps. However, the Coast Guard understands that in other regions plan-holders may have great difficulty in meeting the 1998 increase. Additionally, the Coast Guard believes, since 1993, significant advances have occurred in the use and availability of high rate response techniques and technology within the United States. The Coast Guard intends to take into account these factors when reassessing the 1998 cap.

Reason for Equipment Caps Review

In accordance with the regulations 33 CFR 154.1045(n) and 33 CFR 155.1050(p), the Coast Guard is required to conduct a review of the 25% cap increase. During the review, which is ongoing, the Coast Guard will determine if the increase is practicable; if not, the Coast Guard will propose an alternative cap which may be higher or lower. The review is to include, but not be limited to, the following topics:

a. Increases in skimming efficiencies and improvements in design technologies;

b. Advances in oil tracking technology;

c. Improvements in high rate response techniques;

d. Other applicable technologies;

e. Increases in the availability of private response resources.

The regulations also state that the scheduled cap increase would occur on February 18, 1998, unless the review is not completed by the Coast Guard. The Coast Guard can not complete the review by February 18, 1998, and will not implement the cap increase as scheduled. Any changes or additional requirements will occur through the public notice and comment process and will not become effective until 90 days after publication of a **Federal Register** notice reporting the results of the review.

Request for Comments

The Coast Guard encourages interested persons to submit specific comments with regard to the requirements of 33 CFR 154.1045(m) and 33 CFR 155.1050(o). The Coast Guard is seeking comments to determine if the proposed increase to the cap remains practicable. Responses to the following questions regarding the proposed cap increase will be helpful in determining the practicality of these requirements:

(1) Is a 25% cap increase practicable? Nationally? Regionally?

(2) Have there been advances or improvements in the efficiency of mechanical recovery designs that should be considered in determining a new cap?

(3) Have there been improvements in oil tracking technologies that should be considered in determining a new cap?

(4) Have there been improvements in high rate response technologies such as dispersants, in situ burning, etc., that should be considered in determining a new cap?

(5) Have there been large increases in the availability of private resources within specific regions of the country?

Persons submitting comments should include their name and address, identify this request for information (USCG 98–XXX), and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing, to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comments, enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period, and may propose a new cap based on the comments.

Dated: January 21, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–1887 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–5954–7]

RIN 2060–AE30

Opportunity to Comment on EPA's Analysis of Air Drilling as it Relates to EPA's Proposed Rule: ''40 CFR Part 194, Criteria for the Certification and Re-certification of the Waste Isolation Pilot Plant's (WIPP) Compliance with the 40 CFR Part 191 Disposal Regulations: Certification Decision''

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of EPA's analysis of the practice of air drilling during petroleum exploration and its impact on the ability of the Waste Isolation Pilot Plant to contain radioactive waste within federal environmental and public health limits. EPA's analysis of air drilling is now available for review in the public dockets listed in **ADDRESSES**.

DATES: EPA is requesting public comment on EPA's review of air drilling. Comments must be received by EPA's official docket on or before February 27, 1998.

ADDRESSES: EPA's official docket for all rulemaking activities under the Waste Isolation Pilot Plant Land Withdrawal Act, as amended, is located in Washington, DC, in the Air Docket, Room M1500, Mailcode 6102, U.S. EPA, 401 M Street, SW, Washington, DC 20460. Information on EPA's radioactive waste disposal standards (40 CFR part 191), the compliance criteria (40 CFR part 194), and EPA's proposed decision to certify WIPP is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review at the following three EPA WIPP docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Mon–Thu, 10–9, Fri–Sat, 10–6, and Sun 1–5; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Mon–Thu, 8–9, Fri, 8–5, Sat–Sun, 1–5; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Mon–Thu, 8–12 Midnight, Fri, 8–5, Sat, 9–5, and Sun, 1–9.

Note: The dockets in New Mexico contain only major items from the official Air docket in Washington, DC, plus all those documents added to the official docket since the October 1992 enactment of the WIPP Land Withdrawal Act, Pub. L. No. 102–579 (LWA).

As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal Air docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Tom Peake, Office of Radiation and Indoor Air, (202) 564–9310 or call EPA's 24-hour toll-free WIPP Information Line, 1–800–331–WIPP.

SUPPLEMENTARY INFORMATION:

Background

The Department of Energy (DOE) is developing the Waste Isolation Pilot Plant (WIPP) near Carlsbad in southeastern New Mexico as a potential deep geologic repository for disposal of transuranic (TRU) radioactive waste. As defined by the WIPP LWA, as amended, TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Most TRU waste consists of items contaminated during the production of nuclear weapons, e.g., rags, equipment, tools, and organic and inorganic sludges.

On October 23, 1997, the Environmental Protection Agency (EPA) announced its proposed decision to issue to the Secretary of the Department of Energy (DOE) a ''certification of compliance'' that the WIPP will comply with EPA's radioactive waste disposal standards at 40 CFR part 191, subject to several conditions related to: (1) Waste characterization (to determine the radionuclides and other contents of waste disposal containers); (2) quality assurance programs at DOE waste generator sites; (3) implementation of passive institutional controls (PICs) (intended to warn future generations about the hazards of the radioactive waste buried in the WIPP); and (4) panel seals (used to contain the waste within compartments in the facility). In addition, DOE is required to report to EPA any change in the activities or conditions at the WIPP that differ from those described in the Compliance Certification Application (CCA), and to immediately inform EPA of any activities or conditions at the WIPP that might cause the WIPP to exceed the containment requirements of the disposal regulations. This proposal, entitled ''Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR Part 191 Disposal Regulations: Certification Decision; Proposed Rule,'' was published in the **Federal Register** at 62 FR 58791–58838 on October 30, 1997, which marked the start of a 120-day public comment period. EPA's proposed decision to certify WIPP is based on an extensive independent technical review and evaluation (including confirmatory audits and inspections) of the DOE's CCA and supplemental materials based on the requirements specified in the WIPP Compliance Criteria at 40 CFR part 194.

The public has raised air drilling for petroleum exploration as a potential scenario that should have been considered by the DOE in its submission of the Certification Compliance Application CCA. In the CCA, DOE assumes that mud is the fluid used in conjunction with drilling for resources. EPA has received comments indicating that the use of air (instead of mud) is a drilling technique that should be considered in the performance of the WIPP. EPA has analyzed the potential for air drilling, and the potential impacts that air drilling could have on the performance of the WIPP. This analysis is now available for public review in EPA's dockets.

The Agency concludes from its analysis of the impacts of air drilling that no adverse consequences would result on the ability of the WIPP site to meet the Agency radioactive waste disposal standards at 40 CFR 191. Therefore, the Agency's proposed decision of October 23, 1997, to issue the DOE a certification of compliance remains unchanged.

Dated: January 21, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–1913 Filed 1–26–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE53

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Erigeron decumbens var. decumbens (Willamette Daisy) and Fender's Blue Butterfly (Icaricia icarioides fenderi) and Proposed Threatened Status for Lupinus sulphureus ssp. kincaidii (Kincaid's lupine)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for a plant and a butterfly, *Erigeron decumbens* var. *decumbens* (Willamette daisy) and Fender's blue butterfly (*Icaricia icarioides fenderi*), and proposes threatened status for a plant, *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine). These species are restricted to native prairie in the Willamette Valley of Oregon and are currently known from a few small remnants of a formerly widespread distribution. In addition to its Oregon occurrences, *L. sulphureus* ssp. *kincaidii* is also known from one small site in southern Washington. The three taxa are threatened by one or more of the following—commercial and/or residential development, agriculture, silviculture, road improvement, over-collection, herbicide use, and naturally occurring demographic and random environmental events. This proposal, if made final, would invoke the Federal protection and recovery provisions of the Act for these plant and butterfly species.

DATES: Comments from all interested parties must be received by March 30, 1998. Public hearing requests must be received by March 13, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 SE 98th Ave., Suite 100, Portland, Oregon 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew F. Robinson, Jr., Botanist; or Diana Hwang, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** section above or telephone 503–231–6179, FAX 503–231–6195).

SUPPLEMENTARY INFORMATION:

Background

Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) are restricted to the Willamette Valley of Oregon. The valley is a 209 kilometer (km) long (130 miles (mi)) and 32–64 km (20–40 mi) wide alluvial flood plain with an overall northward gradient (Orr *et al.* 1992). The valley is narrow and flat at its southern end, widening and becoming hilly near its northern end at the confluence of the Willamette and Columbia Rivers. In addition to its Oregon occurrences, *L. sulphureus* ssp. *kincaidii* is also known from one small site in southern Washington.

The alluvial soils of the Willamette Valley and southern Washington host a mosaic of grassland, woodland, and forest communities. Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* occupy native grassland habitats within the Willamette Valley. Based on the limited available evidence, Franklin and Dyrness (1973) asserted that most Willamette Valley grasslands are seral (one stage in a sequential progression), requiring natural or human-induced disturbance for their maintenance. Johannessen *et al.* (1971) indicated that the vast majority of Willamette Valley grasslands would be forested if left undisturbed. Important exceptions to this successional pattern are grass balds on valley hillsides, which may be climax grasslands due to the presence of deep, fine-textured, self-mulching soils or xeric (very dry) lithosoils (Franklin and Dyrness 1973).

Two native prairie types occur in the Willamette Valley, wet prairie and upland prairie. Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* are typically found in native upland prairie with the dominant species being *Festuca rubra* (red fescue) and/or *Festuca idahoensis* (Idaho fescue) and *Calochortus tolmiei* (Tolmie's mariposa), *Silene hookeri* (Hooker's catchfly), *Fragaria virginiana* (broadpetal strawberry), *Sidalcea virgata* (rose checker-mallow), and *Lomatium* spp. (common lomatium) serving as herbaceous indicator species (Hammond and Wilson 1993). These dry, fescue prairies make up the majority of habitat for Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii.* Although Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* are occasionally found on steep, south-facing slopes and barren rocky cliffs, neither of these species appear capable of occupying the most xeric oatgrass communities on these south facing slopes.

The primary habitat for *Erigeron decumbens* var. *decumbens* is native wetland prairie. This habitat is characterized by the seasonally-wet *Deschampsia caespitosa* (tufted hairgrass) community that occurs in low, flat regions of the Willamette Valley where flooding creates anaerobic and strongly reducing soil conditions. This wet prairie community includes *Juncus* spp. (rush) and *Danthonia californica* (California oatgrass) as co-dominant native species, as well as the introduced species *Festuca arundinaceae* (tall fescue), *Bromus japonicus* (Japanese brome) and *Anthoxanthum odoratum* (sweet vernal grass) (USFWS 1993). Another endangered species, *Lomatium bradshawii* (Bradshaw's lomatium) also grows in wet prairie habitat. Atypically, one population of *E. decumbens* var. *decumbens* occurs on top of a dry, stony butte in an upland prairie.

The impact of humans on the botanical communities of the Willamette Valley date back several centuries to the Kalapooya Indians, who cleared and burned lands used for hunting and food gathering. Early accounts by David Douglas in 1826 indicate extensive burning of the valley floor, from its northern end at the falls of the Willamette River to its southern extremities near Eugene. Burned areas were documented by Douglas as being so complete as to limit the forage available for his horse and to reduce game availability (Douglas 1972). Accounts by other early explorers support Douglas' observations and suggest a pattern of annual burning by the Kalapooya (Johannessen *et al.* 1971). The Kalapooya land practices resulted in the maintenance of extensive wet and dry prairie grasslands, which may have facilitated their hunting efforts and limited the potential for sneak attacks by enemies (Clarke 1905, Douglas 1972, Minto 1900, Smith 1949). Although much of the woody vegetation was prevented from becoming established on the grasslands by this treatment, the random survival of young fire-resistant species such as *Quercus garryana* (Oregon white oak) accounted for the widely spaced trees on the margins of the valley (Habeck 1961). After 1848, burning decreased sharply through the efforts of settlers to suppress large-scale fires. Consequently, the open, park-like nature of the valley floor was lost, replaced by agricultural fields, dense oak and fir forests, and scrub lands following logging.

The Willamette basin covers approximately 2,600,000 hectares (ha) (6,400,000 acres (ac)), which was estimated in the mid-1880's to consist of one-sixth prairie and five-sixths forest (Lang 1885). The extent of the prairie component can be analyzed through historical information from land survey records. Natural grasslands described by Federal land surveyors in the 1850's were broken down into three distinct types—oak savannah, upland prairie, and wet prairie (Habeck 1961). Of the estimated 409,000 ha (1,010,000 ac) of historic native grasslands extant prior to 1850, approximately 277,000 ha (685,000 ac) appears to have consisted of upland prairie and 132,000 ha

(325,000 ac) of wet prairie (E. Alverson, The Nature Conservancy, Eugene, pers. comm., 1994).

This extensive resource was rapidly depleted through the conversion of native prairie to agricultural use during settlement. Within 30 years of passage of the Donation Land Act of 1850, most prairie lands were occupied by European-American settlers who quickly subdivided their original land grants to accommodate the rapid increase in population (Lang 1885). The level, open tracts of prairie were the first to go under the plow (Lang 1885) and only boggy, flood-prone areas prevented complete conversion of the native grassland community to cropped monoculture. Limitations on development imposed by seasonal flooding and a high water table were, however, overcome after 1936, when the U.S. Army Corps of Engineers (Corps) initiated water projects to provide flood control and security for expanded agricultural activity.

Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* likely once occurred over a large distribution throughout the historic native prairie, and have been eliminated from these areas as native prairie habitat has been converted to agriculture or otherwise developed. Native prairie vegetation in the Willamette Valley was decimated by the rapid expansion of agriculture during the 140-year period from the 1850's to the present. With extensive changes in the fire regime, disturbance forces that maintained native prairies were substantially altered. Fire suppression allowed shrub and tree species to overtake grasslands, while agricultural practices hastened the decline of native prairie species through habitat loss and increased grazing (Johannessen, *et al.* 1971; Franklin and Dyrness 1973). Refugia from these forces of change were limited to fence rows and intervening strips of land along agricultural fields and roadsides.

Although large prairie expanses dominated by native species had been lost by the early 1900's, many remnant grasslands with a large native species component have been recently identified. These remnants, even though dominated by exotic species, support the only remaining occurrences of native prairie species in the Willamette Valley. Current estimates of the remaining native upland prairie in the Willamette Valley total less than 400 ha (1,000 ac) (Alverson, pers. comm. 1994). This estimate represents only one-tenth of one percent of the original upland prairie once available to Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and less than one half of this habitat (84 sites) is currently occupied by Fender's blue butterfly and/or *L. sulphureus* ssp. *kincaidii* and/or *Erigeron decumbens* var. *decumbens*. Within this available habitat, *E. decumbens* var. *decumbens* occupies 28 sites across 116 ha (286 ac), *L. sulphureus* ssp. *kincaidii* occupies 51 sites across 145 ha (357 ac), while Fender's blue butterfly occupies 31 sites across 165 ha (408 ac). Similar losses have occurred for wet prairie habitats, but estimates of current acreage are not available.

Fender's Blue Butterfly

Fender's blue butterfly is one of about a dozen subspecies of Boisduval's blue butterfly (*Icaricia icarioides*). *Icaricia icarioides* is found in western North America; subspecies *fenderi* is restricted to the Willamette Valley (Dornfeld 1980; R. H. T. Mattoni, University of California, pers. comm. to C. Nagano 1997; J. Emmel, Hemet, California, pers. comm. to C. Nagano 1997). Fender's blue butterfly was described by Ralph W. Macey (1931) as *Plebejus maricopa fenderi* based on specimens he had collected in Yamhill County, Oregon. The species *maricopa* is currently considered to be a synonym of the species *icarioides* (Miller and Brown 1981). The species *icaricia* has been determined to be a member of the genus *Icaricia*, rather than the genus *Plebejus* (Miller and Brown 1981; R. H. T. Mattoni, pers. comm. to C. D. Nagano 1997). Subspecies *fenderi* was considered to be a synonym of the pardalis blue butterfly (*Icaricia icarioides pardalis*), an inhabitant of the central California Coast Range near San Francisco (Downey 1975; Miller and Brown 1981); however Fender's blue butterfly is a distinct taxon based on adult characters and geographic distribution (Dornfeld 1980; Hammond and Wilson 1993; R. H. T. Mattoni and J. Emmel, pers. comm. to C. D. Nagano 1997).

Fender's blue butterfly is a small sized butterfly with a wingspan of approximately 2.5 centimeter (cm) (1 inch (in)). The upper wings of the males are brilliant blue in color and the borders and basal areas are black. The upper wings of the females are completely brown colored. The undersides of the wings of both sexes are creamish tan with black spots surrounded with a fine white border or halo. The dark spots on the underwings of the males are small on Fender's blue butterfly; surrounded with wide white haloes on the pembina blue butterfly (*Icaricia icarioides pembina*); the underside is very pale whitish gray with broad haloes around the black spots on the hindwings of Boisduval's blue butterfly.

The historic distribution of Fender's blue butterfly is not precisely known due to the limited information collected on this species prior to its description in 1931. Although the type specimens for this butterfly were collected in 1929 by Ralph W. Macy, only a limited number of collections were made between the time of the subspecies' discovery and Macy's last observation on May 23, 1937, in Benton County, Oregon (Hammond and Wilson 1992a). A lack of information on the identity of the butterfly's host plant caused researchers to focus their survey efforts on common lupine species known to occur in the vicinity of Macy's collections. As a result, no Fender's blue butterflies were observed during 20 years of widespread investigation. Finally, Fender's blue butterfly was rediscovered in 1989 by Dr. Paul Hammond at McDonald Forest, Benton County, Oregon on an uncommon species of lupine, *Lupinus sulphureus* ssp. *kincaidii*. Based on this additional information, recent surveys have determined that the animal is confined to the Willamette Valley and currently occupies 31 sites in Yamhill, Polk, Benton, and Lane Counties (Hammond and Wilson 1993; Schultz 1996). One population at Willow Creek is found in wet, *Deschampsia*-type prairie, while the remaining sites are found on drier upland prairies characterized by *Festuca* spp. Sites occupied by Fender's blue butterfly are located almost exclusively on the western side of the valley, within 33 km (21 mi) of the Willamette River.

Although only limited observations have been made of the early life stages of Fender's blue butterfly, the life cycle of the species likely is similar to other subspecies of *Icaricia icarioides* (R. H. T. Mattoni, pers. comm. to C. Nagano 1997; G. Pratt, Riverside, California, pers. comm. to C. Nagano 1997; Hammond and Wilson 1993). Adult butterflies lay their eggs on perennial *Lupinus* sp. (Ballmer and Pratt 1988), the foodplant of the caterpillar during May and June. Newly hatched larvae feed for a short time, reaching their second instar in the early summer, at which point they enter an extended diapause (maintaining a state of suspended activity). Diapausing larvae remain in the leaf litter at or near the base of the host plant through the fall and winter and some individuals likely become active again in March or April of the following year. Some larvae may be able to extend diapause for more than one season depending upon the

individual and environmental conditions (R. H. T. Mattoni pers. comm. to C. Nagano 1997). Once diapause is broken, the larvae feed and grow through three to four additional instars, enter their pupal stage, and then emerge as adult butterflies in April and May. Behavioral observations of Fender's blue butterfly indicate the larvae are alert to potential predators, with individuals dropping from their feeding position on lupine leaves to the base of the plant at the slightest sign of disturbance (C. Schultz, University of Washington, pers. comm. 1994). The life cycle of Fender's blue butterfly may be completed in one year.

The larvae of many species of lycaenid butterflies, including *Icaricia icarioides*, possess specialized glands that secrete a sweet solution sought by some ant species who may actively ''tend'' and protect them from predators and parasites (Ballmer and Pratt 1988; G. Pratt pers. comm. to C. Nagano 1997). Although other subspecies of Boisduval's blue butterfly are tended by ants during their larval stage (Downey 1962, 1975; Thomas Reid Associates 1982; R. H. T. Mattoni and G. Pratt, pers. comm. to C. Nagano 1997), limited observations of Fender's blue butterfly larvae in the field have failed to document such a mutualistic association (Hammond 1994). However, this may be due to the nocturnal activity patterns of the larvae of *Icaricia icarioides* as it appears that this species has an obligate relationship with ants (G. Pratt pers. comm. to C. Nagano 1997). Non-native Argentine ants (*Iridomyrmex humilis*) have been observed tending Fender's blue butterfly larvae during indoor rearing trials (Schultz, pers. comm. 1994).

The near absence of Fender's blue butterfly at sites without *Lupinus sulphureus* ssp. *kincaidii* suggest that *L. laxiflorus* (spurred lupine) and *L. albicaulis* (sickle keeled lupine) are secondary foodplants used by the animal (Hammond and Wilson 1993k). Fender's blue butterfly inhabits two sites that contain only *L. laxiflorus*, where it is the primary foodplant (Schultz 1996) and *L. laxiflorus* co-occurs with *L. sulphureus* ssp. *kincaidii* at two additional sites (Hammond and Wilson 1993). Fender's blue butterfly occupies six sites containing only *L. albicaulis*, where it is the primary foodplant. However, the butterfly is declining at two of these sites. *Lupinus albicaulis* and *L. laxiflorus* may possess physical or biochemical properties that render them less suitable for Fender's blue butterfly than *L. sulphureus* ssp. *kincaidii*. This phenomenon in foodplants has been documented in other species of butterflies and moths (Longcore *et al.* 1997).

Lupinus Sulphureus ssp. Kincaidii

Lupinus sulphureus ssp. *kincaidii* was first described in 1924 by C.P. Smith as *L. oreganus* var. *kincaidii* from a collection made in Corvallis, Oregon (Kuykendall and Kaye 1993a). Phillips (1955) transferred the taxon to a subspecies status as *L. sulphureus* ssp. *kincaidii*. Hitchcock et al. (1961) retained the position noted by Phillips (1955), but preferred the combination as a varietal rank, *L. sulphureus* var. *kincaidii*.

Lupinus sulphureus ssp. *kincaidii* occupies 51 sites throughout the Willamette Valley and one site in southern Washington. The northern limit of *L. sulphureus* ssp. *kincaidii* is Lewis County, Washington, while it ranges south to Douglas County, Oregon, a latitudinal span of over 400 km (250 mi). This distribution implies a close association with native upland prairie sites that are characterized by heavier soils and mesic to slightly xeric soil moisture levels. At the southern limit of its range, the subspecies occurs on well-developed soils adjacent to serpentine outcrops where the plant is often found under scattered oaks (Kuykendall and Kaye 1993a).

With its low-growing habit and unbranched inflorescence, *Lupinus sulphureus* ssp. *kincaidii* is easily distinguished from other sympatric members of the genus *Lupinus*. Its aromatic flowers have a slightly reflexed, distinctly ruffled banner and are yellowish-cream colored, often showing shades of blue on the keel. The upper calyx lip is short, yet unobscured by the reflexed banner when viewed from above. The leaflets tend to be a deep green with an upper surface that is often glabrous. The plants are 4–8 decimeters (dm) (16–32 in) tall, with single to multiple unbranched flowering stems and basal leaves that remain after flowering (Kuykendall and Kaye 1993).

Lupinus sulphureus ssp. *kincaidii* is a long-lived perennial species, with a maximum reported age of 25 years (M. Wilson, Oregon State University, *in litt.*, 1993). Individual plants are capable of spreading by rhizomes producing clumps of plants exceeding 20 meters (m) (65.62 feet (ft)) in diameter (P. Hammond, independent consultant, pers. comm. 1994). The long rhizomes do not produce adventitious roots, apparently do not separate from the parent clump, and the clumps may be short-lived, regularly dying back to the crown (Kuykendall and Kaye 1993a). Self-incompatible, *L. sulphureus* ssp. *kincaidii* is pollinated by solitary bees and flies (P. Hammond, pers. comm. 1994). Seed set and seed production are low, with few (but variable) numbers of flowers producing fruit from year to year and each fruit containing an average of 0.3–1.8 seeds (Liston *et al.* 1994). Seeds are dispersed from fruits that open explosively upon drying.

Erigeron Decumbens var. Decumbens

Thomas Nuttall (1840) based his description of *Erigeron decumbens* on a specimen he collected in the summer of 1835. The autonym *E. decumbens* var. *decumbens* was automatically established by Cronquist (1947) when he described *E. decumbens* var. *robustior*. Recent revisions of the *Erigeron* genus (Strother and Ferlatte 1988, Nesom 1989) treat the plant as a variety, *E. decumbens* var. *decumbens*.

According to Strother and Ferlatte (1988), *Erigeron decumbens* var. *decumbens* is geographically limited to the Willamette Valley. They also restrict the morphologically similar *E. decumbens* var. *robustior* to Humboldt and western Trinity Counties, California. Intermediate specimens of *Erigeron* from southern Oregon are considered by Strother and Ferlatte (1988) to be robust specimens of *E. eatonii* var. *plantagineus*.

A review of herbarium specimens by Clark *et al.* (1993) shows a historical distribution of *Erigeron decumbens* var. *decumbens* throughout the Willamette Valley. Collections were frequent between 1881 and 1934, yet from 1934 to 1980 no collections or observations were made (Clark *et al.* 1993). The species was rediscovered in 1980 in Lane County, Oregon, and has since been identified at 28 sites in Polk, Marion, Linn, Benton, and Lane counties, Oregon. With 28 occurrences and 115 ha (284 ac) of occupied habitat, *E. decumbens* var. *decumbens* has the most restricted range of the species proposed for listing herein.

Erigeron decumbens var. *decumbens* is a perennial herb, 15–60 mm (0.6–2.4 in.) tall, with erect to sometimes prostrate stems at the base. The basal leaves often wither prior to flowering and are mostly linear, 5–12 cm (2–5 in.) long and 3–4 mm (0.1–0.2 in.) wide. Flowering stems produce 2–5 heads, each of which is daisy-like, with pinkish to pale blue ray flowers and yellow disk flowers. Ray flowers often fade to white with age (Siddall and Chambers 1978). The morphologically similar *E. eatonii* occurs east of the Cascade Mountains, while the sympatric species *Aster hallii* flowers later in the summer. *Erigeron decumbens* var. *decumbens* can be confused with *A. hallii* in their vegetative state, but close

examination reveals the reddish stems of *A. hallii* in contrast to the green stems of *E. decumbens* var. *decumbens* (Clark *et al.* 1993).

As with many species in the family Asteraceae, *Erigeron decumbens* var. *decumbens* produces large quantities of wind-dispersed seed. Flowering typically occurs in June and July with pollination carried out by syphrid flies and solitary bees. Seeds are released in July and August. Although the seeds are wind-dispersed, the short stature of this species likely precludes the long-distance travel of many of these seeds. *Erigeron decumbens* var. *decumbens* is capable of vegetative spreading and is commonly found in large clumps scattered throughout a site (Clark *et al.* 1993).

Previous Federal Action

Erigeron decumbens var. *decumbens* was initially included as a category 2 candidate in a Notice of Review published by the Service on December 15, 1980 (45 FR 82506). Category 2 candidates were those species for which the Service had information in its possession indicating that listing may be appropriate, but for which additional information was needed to support the preparation of a proposed rule. On November 28, 1983, the Service published a Notice of Review upgrading this species to category 1 status (48 FR 53649). Category 1 taxa were taxa for which the Service had sufficient data in its possession to support preparation of listing proposals. Subsequently, *E. decumbens* var. *decumbens* was reassigned category 2 candidacy by a Notice of Review published on September 27, 1985 (50 FR 39527). On February 21, 1990 the Service published a Notice of Review (55 FR 6202) that reinstated *E. decumbens* var. *decumbens* as a category 1 candidate and also designated *Lupinus sulphureus* ssp. *kincaidii* as a category 2 candidate (55 FR 6121). The Service published a Notice of Review on February 28, 1996 (61 FR 7596), updating the candidate species list and changing the policy on candidates to discontinue the use of candidate categories. *Erigeron decumbens* var. *decumbens* was retained as a candidate species; however, *Lupinus sulphureus* ssp. *kincaidii* and other former category 2 candidates were not. The 1997 Notice of Review retained *Erigeron decumbens* var. *decumbens* as a candidate species; *Lupinus sulphureus* ssp. *kincaidii* was not included as a candidate. Since this Notice of Review was published, the Service has reevaluated the available information and determined that listing is warranted for both *Erigeron decumbens* var. *decumbens* and *Lupinus sulphureus* ssp. *kincaidii.*

Fender's blue butterfly was initially assigned to category 3A taxa in the Notice of Review published by the Service on January 6, 1989 (54 FR 572). The best available information at that time indicated that this butterfly was likely extinct because the subspecies was last observed in 1937. Category 3A taxa were taxa for which the Service had pervasive evidence of extinction, however if rediscovered, such taxa might be reconsidered for listing. The rediscovery of this butterfly in May 1989 prompted the Service to change the status of the subspecies to a category 2 candidate in the Notice of Review published on November 21, 1991 (56 FR 58830). In the Notice of Review published on February 28, 1996 (61 FR 7596), the Service retained Fender's blue butterfly as a candidate for listing. The 1997 Notice of Review also retained Fender's blue butterfly as a candidate for listing.

The processing of this proposed listing rule conforms with the Service's final listing priority guidance for fiscal year (FY) 1997 that was published in the **Federal Register** on December 5, 1996 (61 FR 64475–64481), and the Service's extension of the FY 1997 guidance published in the **Federal Register** on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats. This proposed rule for Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid's lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) falls under Tier 3. According to the Listing Priority Guidance, the Service is operating under a more balanced listing program and may process Tier 3 actions. Processing of this proposed rule is in accordance with the current Listing Priority Guidance.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to Fender's blue butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* Dougl. ssp. *kincaidii* (Smith) Phillips (Kincaid's lupine), and *Erigeron decumbens* Nutt. var. *decumbens* (Willamette daisy) are as follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The primary loss of habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii,* and *Erigeron decumbens* var. *decumbens* has resulted from the extensive alteration of native prairie in the Willamette Valley that has occurred over the last 140 years, described in the ''Background'' section above. As a result, over 99 percent of the native prairie in the Willamette Valley, the only known habitat area of Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii,* and *E. decumbens* var. *decumbens,* has been lost (E. Alverson, pers. comm. 1994).

Within the 84 remnants of native prairie occupied by these species in the Willamette Valley, Fender's blue butterfly occurs at 31 sites (Hammond and Wilson 1993, Schultz 1996), *Lupinus sulphureus* ssp. *kincaidii* occurs at 51 sites (Kuykendall and Kaye 1993a), and *Erigeron decumbens* var. *decumbens* occurs at 28 sites (Clark *et al.* 1993). In this collection of sites, Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* are found in close association, occurring together at a total of 24 sites. *Erigeron decumbens* var. *decumbens* co-occurs with *L. sulphureus* ssp. *kincaidii* at only one site and with Fender's blue butterfly at only this same site, Baskett Butte. Typically these sites are small, with extirpation likely in the near future. Activities that destroy, modify or curtail the habitat of *L. sulphureus* ssp. *kincaidii, E. decumbens* var. *decumbens,* and Fender's blue butterfly are discussed below.

The immediacy of the threat of habitat loss in the last remaining 84 remnants of native prairie occupied by these species has been well documented. Habitat at 80 percent of the sites (e.g., 68 sites) is rapidly disappearing due to

agriculture practices, development activities, forestry practices, grazing, roadside maintenance, and commercial Christmas tree farms.

At least eleven prairie remnants are likely to be impacted by agricultural activities. Five of these are wetland prairies occupied by *Erigeron decumbens* var. *decumbens* and the remaining six are upland prairies occupied by *Lupinus sulphureus* ssp. *kincaidii* and Fender's blue butterfly. The types of impacts include examples such as a wheat field boundary adjustment near Buell in Polk County (Mill Creek-Hwy 22 at Buell) that is likely to lead to loss of a population of Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* (Hammond 1994). By 1996, this boundary adjustment was implemented with a diminished population of *L. sulphureus* ssp. *kincaidii* and Fender's blue butterfly still present; however, no Fender's blue butterflies were observed at this site in 1997 (Hammond, pers. comm. 1997). The majority of the habitat supporting populations of each of these species are habitat remnants, e.g., small habitat patches remaining after other habitat loss has occurred. Small habitat patches that occur along State and County roadsides face greater threats from agriculture than those occurring along non-roadside areas. While in past decades many roadside habitats were less disturbed, today roadside stretches of habitats adjoining grass seed farms are now being disked and/or sprayed with herbicides to kill all roadside vegetation (A. Robinson, U.S. Fish and Wildlife Service, pers. comm. 1997). Grass seed farms use herbicide spraying to create bare soil as a common practice to prevent the spread of weeds from roadsides into the grass seed fields. Many of these areas are inhabited by populations of *E. decumbens* var. *decumbens.*

Urban development has caused additional loss of prairie habitat (Clark *et al.* 1993; Hammond 1992, 1994, 1996; Kuykendall and Kaye 1993; Liston *et al.* 1994; Schultz, 1996; Sidall and Chambers 1978). Destruction of upland prairie habitat occupied by Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* at several sites since 1992 has caused the butterflies at these sites to either completely die out or to be reduced to low, non-viable numbers (Hammond 1994, 1996). Future losses for 48 prairie remnants are projected as a result of urban development. This is the largest single factor currently threatening the survival of these prairie species. Nineteen of these remnants are wetland prairies supporting *Erigeron decumbens* var. *decumbens* and the other 29 are upland prairie remnants supporting populations of Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii.*

Examples of this type of threat are the Dallas-Oakdale Avenue sites 1 and 2 covering about 2 ha (5 ac) occupied by Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* near the town of Dallas in Polk County that is expected to be lost due to housing development planned at that site (Hammond 1996). The loss of native prairie habitat is further exemplified by the destruction of a site supporting 6,000 plants in Lane County, formerly the largest occurrence of *E. decumbens* var. *decumbens,* plowed under in 1986 prior to the development of an industrial and residential site (Kagan and Yamamoto 1987). Construction of a single driveway resulted in the loss of one site occupied by Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* in Kings Valley (Hammond 1994). Future highway construction potentially threatens the Nielson Road site of *L. sulphureus* ssp. *kincaidii* located in a highway expansion corridor in Lane County (Oregon Natural Heritage Program 1996). The population of Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* at Wren in Benton County occurs at two sites and covers about 9 ha (22 ac, however, only a portion of the population (7.4 ha) occurs on land owned by The Nature Conservancy (TNC). Heavy clearing and mowing activities on private lands adjacent to the TNC property has caused the decline of the lupine and is reducing the butterfly population at the Wren site to a non-viable state (Hammond and Wilson 1993). At the Willow Creek Main site, Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* occur together. This site is actively managed for the benefit of the species and the lands are considered relatively secure from development threats. Although this TNC site is considered a secure habitat area, extensive damage to habitat occupied by Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* occurred in 1996 during pipeline repair work conducted on a utility corridor easement. Two other moderately sized habitat patches occupied by *E. decumbens* var. *decumbens* face habitat loss from trash dumping (at the Grande Ronde site) and urbanization (at the west Eugene site) (Clark *et al.* 1993).

Silvicultural activities for timber production have threatened 6 percent (5 sites) of the remaining 84 prairie occurrences. The Coburg Ridge area-2 site in Lane County is the largest site occupied by Fender's blue butterfly and is among the best examples of remnant upland native prairie in the Willamette Valley (Hammond 1994). Native species were severely damaged, however, by the application of grass-specific herbicide that eliminated grasses and severely damaged other herbaceous species prior to tree planting activities. Approximately 1 ha (2.5 ac) was sprayed with herbicide. The saddle section of Coburg Ridge (area-2) that received aerial application of the herbicide is used by Fender's blue butterfly due to the presence of *Lupinus laxiflorus,* an alternate host plant, but this site does not contain *L. sulphureus* ssp. *kincaidii* (Schultz 1996). Loss of such alternate host plant sites further limits the habitat that is available to support Fender's blue butterfly. Additional tree-planting efforts by an adjacent Coburg Ridge landowner threatens to alter a different portion of the grassland in area-2, which has displayed the highest levels of butterfly activity in previous years (Schultz 1996). This site received spot herbicide application during the planting efforts, rather than the aerial broadcast method of the first case; therefore, the immediate effects to the habitat were not as severe. However, tree saplings were planted and as the trees grow they will eventually shade out the native prairie species, resulting in the loss of butterfly habitat. Herbicide spraying associated with reforestation after logging has also altered habitat and caused a decline of a *L. sulphureus* ssp. *kincaidii* population on Bureau of Land Management (BLM) properties. The other large sized occurrence of the butterfly and *L. sulphureus* ssp. *kincaidii* is in Benton County on McDonald State Forest and adjacent private lands that could be similarly affected by surrounding silvicultural operations.

Grazing is currently impacting 12 of the occupied habitat patches, with five of these being wetlands occupied by *Erigeron decumbens* var. *decumbens.* Most of the habitat occupied by Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* at the Oak Ridge south site in Yamhill County has been lost due to heavy grazing (Hammond 1996). Another site of *L. sulphureus* ssp. *kincaidii,* covering about 4.6 ha (11 ac) at Crabtree Hill in Lane County, is being damaged by extensive livestock grazing. The Crabtree Hill population of 6,000 plants is the largest known *L. sulphureus* ssp. *kincaidii* population.

The next most common threat to these species is roadside maintenance activities. At least 30 sites occur along roadsides and are impacted by maintenance activities. Examples

include the populations of Fender's blue butterfly and *Lupinus sulpheureus* ssp. *kincaidii* at the Oak Ridge north site that were recently lost due to road maintenance activities. When planned developments are completed on the Oak Ridge south site, the butterfly and lupine will essentially be extirpated from the Oak Ridge area (Hammond 1996). Two sites on Oregon Department of Transportation (ODOT) property and one site on land owned by the City of Corvallis receive only limited protection and could potentially be impacted by future development and highway maintenance activities. Publicly-owned roadside sites receive varying degrees of protection on a district by district basis. Although some roadside sites have been marked as no-spray zones by the Native Plant Society of Oregon, this protective measure is not always effective. The roadside portion of a *L. sulphureus* ssp. *kincaidii* population in Kings Valley continues to receive herbicide application during roadside weed control activities, despite efforts to restrict spraying. Other roadside sites receive only sporadic protection during herbicide application. Privately managed roadside occurrences do not fare much better; extensive mowing at the Wren sites in Benton County and Fir Butte Road roadside sites in Lane County have caused declines in Fender's blue butterfly and *L. sulphureus* ssp. *kincaidii* populations (Hammond 1994). With frequent weed control efforts ongoing, as well as highway and driveway construction, small roadside occurrences of Fender's blue butterfly, *L. sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* are unlikely to persist. Between 1994 and 1996, Fender's blue butterfly populations disappeared from (or are considered no longer viable) at least seven small roadside sites (Liberty Road, Monmouth Falls City Road, Fern Corner, Grant Creek, and McTimmonds Valley in Polk County, and two sites at Wren) and populations at many of the remaining roadside sites continue to decline.

Between 1990 and 1992, three sites occupied by both Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* were lost in the McTimmond's Valley to the expansion of Christmas tree farming operations (Hammond 1994). Conversion of these three sites destroyed approximately 3 ha (7 ac) of habitat along roadside and private land that comprised the nucleus of two Fender's blue butterfly populations and a substantial number of *L. sulphureus* ssp. *kincaidii* plants. The two roadside occurrences of the butterfly that remain nearby are no longer considered viable due to the loss of the source butterfly populations and considerable numbers of *L. sulphureus* ssp. *kincaidii* plants. Hammond (1994) stated that these two roadside occurrences are not expected to persist for more than a few additional years. The Service does not know if the two roadside occurrences still exist.

In summary, habitat loss from a wide variety of causes (urbanization, agriculture, silvicultural practices, and roadside maintenance) is a severe problem faced by Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* at a majority of their occurrences. Development and land alteration in the Willamette Valley has been so extensive that all the occurrences of the three species on the valley floor have essentially been relegated to small patches of habitat, except for three hilltop areas (Baskett Slough National Wildlife Refuge, Coburg Ridge, and McDonald State Forest) that, because of their topography, have not been subjected to agricultural and urban development activities occurring on the valley floor. Only 16 out the 84 remnant prairie sites that are occupied by one or more of these species are currently not threatened with destruction of habitat. However, herbivory, exotic weed species competition, and/or succession threaten all of these 16 sites (see Factor E below for more information). As habitat loss continues on these prairie remnants, populations of the three species in these 64 areas are likely to be extirpated. At least 12 of 31 sites occupied by Fender's blue butterfly, 47 of 51 sites occupied by *L. sulphureus* ssp. *kincaidii*, and 24 of 28 sites occupied by *E. decumbens* var. *decumbens* occur on private lands and, without further action, are expected to be lost in the near future. The threat of extinction for these species is high, given the expected continuing extirpation of small populations, the continued habitat loss on moderate sites and large sites, and the continuing degradation of habitat, even on secure sites (see Factor E below for more information about continuing degradation of habitat).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Rare butterflies, such as Fender's blue butterfly are highly prized by insect collectors. Although there are no studies on the impact of the removal of individuals from natural populations of this animal, based on studies of another lycaenid butterfly (Duffey 1968), and an endangered nymphalid butterfly (Gall, 1984a and 1984b), it is likely that Fender's blue butterfly could be adversely affected due to its isolated, possibly small populations. There is an international commercial trade for butterfly species proposed for listing, as well as other imperiled or rare butterflies (C.D. Nagano, J. Mendoza, and C. Schroeder, USFWS, pers. obs., 1992–1997) and specimens of Fender's blue butterfly are known to have recently been offered for trade (C. Nagano pers. obs.). Some collectors and dealers closely monitor listing activities by the Service and they are known to have stockpiled rare butterflies in anticipation of their becoming designated as endangered or threatened species (C.D. Nagano and J. Mendoza, pers. obs., 1992). Collecting from small colonies or repeated handling and marking (particularly of females and in years of low abundance) could seriously damage the populations through loss of individuals and genetic variability (Gall 1984b; Murphy 1988; Singer and Wedlake 1981). Collection of females dispersing from a colony also can reduce the probability that new colonies will be founded. Collectors pose a threat because they may be unable to recognize when they are depleting butterfly colonies below the thresholds of survival or recovery, especially when they lack appropriate biological training or the area is visited for a short period of time (Collins and Morris 1985).

There likely is high interest by collectors in Fender's blue butterfly due to its unique history of assumed extinction. The rediscovery in 1989 of this animal generated a great deal of publicity and interest, which in turn increases demand by collectors. Collectors often highly prize rare butterflies (Morris *et al.* 1991) and at times take all wild specimens obtainable for use in trade (U. S. Department of Justice, *in litt.* 1993). The populations of Fender's blue butterfly that remain face strong pressure from some members of the collecting community. Since many of the Fender's blue butterfly populations occur along public roadsides, the species is easily acquired and the extremely limited numbers and distribution of many of the remaining populations make this species vulnerable to collectors.

Due to their unattractive weedy like appearance, the threat to *Erigeron decumbens* var. *decumbens* and/or *Lupinus sulphureus* ssp. *kincaidii* from collection for horticultural purposes may be less than the threat from collectors faced by Fender's blue butterfly. Although no current evidence exists of such horticultural collection or

other overutilization for scientific purposes for either *E. decumbens* var. *decumbens* or *L. sulphureus* ssp. *kincaidii,* the threat posed by collecting for personal herbarium specimens is significant due to their rarity and the relative accessability of roadside populations.

C. Disease or Predation

Although most lepidopteran larvae suffer significant mortality from parasitoid attack, no instances of parasitism (Hammond 1993) or disease (R. H. T. Mattoni, pers. comm. to C. D. Nagano 1997) have been documented for Fender's blue butterfly.

Lupinus sulphureus ssp. *kincaidii* evidently hosts a number of herbivore and parasite species. Gall-forming insects attack unopened flowers and the bases of woody stems. Weevils lay eggs in the developing floral embryos and their offspring stimulate the fruit to produce callous tissue as a food source. Misdirection of the developing fruit by weevil larvae effectively prevents viable seed formation in the parasitized fruits (Kuykendall and Kaye 1993b). Weevil damage at some sites (e.g., Willow Creek) can be high, with some plants suffering 90 percent loss of mature fruits (E. Alverson, pers. comm. 1994). Herbivory has been documented at all three Fern Ridge Reservoir sites. Loss of floral parts through herbivory can also significantly reduce reproduction. Larvae of the silvery blue butterfly (*Glaucopsyche lygdamus*) graze flowers for pollen and in doing so effectively destroy them. Silvery blue larvae can reach high population densities at some of the sites and may reduce the fecundity of *L. sulphureus* ssp. *kincaidii,* but do not appear to cause the death of mature individual plants (C. Schultz, pers. comm. 1994).

Evidence of insect herbivory on *Erigeron decumbens* var. *decumbens* is limited. Insect species collected on *E. decumbens* var. *decumbens* in 1993 included sap-sucking insects (Hemiptera), a bruchid beetle, thrips, and mites (Clark *et al.* 1993). Other threats from herbivory include consumption of *E. decumbens* var. *decumbens* by cattle; no plants were found in areas currently or recently grazed during surveys conducted in 1986 (Kagan and Yamamoto 1987) and only one site was observed to support *E. decumbens* var. *decumbens* in the presence of cattle in 1993 (Clark *et al.* 1993).

D. The Inadequacy of Existing Regulatory Mechanisms

In 1963, the protection of natural botanical resources by the State of Oregon was initiated with the passage of the Oregon Wildflower Law (ORS 564.010–564.040). This law was designed to protect specific showy botanical groups including lilies, shooting stars, orchids, and rhododendrons from collection and trade by horticulturists interested in the cultivation of these species. It also prohibits the collection of wildflowers from ''within 500 feet of the centerline of any public highway'' (ORS 564.020 (2)). Although protective in spirit, the Oregon Wildflower Law carries minimal penalties and is rarely enforced. As a means of protecting *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* populations, the effectiveness of the law is doubtful.

In 1987, Oregon Senate Bill 533 was passed to augment the legislative actions available for the protection of the State's threatened and endangered species, both plant and animal. This bill, known as the Oregon Endangered Species Act, mandates responsibility for threatened and endangered species in Oregon to two State agencies—the Oregon Department of Agriculture (ODOA) for plant species (ORS 564.105) and the Oregon Department of Fish and Wildlife (ODFW) for ''wildlife'' species (ORS 496.172).

As reauthorized in 1995 (HB 2120), the Oregon Endangered Species Act does not include invertebrate animals in the definition of ''wildlife.'' Therefore, Fender's blue butterfly receives no protection under the Oregon Endangered Species Act. The Oregon Natural Heritage Program is the only State agency ''which tracks locations of and works to protect the rare, threatened and endangered invertebrates of Oregon'' (Oregon Natural Heritage Program 1993). The Heritage program has created a Sensitive Species invertebrate list, which includes Fender's blue butterfly as a ''priority 1 species.'' Priority 1 species are ''taxa threatened or endangered throughout range'' (Oregon Natural Heritage Program 1993). The program can assist planning agencies in managing lands for the benefit of rare invertebrate taxa, but it has no regulatory authority over rare invertebrates (Jimmy Kagan, Oregon Natural Heritage Program, pers. comm. 1997).

For plant species, the Oregon Endangered Species Act directs the ODOA to maintain a strong program to conserve and protect native plant species classified by the State as threatened or endangered. *Erigeron decumbens* var. *decumbens,* as a State-listed endangered species and *Lupinus sulphureus* ssp. *kincaidii* as a State-listed threatened species receive protection on State-managed lands under the Oregon Endangered Species Act. The ODOA is able to regulate the import, export, or trafficking of State-listed plant species when they are in transit (under ORS 564.1200). The ODOA's ability to protect plant populations, such as restricting take under the Oregon Endangered Species Act, is limited to ''land owned or leased by the State, or for which the State holds a recorded easement'' (ORS 564.115). ''Nothing in ORS 564.100 to 564.130 is intended * * * to require the owner of any commercial forest land or other private land to take action to protect a threatened species or endangered species'' on his lands (ORS 564.135(1)). As a result, populations of *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens* on private lands receive minimal protection from their State status as endangered or threatened.

ODOT owns and manages roadside habitat where *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* are present. The Oregon Endangered Species Act requires the protection of these State-listed species. ODOT has responded, in conjunction with Oregon State University researchers and the Native Plant Society of Oregon, by providing road crews with maps of these areas and instruction to avoid herbicide use.

Lupinus sulphureus ssp. *kincaidii, Erigeron decumbens* var. *decumbens,* and Fender's blue butterfly occurrences within the Service's National Wildlife Refuges receive protection within the boundaries of the refuge. All three species occur together only at Baskett Slough National Wildlife Refuge, which actively manages habitat for the benefit of the species.

Under section 7 of the Endangered Species Act, Federal agencies are required to consult with the Service if any action they regulate, fund or carry out may jeopardize the continued existence of an endangered or threatened species. Species that are candidates for listing receive no formal regulatory protection under the Act. The BLM and the Forest Service (FS) manage lands occupied by *Lupinus sulphureus* ssp. *kincaidii.* This species on BLM properties is given some protection through a general conservation agreement that applies to all Federal candidate species. The population of *L. sulphureus* ssp. *kincaidii* that occurs in the Umpqua National Forest is not covered under any conservation agreement and receives no official protection under the Act.

On Corps lands, discretion for the protection and management of State-

listed and Federal candidate species lies at the local level. Funds may be available in some years to proactively manage these species. *Lupinus sulphureus* ssp. *kincaidii*, *Erigeron decumbens* var. *decumbens*, and Fender's blue butterfly have received habitat protection, as well as support for research activity from the Corps through allocation of personnel and supplies to these projects. This protection and cooperation is voluntary for candidate species and is dependent on continuation of sufficient funding.

Populations of *Erigeron decumbens* var. *decumbens* occur in seasonally flooded wet prairies with hydric soils (Clark *et al.* 1993). Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill into waters of the United States, including navigable waters, wetlands (e.g., wet prairies), and other waters (33 CFR parts 320–330). The Clean Water Act requires project proponents to obtain a permit from the Corps prior to undertaking many activities (e.g., grading, discharge of soil or other fill material, etc.) that would result in the filling of wetlands subject to the Corps' jurisdiction. The Corps promulgated nationwide permit number 26 (NWP 26) to address fill of isolated or headwater wetlands. Under the 1996 reauthorized NWP 26 (61 FR 65873), project proposals that involve the fill of wetlands less than one third of an acre are considered authorized. Fill areas between 0.33 acre and 1 acre require only notification to the Corps. When placement of fill would adversely modify between 1 to 3 acres of wetland, the Corps circulates a predischarge notification to the Service and other interested parties for comment to determine whether or not an individual permit should be required for the proposed fill activity and associated impacts.

Individual Corps permits are required for discharge of material that would fill or adversely modify greater than 3 acres of wetlands. The review process for individual permits is more rigorous than for nationwide permits. Unlike nationwide permits, an analysis of cumulative wetland impacts is required for individual permit applications. Resulting permits may include special conditions that require potential avoidance or mitigation for environmental impacts. On nationwide permits, the Corps has discretionary authority to instead require an individual permit if the Corps believes that resources are sufficiently important, regardless of the wetland's size. In practice, however, the Corps generally does not require an individual permit when a project qualifies for a nationwide permit, unless a threatened or endangered species or other significant resources would be adversely affected by the proposed activity. In such cases, conferencing and consultation requirements of section 7 of the Act do pertain to the Corps' regulatory process.

Disking and some other farming, ranching and silviculture practices can degrade or destroy wetland habitat without a permit from the Corps because these activities are exempt from regulation under the Clean Water Act (33 CFR 323.4 (a)). The discontinuous configuration of the existing wet prairies further obscures these wetland losses. Occurrences of *Lupinus sulphureus* ssp. *kincaidii*, and Fender's blue butterfly in upland (non-wetland) areas receive no protection under section 404 of the Clean Water Act.

The primary inadequacies in existing regulations pertain to populations of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* that occur on private lands that currently have no connection to Federal authority or funding. Privately owned lands where populations of these species occur constitute a significant portion of the range of these species and play a substantial role in their continued existence.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Larger sites (greater than 10 ha (25 ac)) currently support relatively stable populations of Fender's blue butterflies, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* and provide the greatest potential for long-term persistence of the species if their current condition can be sustained or improved. However, few of these larger sites are secure from threats due to habitat loss. The only large site occupied by each of the species that is considered relatively secure from habitat loss is Baskett Slough National Wildlife Refuge in Polk County, although the habitat condition is declining from invasion by alien plants (Hammond 1996, Hammond 1994, Hammond and Wilson 1993). The two remaining large butterfly sites (Coburg Ridge area—1 and 2, and McDonald State Forest 1) and the one remaining large lupine site (McDonald State Forest 1) are not considered secure because these sites face loss or degradation of habitat through adjacent silviculture operations, ecological succession to shrub and forest, and competition from alien species (Hammond 1994, Kuykendall and Kaye 1993a).

Erigeron decumbens var. *decumbens* occupies three large sites. Two of those sites, one occurring on Corps property and the other on land owned by TNC, are being managed to benefit native prairie species and are relatively secure. The third site on private land is not managed for native prairie species and is not protected from habitat loss.

The small occurrences of the three taxa in this proposed rule, predominantly roadside and fence line/boundary sites, face an immediate threat of destruction from a variety of activities including development, agriculture, silvicultural practices, roadside maintenance, and herbicide application. The degree to which habitat loss threatens Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* becomes evident when the size of the populations is examined. Of the 51 sites occupied by *L. sulphureus* ssp. *kincaidii*, 40 consist of small area occurrences, less than 3.4 ha (8.3 ac) in size. The Fender's blue butterfly, occupying a subset of the lupine sites, shows a similar pattern with 23 of its 31 populations found on parcels of 3.4 ha (8.3 ac) or less. All of the small site occurrences of the Fender's blue butterfly are likely to be extirpated within the next five years because habitat may not be large enough to support viable populations. Of the 28 sites occupied by *E. decumbens* var. *decumbens*, 17 are less than 3.4 ha (8.3 ac) in size. These small occurrences account for a majority of the known populations for all three species.

Given the impact of such habitat losses on these small habitat patches, the extirpation of most of the small Fender's blue butterfly populations is anticipated within five years. *Lupinus sulphureus* ssp. *kincaidii* may survive for a time in these small sites; nonetheless, extirpation of *L. sulphureus* ssp. *kincaidii* at most, if not all, of their 40 small sites is also anticipated in the future. Similarly, these habitat losses are expected to also cause extirpation of the 17 small populations of *Erigeron decumbens* var. *decumbens*. Should these smaller populations disappear, only 8 habitat areas of Fender's blue butterfly (a 75 percent reduction in number of sites), 11 habitat areas of *L. sulphureus* ssp. *kincaidii* (a 78 percent reduction in number of sites), and 11 habitat areas of *E. decumbens* var. *decumbens* (a 61 percent reduction of sites) will remain.

The importance of these sites, particularly for the Fender's blue butterfly, lies in their potential to serve as corridors among larger, neighboring populations. The loss of these sites and

the loss of accompanying potential habitat, severely compromises the ability of any of the species to disperse from larger sites (Hammond and Wilson 1993, Schultz 1996). Larger populations will remain isolated, with no opportunities for migration and/or recolonization if local conditions become unfavorable. Thus, the status of the species as a whole declines.

A less visible threat to the smaller occurrences is the decrease in vigor and viability experienced by populations of few individuals. For the Fender's blue butterfly, small numbers and localized populations increase the risk of loss through random genetic or demographic factors. (Gilpin and Soule' 1986, Kuykendall and Kaye 1993b, Lacy 1992). Eighteen of the 31 Fender's blue butterfly sites contain 50 or fewer individuals. The threat of extinction due to naturally occurring genetic or demographic events can play a significant role in the instability of the species as a whole. The isolation of these small populations due to habitat fragmentation precludes recolonization from larger populations and could result in the permanent loss of occurrences once populations fall below a critical level.

This pattern of extinction and recolonization of connected colonies of butterflies has been disrupted by the extensive fragmentation of remaining habitat and the disruption of the disturbance regimes that have maintained them. The remnant populations, now small in numbers, are either unconnected or exchange individuals to a very limited degree. With their limited dispersal abilities, low numbers and dwindling habitat, a majority of the remaining populations of Fender's blue butterfly likely face permanent extirpation. The small population sizes at several sites pose their own threat to the survival of Fender's blue butterfly as demographic and genetic problems can push a population to extinction (Hammond and Wilson 1993).

Random human and environmental events may also affect the small populations of these species and cause future extirpations. The impact of such events are magnified by the size of the populations. It is much easier to cause the extirpation of a population occupying a small area than one occupying a larger area. Due to the small area occupied by many of the remaining populations, randomly occurring natural events can play a role in extirpation. One small population of *Erigeron decumbens* var. *decumbens* previously found on Finley National Wildlife Refuge was recently lost due to erosion (Meincke 1980). A natural change in a waterway course was apparently responsible. Shultz (1996) stated that large fluctuations in populations evident in her 3-year study from 1993 to 1995 indicate that Fender's blue butterfly populations are strongly influenced by random variation in weather conditions from year to year; these large fluctuations make Fender's blue butterfly extremely susceptible to loss of habitat and host plants due to human-caused events or invasive alien plants.

A serious long-term threat to all Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* occurrences is the change in community structure due to succession. Currently, succession has been documented for 70 of the 84 relic prairie sites occupied by one or more of these species proposed for listing. Invasion by alien plant species has been documented at 36 of these 84 prairie sites. The natural transition of grassland to forest in the absence of disturbance means that prairie sites left unmanaged likely will eventually be lost (Clark *et al.* 1993; Franklin and Dyrness 1973; Hammond and Wilson 1993; Johannsesen *et al.* 1971; Kuykendall and Kaye 1993). In addition, the presence of tall, fast-growing alien species speeds the conversion of open upland prairie to dense, rank grasslands and shrublands. Invasive woody species of concern include the alien plants *Rubus discolor* (Himalayan blackberry) and *Cytisus scoparius* (Scotch broom), and the native *Toxicodendron diversiloba* (poison oak). Non-native grass species aggressive enough to suppress *L. sulphureus* ssp. *kincaidii* and *E. decumbens* var. *decumbens* include *Holcus lanatus* (velvet grass), *Dactylis glomerata* (orchard grass), *Brachypodium sylvaticum* (false-brome), and *Arrhenatherum elatius* (tall oat-grass) (Hammond 1996).

The degree of the threat of succession at roadside sites varies considerably depending on the vegetation control employed by each County at each site. Fender's blue butterfly populations at small roadside sites are weak (low numbers) and are close to extinction either through degradation of habitat from invasion of alien grasses, succession by shrubs and trees, or through development activities (Hammond 1996). One roadside site at Oak Ridge that was previously considered stable has declined since 1992, and is being invaded by large thickets of *Rubus* ssp. (blackberry) and *Cytisus scoparius* (Hammond 1996).

Non-roadside sites in general face the greatest threat from succession/weed expansion and invasion due to a lack of disturbance that disrupts successional progress. Otherwise secure habitat on Corps lands is being heavily invaded by the alien plant *Arrhenatherum elatius*, and the butterfly population is alarmingly small (Schultz 1996). Prime habitat occupied by *Erigeron decumbens* var. *decumbens* at Baskett Butte is rapidly being overgrown with alien grass and trees (Hammond 1996). About 25 percent of the large Coburg Ridge site occupied by Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* is threatened by the profuse shrub growth of *Cytisus scoparius* (Hammond 1996). Regardless of the size of the site, invasion by non-native plants is a threat at all of the sites occupied by any of the three species proposed for listing in this rule.

The application of pesticides and biological control agents to control insect pests, such as gypsy moths, is also a threat to Fender's blue butterfly. Although the sensitivity of Fender's blue butterfly larvae to specific insecticides is not known, the potential result from use of gypsy moth control agents on habitats occupied by the Fender's blue butterfly should not be dismissed (Hammond 1994). The use of microbial insecticides, such as *Bacillus thuringiensis* (Bt) has been shown to have significant residual toxic impacts on native butterflies under field conditions even with heavy rain and ultraviolet light exposure (Schriber and Gage 1995).

Taken together as a category, other natural and manmade factors have a profound effect on the remaining populations of Fender's blue butterflies, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*. Nearly all of the populations are threatened by either alien species, successional transition of habitat, or demographic and genetic factors as a result of small population size. Populations of Fender's blue butterfly at all of the 31 sites are currently threatened by one of these factors. The same holds true for all 28 sites of *E. decumbens* var. *decumbens* and for all 51 sites of *L. sulphureus* ssp. *kincaidii*. Although progressing on a slower time scale, the encroachment of alien plants, the successional advance of tree and shrub species and other naturally occurring random events will, if unchecked, lead to reductions in population size, reductions in population viability and, ultimately, the extinction of these native prairie species.

The Service has carefully assessed the best scientific and commercial information available regarding the past,

present, and future threats faced by these species in determining to propose this rule. Threats to Fender's blue butterfly are more imminent than threats to *Lupinus sulphureus kincaidii* since the butterfly, with its biology and shorter life span, will exhibit more rapid declines in numbers and in the face of threats will be extirpated more quickly at any one location. Because of its longer life span, small numbers of *L. sulphureus* ssp. *kincaidii* plants are likely to persist longer in any given habitat area than are small numbers of butterflies. Threats to *Erigeron decumbens* var. *decumbens* are also more imminent than threats to *L. sulphureus* ssp. *kincaidii* because of the fewer populations of *E. decumbens* var. *decumbens*. Secondly, many of the populations of *E. decumbens* var. *decumbens* grow along roadsides adjacent to agricultural activities (especially grass seed farms) where herbicide spraying to create bare soil is common practice. Based on this evaluation, Fender's blue butterfly and *E. decumbens* var. *decumbens* are in danger of extinction throughout all or a significant portion of their respective ranges, while *L. sulphureus* ssp. *kincaidii* is likely to become endangered within the foreseeable future. Therefore, the Service proposes to list Fender's blue butterfly (*Icaricia icarioides fenderi*) and *E. decumbens* var. *decumbens* (Willamette daisy) as endangered and to list *L. sulphureus* ssp. *kincaidii* (Kincaid's lupine) as threatened.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (i) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The term ''conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is determined to be threatened or endangered. The Service finds that designation of critical habitat is not prudent for *Erigeron decumbens* var. *decumbens, Lupinus sulphureus* ssp. *kincaidii,* or Fender's blue butterfly at this time. Service regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species.

The listing of *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* in and of itself contributes to a certain level of risk from over-collection. This is because listing acknowledges the rarity of a species, which then creates a certain level of demand by collectors. Easily accessible roadside populations with few individuals would be particularly susceptible to indiscriminate collection by persons interested in rare plants and/or butterflies if not for the fact that location information is not readily available.

Designation of critical habitat for *Lupinus sulphureus* ssp. *kincaidii, Erigeron decumbens* var. *decumbens,* and Fender's blue butterfly is not considered prudent, because the disclosure of precise maps and descriptions of critical habitat in the **Federal Register** would likely subject these populations to loss of individuals and over-collection, resulting in the further decline of the species. The Fender's blue butterfly is also vulnerable to acts of vandalism, which may damage or eliminate populations of this animal.

In the case of Fender's blue butterfly, both criteria apply. As discussed under ''Summary of Factors Affecting the Species,'' this animal and its habitat are vulnerable to several activities, especially the removal of specimens for scientific or personal collections. The Service is concerned about the impacts of the illicit commercial trade on Fender's blue butterfly. Specimens of this species are known to have recently been offered for trade by a butterfly collector. Unauthorized collecting is an activity that can be difficult to control because it can be done in an inconspicuous and discreet manner. The international trade of butterflies, including listed species, is an established practice and the value of a specimen is commensurate with the quality of the specimen and its rarity. High prices for prized specimens can provide an incentive for illegal take and trade. Listing in itself increases the publicity and interest in a species' rarity, and thus may directly increase the value and demand for specimens. Trade of illegally captured or held butterflies and other invertebrates has lead to several arrests and convictions for violations of the Lacey Act (Claiborne 1997; Hoekwater 1997; Mendoza 1995; U. S. Department of Justice 1993, 1994, 1995a, 1995b; Williams 1996). However, with the designation of critical habitat, precise pinpointing of localities would result from publication of critical habitat descriptions and maps in the **Federal Register**. Since the access to many sites is not actively protected, managed or monitored closely enough to prevent trespass or restrict access, the disclosure of critical location information on rare species increases collection activities on the animal, even for butterflies that have been designated as endangered or threatened species.

Since many of the extant populations of Fender's blue butterfly are comprised of a small number of individuals (less than a few hundred individuals, and at seven sites only five individuals), one person seeking to augment a private or scientific collection could extirpate a population with the removal of a few individuals. Several populations are along roadsides, which make them particularly accessible. Therefore, designation of critical habitat would increase the vulnerability of smaller sites, thereby increasing the risk of extinction at these smaller sites from collection.

In addition to the threat of over-collection, critical habitat designation may also make Fender's blue butterfly and its habitat prone to visitation and impact by non-collectors curious about any of the three species discussed in this proposed rule. Curiosity seekers may inadvertently trample host plants and crush eggs, larvae or adult butterflies. Fender's blue butterfly co-occurs with *Lupinus sulphureus* ssp. *kincaidii* at 14 sites and also occurs with *Erigeron decumbens* var. *decumbens* at 1 site. Publication of critical habitat descriptions and maps for *L. sulphureus* ssp. *kincaidii, E. decumbens* var. *decumbens,* or Fender's blue butterfly would place all three species at an increased risk of harm from trampling or habitat destruction. For example, in the spring of 1997, naturalists intent on observing the endangered Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*) trampled and damaged its habitat in their quest to obtain photographs of the animal (C. Nagano, pers. obs. 1997).

Designation of critical habitat could also increase the vulnerability of Fender's blue butterfly habitat to intentional destruction by landowners

who do not want a protected species on their property. In the mid-1980's, a landowner disked the habitat of the now endangered Quino checkerspot butterfly (*Euphydryas editha quino*) and eliminated the species from the site after being informed about its presence (C. Nagano, pers. obs.).

Furthermore, the designation of critical habitat provides limited benefit in addition to the protection and awareness that these three taxa will receive by virtue of their listing. Section 7(a)(2) of the Act requires Federal agencies in consultation with the Service, to ensure that any action authorized, funded, or carried out by such agency, does not jeopardize the continued existence of a federally listed species, or does not destroy or adversely modify designated critical habitat. The occurrences of these three species are so closely associated to their habitat year-round that any designated critical habitat areas would overlap areas of species' presence and occurrence. Therefore, when a species is listed, an analysis to determine jeopardy under section 7(a)(2) would consider take associated with habitat impacts. Such an analysis would closely parallel any analysis of habitat impacts conducted to determine adverse modification of critical habitat. As a result, a determination of adverse modification of critical habitat for Fender's blue butterfly or *Lupinus sulfureus* ssp. *kincaidii* or *Erigeron decumbens* ssp. *decumbens* is highly likely to be accompanied with a determination of jeopardy. Listing of these species will ensure that section 7 consultation occurs and potential impacts to the species and its habitat are considered for any Federal action that may affect these species. In the case of Fender's blue butterfly, the listing of *L. sulfureus* ssp. *kincaidii* will also ensure that Federal agencies consult even when Federal actions may affect unoccupied potentially suitable habitat for the butterfly.

It is the intent of critical habitat designation to provide additional benefits to the species through increased awareness and management activities. Benefits resulting from designation of critical habitat are anticipated to be limited because Federal, State, and conservation group land managers with moderate and larger extant populations of Fender's blue butterfly and *Erigeron decumbens* ssp. *decumbens* have known of the occurrence of these species and have initiated management activities in several cases. The largest populations of the Fender's blue butterfly occur at Baskett Slough National Wildlife Refuge (1,400 individuals on 50 ha) and the second largest is at Willow Creek Main managed by TNC (764 individuals on 3.8 ha). The largest population of *Erigeron decumbens* ssp. *decumbens* occurs at Willow Creek Preserve managed by TNC (2,080 individual plants on 20.3 ha) and the second and third occur on Corps land (Fisher Butte has 1,500 plants on 20.3 ha and Fisher Butte Dike has 1,000 plants on 4.1 ha). All of the large populations of *Lupinus sulphureus* ssp. *kincaidii* occur on private lands and designating critical habitat for *L. sulphureus* ssp. *kincaidii* would reveal locations of the Fender's blue butterfly.

The BLM, FS, Corps, and the Service are aware of the presence and locations of the three species on their properties. The Corps and Service are managing the lands that are under their jurisdiction to restore habitat for the three species and are monitoring the existing populations.

Extant populations of Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* occur on State lands managed by ODOT and Oregon State University (OSU) College of Forestry. The ODOT is aware of locations of Fender's blue butterfly, *L. sulfureus* ssp. *kincaidii*, and *Erigeron decumbens* ssp. *decumbens* sites, and are currently managing these sites to avoid impacts from State road maintenance activities. The ODOT is a non-Federal representative of the Federal Highway Administration (FHA) for the purposes of section 7 consultation. Therefore, any ODOT activities funded by the FHA that may affect listed species would require section 7 consultation. The OSU Department of Botany and Plant Pathology has been working cooperatively with OSU College of Forestry to conserve habitats at McDonald State Forest where *L. sulphureus* ssp. *kincaidii* and Fender's blue butterfly occur in butterfly meadows on OSU lands (Mark Wilson, pers. comm. 1997).

Other Federal agencies will be notified with this proposed rule. Therefore, agencies such as the Department of Housing and Urban Development (HUD) would be subject to section 7 consultation under the Act. Agencies, such as HUD, with any actions that may impact listed species whether occurring on Federal, State, or private lands, would be subject to section 7 consultation under the Act. Since activities on Federal lands and federally funded activities would be subject to section 7 consultation and recovery planning with listing, protection of habitat will be addressed through the consultation and recovery processes.

Aside from consideration under section 7, the Act does not provide any additional protection to lands designated as critical habitat. Designating critical habitat does not create a management plan for the areas where the listed species occurs; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat.

Critical habitat designation would provide limited benefit on private lands. The primary reasons are that critical habitat designation provides protection only on Federal lands or on private lands if there is Federal involvement through authorization or funding of, or participation in, a project or activity. In other words, a designation of critical habitat on private lands does not compel or require private landowners to undertake recovery or active management for the species. Also, Federal actions on private lands are likely to be limited, but nevertheless would require section 7 consultation if such actions may affect listed species. In addition, private landowners with sizeable or significant populations of the Fender's blue butterfly, *Lupinus sulfureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* are aware of the populations of the species on their lands. Landowners and managers of smaller sites will be notified with publication of the proposed rule. In the case of The Nature Conservancy, management and conservation activities have been implemented.

Smaller roadside sites may benefit from critical habitat designation by increasing awareness of locations to County road maintenance crews. However, the benefit of critical habitat designation of these smaller sites would be small to negligible when compared to the increased risks and vulnerability these smaller sites may face from collection or vandalism with disclosure of their locations.

In summary, the Service believes that any benefit potentially provided by designation of critical habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* would be outweighed by the increase in threats to the species and their habitat from illegal collecting and vandalism caused by such designation. Therefore, the Service has determined that designation of critical habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens* is not prudent. Protection of Fender's blue butterfly habitat, *Lupinus*

sulphureus ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* will be addressed through the section 7 consultation process and through recovery actions.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm of animals and certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action is likely to adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

As a result of the occupation of roadside habitat by *Erigeron decumbens* var. *decumbens*, *Lupinus sulphureus* ssp. *kincaidii*, and Fender's blue butterfly, the FHA would become involved with these species in the event of full or partial funding of state highway maintenance by the Federal government. Such maintenance activities would be subject to review under the Act. Additionally, sites supporting occurrences of *E. decumbens* var. *decumbens*, *L. sulphureus* ssp. *kincaidii*, and Fender's blue butterfly on private holdings would be subject to review under section 7 of the Act if HUD is involved in the issuance of housing loans. The BLM, FS, and Corps manage lands known to contain extant populations of the three species in this proposed rule. In all of these cases, the consultation and conservation requirements placed upon Federal agencies by the Act would be initiated. Furthermore, opportunities for land acquisition, conservation agreements and other recovery strategies would be bolstered by listing these species as endangered or threatened.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants and 50 CFR 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction of areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law (see 16 U.S.C. § 1538 (a)(2)(B). Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to *Lupinus sulphureus* ssp. *kincaidii* in the future if a special regulation is promulgated after opportunity for public notice and comment. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* are not common in cultivation or in the wild.

The Act and implementing regulations also set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the range of a species. *Erigeron decumbens* var. *decumbens*, and *Lupinus sulphureus* ssp. *kincaidii* are known to occur on Federal lands under the jurisdiction of the Service, Corps, BLM, or FS. In the event of listing, occurrences of these species on Federal lands would be protected from collection, damage or destruction under section 9 of the Act. State law provides some protection to populations on State-owned lands as discussed previously. In appropriate cases, collection of these species could be allowed through the issuance of a Federal endangered species permit. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of Section 9.

As a listed wildlife species, Fender's blue butterfly would receive more extensive protection under the Act than described for the plant species above.

Section 9 prohibits the take of any listed wildlife species by any person subject to the jurisdiction of the United States. The Service believes that, based on the best available information, the following actions would not be violations of section 9:

(1) Possession, delivery, or movement, including interstate transport and import or export from the United States, involving no commercial activity, of dead specimens of Fender's blue butterfly that were collected prior to the date of publication in the **Federal Register** of a final regulation adding this taxon to the list of endangered species;

(2) Actions that may affect Fender's blue butterfly and are authorized, funded, or carried out by a Federal agency when the action is conducted in accordance with section 7 of the Act;

(3) Land actions or management carried out under a habitat conservation plan approved by the Service pursuant to section 10(a)(1)(B) of the Act, or an approved conservation agreement; and,

(4) Scientific research carried out under a recovery permit issued by the Service pursuant to section 10(a)(1)(A) of the Act.

Potential activities involving Fender's blue butterfly that the Service will likely consider a violation of section 9 include, but are not limited to, the following:

(1) Take of Fender's blue butterfly without a recovery permit pursuant to section 10(a)(1)A) or an incidental take permit pursuant to section 10(a)(1)(B) of the Act (this includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions);

(2) Possess, sell, deliver, carry, transport, or ship illegally taken specimens of Fender's blue butterfly, except for properly documented antique specimens of this taxon at least 100 years old, as defined by section 10(h)(1) of the Act;

(3) The unauthorized release of biological control agents that attack, damage, or kill any stage of this taxa;

(4) The removal or destruction of the foodplants being utilized by Fender's blue butterfly, defined as *Lupinus sulphureus* ssp. *kincaidii, L. albicaulis,* and *L. laxiflorus;* and,

(5) Destruction or alteration of Fender's blue butterfly habitat by grading, leveling, plowing, mowing, burning, herbicide or pesticide spraying, intensively grazing, or otherwise disturbing grasslands that result in the death or injury of adult butterflies and/or their larvae or eggs, or that impair the species' essential breeding, foraging, or sheltering.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the State Supervisor of the Service's Oregon State Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plant and animal species and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503–231–2063; FAX 503–231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on *Erigeron decumbens* var. *decumbens, Lupinus sulphureus* ssp. *kincaidii,* and Fender's blue butterfly.

Final promulgation of the regulation on these species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office (see **ADDRESSES** above).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Oregon State Office (see **ADDRESSES** above).

Author. The primary author of this proposed rule is Richard VanBuskirk, Fish and Wildlife Biologist (see **ADDRESSEES** section). Assistance with the portions of this proposed rule dealing with Fender's blue butterfly were completed by Chris Nagano, staff entomologist, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order, under INSECTS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Fender's blue butterfly.	*Icaricia icarioides fenderi.*	U.S.A. (OR)	NA	E		NA	NA
*	*	*	*	*	*		*

3. Amend section 17.12(h) by adding the following, in alphabetical order, under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
FLOWERING PLANTS							
*	*	*	*	*	*		*
Erigeron decumbens var. *decumbens.*	Willamette daisy	U.S.A. (OR)	Asteraceae	E		NA	NA
*	*	*	*	*	*		*
Lupinus sulphureus ssp. *kincaidii.*	Kincaid's lupine	U.S.A. (OR, WA)	Fabaceae	T		NA	NA
*	*	*	*	*	*		*

Dated: December 30, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–1851 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE59

Endangered and Threatened Wildlife and Plants; Proposed Rule to List the San Bernardino Kangaroo Rat as Endangered; and Notice of Public Hearing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to make the provisions of the emergency rule listing the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act), permanent. The historic range of the San Bernardino kangaroo rat has been reduced by approximately 96 percent due to agricultural and urban development. Of the remaining occupied habitat, a minimum of 90 percent is threatened by habitat loss, degradation, and fragmentation due to sand and gravel mining operations, flood control projects, and urban development. In addition, all of the remaining populations of San Bernardino kangaroo rat are threatened by seasonal flood events due to current restriction of the subspecies to these active flood plain habitats. Additional data and information on the status of this animal, which may assist the Service in making a final decision on this proposed action, is solicited.

DATES: Comments from all interested parties must be received by March 30, 1998. A public hearing has been scheduled for Tuesday, March 3, 1998, from 2–4 P.M. and 6–8 P.M.

ADDRESSES: Comments and materials concerning this proposal should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. The public hearing will be held at the San Bernardino Hilton, 285 E. Hospitality Lane, San Bernardino, California.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Field Office, at the address listed above (telephone 760/431–9440).

SUPPLEMENTARY INFORMATION:

Background

For a thorough discussion of biological information, previous Federal action, a summary of the factors affecting the species, the reasons why critical habitat is not being proposed, and conservation measures available to listed and proposed species, consult the emergency rule on the San Bernardino kangaroo rat published in this same **Federal Register,** separate part.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited.

Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this subspecies;

(2) The location of any additional populations of this subspecies;

(3) Additional information concerning the range, distribution, and population size of this subspecies; and

(4) Current or planned activities in the subject area and their possible impacts on this subspecies.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. In anticipation of public interest, the Service has scheduled a public hearing on Tuesday, March 3, 1998, at the San Bernardino Hilton. Parties wishing to make statements for the record should bring a copy of their statement to the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. There are no limits to the lengths of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comment period closes on March 30, 1998. Written comments should be submitted to the Service Office listed in the **ADDRESSES** section.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section (4)(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Author

The primary author of this proposed rule is Arthur Davenport of the Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Kangaroo rat, San Bernardino.	*Dipodomys merriami parvus.*	U.S.A. (CA)	Entire	E	631,____	NA	NA
*	*	*	*	*	*		*

Dated: January 20, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–2010 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 17
Tuesday, January 27, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on February 5, 1998, at the Double Tree Hotel, Columbia River, Portland, Oregon. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:15 a.m. and continue until 3:00 p.m. Agenda items to be discussed include, but are not limited to: review ongoing and potential activities for the coming year, and progress reports on the scoping phase of the review of Northwest Forest Plan and the strategic research plan. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested person are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–808–2180).

Dated: January 21, 1998.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 98–1880 Filed 1–26–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Evaluation of Coastal Zone Management Program and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Commonwealth of the Northern Marianas Islands, Puerto Rico, Virgin Islands, and New York's Coastal Zone Management Programs and the Jobos Bay National Estuarine Research Reserve in Puerto Rico.

These evaluations will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to coastal program or estuarine research reserve program implementation. Evaluation of Coastal Zone Management and Estuarine Research Reserve Programs require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document or final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Commonwealth of the Northern Marianas Islands Coastal Zone Management Program site visit will be from February 18–27, 1998. One public meeting will be held during the week. This meeting is scheduled for 6:30 p.m., on Wednesday, February 25, 1998, at the Public Library Conference Room, Saipan.

The Puerto Rico Coastal Zone Management Program site visit will be from February 23–27, 1998. One public meeting will be held during the week. This meeting is scheduled for 7 p.m., on Monday, February 23, 1998, at the Department of Environmental Resources Auditorium, Tropical Medicine Building, San Juan, Puerto Rico.

The Jobos Bay National Estuarine Research Reserve in Puerto Rico site visit will be from March 23–27, 1998. One public meeting will be held during the week. This meeting is scheduled for 1:30 p.m., on Wednesday, March 25, 1998, at the Reserve's Visitor's Center, Road 705, Kilometer 2.3, Main Street, Aguirre, Puerto Rico.

The Virgin Islands Coastal Zone Management Program site visit will be from March 30–April 3, 1998. One public meeting will be held during the week. This meeting is scheduled for 7 p.m., on Monday, March 30, 1998, at the Department of Planning and Natural Resources, Lower Level Conference Room, St. Thomas, Virgin Islands.

The New York Coastal Zone Management Program site visit will be from March 30–April 3, 1998. A public meeting will be held on Tuesday, March 31, 1998, from 7–9 p.m. at the Tonawanda City Hall in the City Council Chambers, 200 Niagara Street, Tonawanda, NY.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division (PCD), Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090, ext. 126.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: January 21, 1998.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone.

[FR Doc. 98–1937 Filed 1–26–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012198A]

Notice of Public Hearings on Individual Fishing Quotas

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

ACTION: Notice.

SUMMARY: Notice is hereby given that NMFS will hold three public meetings on Individual Fishing Quotas (IFQs) in compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended by the Sustainable Fisheries Act of 1996. The meetings will be held in the Caribbean, South Atlantic and Western Pacific Council regions. These meetings supplement those held by the National Research Council (NRC) in the other five Council regions. Hearings have been scheduled for the Caribbean and South Atlantic Council regions; the schedule for the Western Pacific Council region will be announced at a later date.

DATES: The public hearing on IFQs for the Caribbean Council region will be on February 12, 1998, beginning at 1 p.m.; for the South Atlantic Council region, the hearing will be held on March 3, 1998, beginning at 7 p.m.

ADDRESSES: Public hearings on IFQs for the Caribbean and South Atlantic Council regions will be held at the following locations, respectively: the Marriott's Frenchman's Reef Beach Resort, St. Thomas, U.S. Virgin Islands, telephone: 809–776–8500; Jekyll Island Club, 371 Riverview Drive, Jekyll Island, Georgia, telephone: 912–635–2600.

FOR FURTHER INFORMATION CONTACT: Amy Gautam, NMFS, Office of Science and Technology; telephone: (301)713–2328.

SUPPLEMENTARY INFORMATION: Participants will be given five minutes each to provide a statement regarding any aspect of IFQ implementation identified in the study requirements of the Magnuson-Stevens Act. All input will be provided to the NRC for use in preparation of its study of a national policy with respect to IFQs. The date and location of the public hearing in the Western Pacific Council region will be announced.

Dated: January 22, 1998.

William W. Fox, Jr.

Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 98–1933 Filed 1–26–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011698B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a meeting which is open to the public.

DATES: The meeting will begin on Monday, February 9, 1998, at 1 p.m. and will continue through 4 p.m. Thursday, February 12, 1998. The Tuesday and Wednesday sessions will begin at 8 a.m. and may go into the evening until business for the day is completed. An opportunity for public comment will be provided at 4 p.m. each day of the meeting and 3 p.m. on Thursday.

ADDRESSES: The meeting will be held in the conference room at the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop a work plan for 1998 and to prepare technical advice and reports to support Council decisions throughout the year. Specific issues the GMT will address include: (1) discuss proposed revisions to the stock assessment process and appoint representatives to track the various assessments; (2) prepare a work plan for 1998 GMT activities; (3) prepare and review sections of the draft groundfish fishery management plan amendment; (4) review methodology for developing inseason catch projections; (5) prepare recommendations related to groundfish research and data needs; (6) evaluate data and analysis requirements related to lingcod and rockfish allocation and management, and begin preparation of the analysis; (7) discuss issues related to a groundfish vessel/permit buy-back program; (8) evaluate Pacific grenadier and rockfish landings trends; and (9) prepare a groundfish economic data plan. The GMT plans to address topics in the order listed but will consider developing daily schedules as the meeting progresses. Due to the large number of agenda items, the GMT economic subgroup may meet separately and concurrently on Wednesday; it is not practical to establish daily agendas or schedules in advance of the meeting.

Although other issues not contained in this agenda may come before the GMT for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues will not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 20, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–1831 Filed 1–26–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011698A]

Marine Mammals; Scientific Research Permit (PHF# 881–1443)

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center, P.O. Box 1239, Seward, AK 99664, has applied in due form for a permit to take Steller sea lions (*Eumetopias jubatus*) and harbor seals (*Phoca vitulina*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before February 26, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

For the purposes of scientific research, the applicant seeks authorization to import from Canada, three juvenile Steller sea lions (*Eumetopias jubatus*) currently housed at the Vancouver Aquarium, and two juvenile harbor seals (*Phoca vitulina*) presently residing at University of British Columbia. Over a five-year period the applicant requests to conduct studies on the nutritional physiology, metabolic development, and clinical health of Steller sea lions and harbor seals under captive conditions. Incidental to this scientific research, the public will be able to view the animals as part of an education program.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: January 21, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–1932 Filed 1–26–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012098A]

Marine Mammals; Scientific Research Permits (559–1442 and P524B)

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

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that applications have been received from the following individuals to take marine mammals for purposes of scientific research:

(559–1442) Mr. Salvatore Cerchio, Museum of Zoology, University of Michigan, 1109 Geddes Ave., Ann Arbor, MI 48109–1079, has applied in due form for a permit to import humpback whale samples from Mexico; and

(P524B) Dr. Shannon Atkinson, Hawaii Institute of Marine Biology, Univ. of HI, 1000 Pope Road MSB #213, Honolulu, HI 96822, has applied in due form for an amendment to Permit No. 969.

DATES: Written or telefaxed comments must be received on or before February 26, 1998.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250); and

Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4001).

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on a particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Mr. Salvatore Cerchio requests a permit to import 1000 humpback whale (*Megaptera novaeangliae*) biopsy tissue samples from Mexico. Samples have already been collected or will be collected under permits issued by the Mexican Government. The goals of the project are to assess paternity and test whether there is a large variance in repreductive success among males, typical of polygynous systems, or if paternities are distributed randomly.

Dr. Shannon Atkinson requests an amendment to Permit No. 969 to import the reproductive tract tissues, blood, plasma and serum of Mediterranean monk seals (*Monachus monachus*) taken from the subpopulation that inhabits the coast of Mauritania in North Africa and was involved in the 1997 die-off. Samples will be imported from Spain, where they are currently in storage. The applicant also requests authority to collect and/or import the same samples from all species of pinnipeds (except walrus) involved in beachings, strandings, die-offs, and taken during normal veterinary procedures on rehabilitated animals. The objective is to evaluate repreductive

hormone concentrations, obtained from blood samples, with respect to reproductive status of male and female monk seals, and other pinnipeds.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: January 21, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–1934 Filed 1–26–98; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 98–C0004]

In the Matter of COA, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR § 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with COA, Inc., a corporation, d/b/a Coaster Co. of America ''containing a civil penalty of $300,000.''.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 11, 1998.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 98–C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Howard N. Tarnoff, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 20, 1998.

Sadye E. Dunn,

Secretary.

In the Matter of COA, INC., a Corporation d/b/a Coaster Co. of America

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between COA, Inc., d/b/a Coaster Co. of America, a corporation (hereinafter, ''COA''), and the staff of the Consumer Product Safety Commission (hereinafter, ''staff''), pursuant to the procedures set forth in 16 CFR § 1118.20, is a compromised resolution of the matter described herein, without a hearing or determination of issues of law and fact.

The Parties

2. The staff is the staff of the Consumer Product Safety Commission (hereinafter, ''Commission''), an independent federal regulatory agency of the United States government, established by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, ''CPSA''), as amended, 15 USC § 2053.

3. Respondent COA is a corporation organized and existing under the laws of the State of California with its principal corporate offices located at 1298 Sandoval St., Santa Fe Springs, CA 90670. COA is an importer and wholesaler of all types of home furnishings and furniture, including baby cribs.

Staff Allegations

4. Section 4(a) of the Federal Hazardous Substances Act (hereinafter, ''FHSA''), 15 U.S.C. § 1263(a), prohibits the introduction into interstate commerce of any banned hazardous substance.

5. Section 15(b) of the CPSA, 15 U.S.C. § 2064(b), requires a manufacturer of a consumer product who, *inter alia*, obtains information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard or creates an unreasonable risk of serious injury or death, to immediately inform the Commission of the defect or risk.

6. From approximately January 1993 through December 1996, COA imported and introducted into interstate commerce approximately 940 full-size baby cribs, identified as model 2368.

7. From approximately June 1996 through April 1997, COA imported and introduced into interstate commerce approximately 900 full-size baby cribs, identified as model 2364.

8. The staff inspected and evaluated these 2 cribs and identified multiple violations of the FHSA and its regulations, Requirements for Full-Size Baby Cribs, 16 CFR Part 1508 (crib regulations). Any one of the FHSA violations is sufficient to render each crib to be a ''banned hazardous substance'' under the FHSA and the applicable crib regulation.

9. Specifically, model 2368 violated the FHSA and its crib regulations at 16 CFR §§ 1508.4 (a) and (b) (spacing of crib components); 16 CFR § 1508.6(b) (requirements for hardware), and; 16 CFR §§ 1508.9(b)(2) and (d) (identifying marks, warning statement, and compliance declaration).

10. Specifically, model 2364 violated the FHSA and its crib regulations at 16 CFR § 1508.4(a); 16 CFR § 1508.7(c) (requirements for construction and finishing), and; 16 CFR §§ 1508.9(b) (1) and (2) and (c).

11. In addition, on or about August 21, 1996, COA received a test report on a sample of model #2364 crib performed by the Detroit Testing Laboratory, Inc. (DTL) on August 20, 1996. DTL had identified and listed substantially all of the violations which the Commission's evaluations subsequently identified. DTL also noted that the decorative ''S'' on the side rails may present a potential for entrapment and strangulation. COA knew or should have known of these violations of the FHSA on or about August 21, 1996, yet it failed to report this to the Commission, as required by section 15(b) of the CPSA. Further, it continued to sell these cribs until at least March 18, 1997.

12. Because these two cribs failed to meet the Requirements for Full-Size Baby Cribs, each of them is a ''banned hazardous substance'' within the meaning of section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261 (q)(1)(A). The introduction into interstate commerce of these banned hazardous substances by COA was a prohibited act pursuant to section 4(a) of the FHSA and was committed ''knowingly'', as that term is defined in section 5(c)(5) of the FHSA, 15 U.S.C. 1264(c)(5).

13. Although COA had obtained sufficient information to reasonably support the conclusion that these cribs contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission in a timely manner, as required by section 15(b) of the CPSA. This is a violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

14. Respondent's failure to report to the Commission, as required by section 15(b) of the CPSA, was committed ''knowingly'', as that term is defined in

Section 20(d) of the CPSA, 15 U.S.C. § 2069(d) and COA is subject to civil penalties under Section 20 of the CPSA.

Response of COA

15. COA denies each and all of the staff allegations with respect to these cribs.

Agreement of the Parties

16. The Commission had jurisdiction in this matter.

17. Upon final acceptance of the Settlement Agreement, COA, Inc. shall pay to the Order of the U.S. Treasury a civil penalty in the amount of three hundred thousand and 00/100 dollars ($300,000.00) to be paid in three installments of $100,000. The first $100,000 payment will be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting this Settlement Agreement. Thereafter, COA, Inc. agrees to pay $100,000 within one hundred and ten (110) days of the date of service of the Final Order, and $100,000 within two hundred (200) days of the first payment. Payment of the total $300,000 civil penalty shall settle fully the staff's allegations set forth in paragraphs 4 through 14 of the Settlement Agreement and Order. Upon the failure by COA, Inc. to make a payment or upon the making of a late payment (as determined by the postmark on the envelope) by CSA (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961 (a) and (b).

18. COA knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of the FHSA or section 15(b) of the CPSA, has occurred, (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty, and (5) to any claims under the Equal Access to Justice Act.

19. This Settlement Agreement and Order settles any allegations of violations of the FHSA or of section 15(b) of the CPSA regarding the products described above.

20. Nothing in this Settlement Agreement and Order shall be construed to preclude the CPSC from pursuing a corrective action or other relief not described above.

21. This Settlement Agreement and Order becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

22. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedure set forth in 16 CFR § 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR § 1118.20(f).

23. Upon final acceptance of this Settlement Agreement and Order, the Commission shall issue the attached Order, incorporated herein by reference.

24. The provisions of this Settlement Agreement and Order shall apply to COA and its successors and assigns.

25. For purposes of section 6(b) of the CPSA, 15 U.S.C. § 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

26. COA agrees to immediately inform the Commission if it learns of any incidents involving the products and alleged defects identified above.

27. This Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

COA, Inc.

Dated: December 11, 1997.

Michael Yeh,

President of COA, Inc.

The Consumer Product Safety Commission.

Alan H. Scheom,

Assistant Executive Director, Office of Compliance.

Eric L. Stone,

Director, Division of Administrative Litigation, Office of Compliance.

Dated: December 17, 1997.

Melvin I. Kramer,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

In the Matter of COA, Inc., a Corporation d/b/a Coaster Company of America

Order

Upon consideration of the Settlement Agreement between Respondent COA, Inc., a corporation, d/b/a Coaster Company of America and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over COA, Inc., and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, and it is

Further ordered, that upon final acceptance of the Settlement Agreement, COA, Inc. shall pay to the Order of the U.S. Treasury a civil penalty in the amount of three hundred thousand and 00/100 dollars ($300,000.00) to be paid in three installments of $100,000. The first $100,000 payment will be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting this Settlement Agreement. Thereafter, COA, Inc. shall pay $100,000 within one hundred and ten (110) days of the date of service of the Final Order, and $100,000 within two hundred (200) days of the first payment. Payment of the total $300,000 civil penalty shall settle fully the staff's allegations set forth in paragraphs 4 through 14 of the Settlement Agreement and Order. Upon the failure by COA, Inc. to make a payment or upon the making of a late payment (as determined by the postmark on the envelope) by CSA: (a) The entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961 (a) and (b).

Further ordered, COA, Inc. shall immediately inform the Commission if it learns of any incidents involving the products and alleged defects identified herein.

Provisionally accepted and Provisional Order issued on the 20th day of January, 1998.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–1821 Filed 1–26–98; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0066]

Submission for OMB Review; Comment Request Entitled Professional Employee Compensation Plan

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0066).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Professional Employee Compensation Plan. A request for public comments was published at 62 FR 62001, November 20, 1997. No comments were received.

DATES: Comments may be submitted on or before February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0066, Professional Employee Compensation Plan, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

OFPP Policy Letter No. 78–2, March 29, 1978, requires that all professional employees shall be compensated fairly and properly. Implementation of this requires a total compensation plan setting forth proposed salaries and fringe benefits for professional employees with supporting data be submitted to the contracting officer for evaluation.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The annual reporting burden is estimated as follows: Respondents, 5,340; responses per respondent, 1; total annual responses, 5,340; preparation hours per response, .5; and total response burden hours, 2,670.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0066, Professional Compensation Plan, in all correspondence.

Dated: January 21, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–1782 Filed 1–26–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: United States Military Academy.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 10 February 1998.

Place of Meeting: Room 418, Russell Senate Office Building, The Capitol, Washington, DC.

Start time of Meeting: Approximately 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Lieutenant Colonel Joseph A. Dubyel, United States Military Academy, West Point, NY 10996–5000, phone: (914) 938–5078.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: Election of officers; selection of Executive Committee; scheduling of meetings for remainder of year; and identification of areas of interest for 1998.

All proceedings are open.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–2003 Filed 1–26–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Record of Decision for the San Gabriel Canyon Sediment Management Plan, Los Angeles County, California

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Regulatory Branch, in coordination with the County of Los Angeles—Department of Public Works, has completed the Record of Decision associated with the Joint Environmental Impact Statement/Environmental Impact Report for the San Gabriel Canyon Sediment Management Plan.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Record of Decision or requests for the document may be directed to Mr. Aaron Allen, Project Manager, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, California, 90053–2325, (213) 452–3413.

SUPPLEMENTARY INFORMATION: None.

Robert L. Davis,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 98–1830 Filed 1–26–98; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Correction.

SUMMARY: In notice document 98–676 beginning on page 1837 in the issue of Monday, January 12, 1998, make the following correction:

On page 1837 in the second column, **SUMMARY** section, second paragraph, fifth line beginning with the words ''transfer of'' the sentence should read ''32,288 kilograms of natural uranium in hexaflouride form''.

Dated: January 16, 1998.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 98–1829 Filed 1–26–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Correction.

SUMMARY: In notice document 98–677 beginning on page 1837 in the issue of Monday, January 12, 1998, make the following corrections:

On page 1837, in the third column, **SUMMARY** section, second paragraph, fifth line, beginning with the words ''transfer of'', the number should read ''76,929.3 kilograms.

Dated: January 16, 1998.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 98–1827 Filed 1–26–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–573–000]

Aurora Power Resources, Inc.; Notice of Issuance of Order

January 21, 1998.

Aurora Power Resources, Inc. (Aurora) submitted for filing a rate schedule under which Aurora will engage in wholesale electric power and energy transactions as a marketer. Aurora also requested waiver of various Commission regulations. In particular, Aurora requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Aurora.

On January 20, 1998, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Aurora should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Aurora is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Aurora's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 19, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1867 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–406–007 and RP98–65–001]

CNG Transmission Corporation; Notice of Tariff Motion Filing

January 21, 1998.

Take notice that on January 14, 1998, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Sub. Sixteenth Revised Sheet No. 35, with an effective date of January 1, 1998.

CNG states that the purpose of this filing is to remove references to an ''Excess Injection Charge'' in compliance with the Suspension Order, which CNG had not removed from Sub. Sixteenth Revised Sheet No. 35 filed on December 31, 1997. CNG requests waiver of Section 154.206(b) of the Commission's regulations, so that its tariff sheet may become effective as proposed.

CNG also notes that its December 31, 1997 Motion Tariff Filing incorporated the small-customer transportation rates proposed in Docket No. RP98–65; CNG has thereby compiled with the filing requirement established by the Commission's December 31, 1997 Letter Order in the above-referenced proceedings.

CNG states that copies of its letter of transmittal and enclosures are being mailed to its customers and interested state commissions.

Any person desiring to protest said filing should file a motion with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1876 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES97–7–001]

Consumers Energy Company; Notice of Amendment of Application

January 21, 1998.

Take notice that on January 15, 1998, Consumers Energy Company filed an amendment to its original application in this proceeding. The amendment seeks authorization to issue up to $475 million of first mortgage bonds for the sole purpose of serving as security for long-term refunding notes authorized in this docket. The first mortgage bonds would not themselves be a source of funds for Consumers, nor would they increase Consumers' total indebtedness. Consumers also requested waivers of the Commission's competitive bid and negotiated placement requirements for certain securities to be issued pursuant to authorization granted in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 29, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1868 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–111–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 21, 1998.

Take notice that on January 16, 1997, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 111. East Tennessee requests that this revised tariff sheet be deemed effective February 15, 1998.

East Tennessee states that Fourth Revised Sheet No. 111 corrects an inadvertent error, namely the mistaken insertion of language previously approved for deletion by the Commission. See November 13, 1996 Letter Order in Docket No. RP97–31. The language approved for deletion involved the restriction in the General Terms and Conditions of East Tennessee's FERC Gas Tariff, that a request for service from East Tennessee could be made no earlier than 90 days prior to the proposed commencement date of service.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1878 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RB98–110–000]

Garden Banks Gas Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

January 21, 1998.

Take notice that on January 15, 1998, Garden Banks Gas Pipeline, L.L.C. (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet Nos. 100 and 101 proposed to become effective January 1, 1998.

GBGP states that the purpose of this filing is to comply with Order 636–C issued on February 27, 1997, whereby the matching term on the right-of-first-refusal to retain existing capacity was shortened from twenty years to five years.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1877 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–153–009]

Granite State Gas Transmission, Inc.; Notice of FERC Tariff Filing

January 21, 1998.

Take notice that on January 15, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifth Revised Sheet No. 289, with an effective date of January 15, 1998.

According to Granite State, the purpose of the foregoing tariff sheet is to incorporate GISB Standard 4.3.6 by reference in the tariff, thus implementing Granite State Internet accessible web page.

Granite State further states that copies of its filing are being served by first-class mail on its firm and interruptible shippers and on the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1875 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–180–000]

Great Lakes Gas Transmission Company; Notice of Request Under Blanket Authorization

January 21, 1998.

Take notice that on January 13, 1998, Great Lakes Gas Transmission Company (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP98–180–000 a request pursuant to Section 157.205 of

the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate a new delivery point (the Duck Creek delivery point) located in Gogebic County, Michigan to provide natural gas transportation service for Wisconsin Electric Power Company (WEPCO) and Wisconsin Public Service Corporation (WPS), under Great Lake's blanket certificates issued in Docket No. CP90–2053–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Great Lakes states that it has executed 10–year firm service agreements with WEPCO and WPS, two new shippers on Great Lakes' system. Great Lakes states further that the shippers would utilize Great Lakes' transportation to expand their retail natural gas distribution services within Wisconsin.

Great Lakes indicates that the estimated cost of constructing the facilities is approximately $250,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1871 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–143–044]

Great Lakes Gas Transmission Limited Partnership; Notice of Revenue Sharing Report; November 1996—Octover 1997

January 21, 1998.

Take notice that on January 15, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed its Interruptible/Overrun (I/O) Revenue Sharing Report with the Commission in accordance with the Stipulation and Agreement (Settlement) filed on September 24, 1992, and approved by the Commission's February 3, 1993 order issued in Docket No. RP91–143–000, *et al.*

Great Lakes states that this report reflects application of the revenue sharing mechanism and remittances made to firm shippers for I/O revenue collected for the November 1, 1996 through October 31, 1997 period, in accordance with Article IV of the Settlement. Great Lakes states that such remittances, totaling $21,147, were made to Great Lakes' firm shippers on December 16, 1997.

Great Lakes further states the amounts remitted are based on implementation of the Commission's orders in Docket Nos. RP91–143, RS92–63 and RP95–422, *et al.* The amounts remitted may be adjusted at a future date in accordance with the provisions of Articles III and V of the Settlement, as certain of the Commission's orders referenced above are under Petitions for Review in the United States Court of Appeals for the D.C. Circuit in Southeastern Michigan Gas Company and Michigan Gas Company, *et al.* v. FERC, Nos. 96–1200, *et al.* Great Lakes states it will adjust the amounts remitted to comply with any further Commission action or judicial review resulting from disposition of the aforementioned court proceeding.

Great Lakes states that copies of the report were sent to its firms customers, parties to this proceeding and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 28, 1998. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1874 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–174–000]

Millennium Energy Corporation; Notice of Issuance of Order

January 21, 1998.

Millennium Energy Corporation (Millennium) submitted for filing a rate schedule under which Millennium will engage in wholesale electric power and energy transactions as a marketer. Millennium also requested waiver of various Commission regulations. In particular, Millennium requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Millennium.

On January 20, 1998, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Millennium should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Millennium is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Millennium's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is February 19, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch,

888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1866 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–185–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

January 21, 1998.

Take notice that on January 14, 1998, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–185–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) under NorAm's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 for authorization to operate certain facilities in Arkansas, Louisiana, Oklahoma and Texas, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NorAm specifically requests authority at the request of ARKLA, a distribution division of NorAm Energy Corporation (ARKLA), to operate existing taps for delivery of natural gas to ARKLA for resale to consumers other than the right-of-way grantors from whom the taps were originally installed. NorAm states that the volumes through these taps range from 1 MMBtu to 200 MMBtu per day. The location and size of each tap for certification is shown in Exhibit Z of the application. NorAm further states that there will be no new construction.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1872 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–172–000]

South Georgia Natural Gas Company; Notice of Request Under Blanket Authorization

January 21, 1998.

Take notice that on January 7, 1998, as supplemented on January 15, 1998, South Georgia Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–172–000, a request, pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216), for authorization to construct and operate modifications to an existing delivery point in Suwannee County, Florida for transportation service to its existing customer, Florida Power Corporation (Florida Power), under South Georgia's blanket certificate authorization issued in Docket No. CP82–548–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

South Georgia is proposing to add one 6-inch turbine meter and to replace the existing 3-inch regulators and monitors with 4-inch regulators and monitors at the existing meter station, known as Florida Power #2, located at or near Mile Post 100.324 on South Georgia's 10-inch Main Line in Suwannee County, Florida.

South Georgia estimates the total cost of the modifications to be $196,550, to be reimbursed to it by Florida Power. South Georgia estimates the annual volumes for deliveries will increase from 350,000 Mcf to 1,050,000 Mcf, and the maximum daily delivery volumes will increase from 9720 Mcf to 29,160 Mcf per day.

South Georgia states that it will transport gas on behalf of Florida Power under its Rate Schedule IT. South Georgia states that the installation of the proposed facilities will have no adverse effect on its ability to provide its firm deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1869 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–173–000]

Texas Gas Transmission Corporation Southern Natural Gas Company; Notice of Application

January 21, 1998.

Take notice that on January 8, 1998, Texas Gas Transmission Corporation (Texas Gas) P.O. Box 20008, Owensboro, Kentucky 42304 and Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202 (jointly referred to as Applicants) filed in Docket No. CP98–173–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas exchange service between Texas Gas and Southern which was authorized in Docket No. G–11138, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants propose to abandon the exchange service between Texas Gas and Southern provided under Texas Gas' Rate Schedule X–7 and Southern's Rate Schedule 11. The Applicants state that this exchange service is no longer required and has been terminated by Texas Gas giving notice to Southern by letter dated April 19, 1996, of its intent to terminate the Exchange Agreement effective July 19, 1996.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 11, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to

intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1870 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Preliminary Permit

January 21, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11609–000.

c. *Date filed:* November 3, 1997.

d. *Applicant:* South Fork Irrigation District and Hot Springs Valley Irrigation District.

e. *Name of Project:* West Valley Project.

f. *Location:* On the Cedar Creek, in Lassen and Modoc Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., 791(a)–825(r).

h. *Applicant Contact:* Mr. Don R. Pope, 9709 W. Fairview Avenue, Littleton, CO 80127–3955, (303) 973–9610.

i. *FERC Contact:* Mr. Robert Bell, (202) 219–2806.

j. *Comment Date:* April 7, 1998.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) the existing 16-foot-high, 1,100-foot-long earthen Moon Lake Dam; (2) the Moon Lake Reservoir, having a surface area of 3,000 acres, a storage capacity of 35,000 acre-feet, and normal water surface elevation of 5,500 feet msl (this will serve as the upper reservoir); (3) a new 90-foot-high, 650-foot-long concrete dam; (4) a new reservoir having a surface area of 184 acres, a storage capacity of 8,280 acre-feet, and normal water surface elevation of 4,950 feet msl (this would serve as the lower reservoir); (5) a new 18,000-foot long tunnel connecting the reservoirs; (6) a new powerhouse within the tunnel, containing four generating units with a total installed capacity of 264 MW; (7) a new 5-mile-long, 230–KV transmission line; and (8) appurtenant facilities.

This project would have an annual generation of 542,880 MWh and would be sold to a local utility.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the project number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application

or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–1873 Filed 1–26–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of November 10 Through November 14, 1997

During the Week of November 10 through November 14, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: January 15, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 10 through Nov. 14, 1997]

Date	Name and location of applicant	Case No.	Type of submission
11/12/97	Dykema Gossett, Washington, DC.	VFA–0349	Appeal of an Information Request Denial. If Granted: The October 20, 1997 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Dykema Gossett would receive access to certain DOE information.
11/13/97	Personnel Security Review.	VSA–0146	Request for Review of Opinion under 10 CFR Part 710. If Granted: The July 31, 1997 Opinion of the Office of Hearings and Appeals, Case No. VSO–0146, would be reviewed at the request of an individual employed by the Department of Energy.
11/14/97	Convergence Research, Portland, Oregon.	VFA–0350	Appeal of an Information Request Denial. If Granted: The October 16, 1997 Freedom of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Convergence Research would receive access to certain DOE information.
11/14/97	Personnel Security Review.	VSA–0161	Request for Review of Opinion under 10 CFR. If Granted: The October 14, 1997 Opinion of the Office of Hearings and Appeals, Case No. VSO-0161, would be reviewed at the request of an individual employed by the Department of Energy.

[FR Doc. 98–1828 Filed 1–26–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5954–2]

Continuing Planning Process for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for public review and comment of the continuing planning process (CPP) for the Commonwealth of Pennsylvania.

SUMMARY: The Clean Water Act (the Act) at section 303(e), and EPA's implementing regulation at 40 CFR 130.5, requires that each State shall establish and maintain a continuing planning process (CPP) consistent with the Act. Each State is responsible for managing its water quality program to implement the processes specified in the CPP, and EPA is responsible for periodically reviewing the adequacy of the State's CPP.

Pennsylvania developed and submitted a CPP in 1977. EPA subsequently approved that CPP. This notice is being published in accordance with Paragraph 18 of the consent decree in the matter of *American Littoral Society and Public Interest Research Group of Pennsylvania* v. *EPA,* Civil Docket No. 96–489. Consistent with the consent decree, EPA is publishing this notice of availability of the CPP to interested parties. By June 1, 1998, EPA will prepare and make available to interested parties for their review and comment its preliminary written summary of its review of the CPP. Copies of the CPP are available by contacting the person listed in the following **FOR FURTHER INFORMATION CONTACT** section. Once available, copies of EPA's preliminary written summary may also be requested.

FOR FURTHER INFORMATION CONTACT: Sarah B. Blackman, Office of Watersheds, at (215) 566–5720, or by e-mail at blackman.sarah@epamail.epa.gov.

Robert J. Mitkus,

Deputy Director, Water Protection Division, EPA Region III.

[FR Doc. 98–1914 Filed 1–26–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5954–8]

Announcement of Stakeholders Meeting on Arsenic in Drinking Water

AGENCY: Environmental Protection Agency.

ACTION: Notice of stakeholders meeting.

SUMMARY: The Environmental Protection Agency (EPA) will be holding a one-day public meeting on February 25, 1998 in San Antonio, Texas. The purpose of this meeting is to present information on EPA's plans for activities to develop a proposed National Primary Drinking Water Regulation (NPDWR) for arsenic

under the Safe Drinking Water Act (SDWA) as amended, and solicit public input on major technical and implementation issues, and on preferred approaches for continued public involvement. This meeting will be very similar in content to the arsenic stakeholders meeting EPA held in Washington, DC on September 11–12, 1997. At the upcoming meeting, EPA is again seeking input from State and Tribal drinking water programs, the regulated community (water systems), public health organizations, academia, environmental and public interest groups, engineering firms, and other stakeholders on a number of issues related to developing the NPDWR for arsenic. EPA encourages the full participation of stakeholders throughout this process.

DATES: The stakeholder meeting on arsenic in drinking water will be held on Wednesday, February 25, 1998 from 8:30 a.m. to 12 noon and 1 p.m. to 5 p.m. Central Standard Time.

ADDRESSES: The meeting will be held in the Holiday Inn Riverwalk ((210) 224–2500), which is located at 217 North St. Mary's Street, San Antonio, TX 78205. To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791 between 9 a.m. and 5:30 p.m. Eastern Standard Time. Those registered for the meeting by Wednesday, February 18, 1998, will receive an agenda, logistics sheet, and discussion papers prior to the meeting. Members of the public who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline by February 18 in order to receive copies of the overheads in advance. Please provide your name, organization, title, mailing address, telephone number, facsimile number, e-mail address and telephone number for EPA to connect the caller via conference call [if applicable] for the ''Arsenic meeting.''

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to developing the NPDWR for arsenic, contact the Safe Drinking Water Hotline at 1–800–426–4791, or visit the EPA Office of Ground Water and Drinking Water arsenic webpage at http://www.epa.gov/OGWDW/ars/arsenic.html, which contains electronic copies of the discussion papers from the September 11–12, 1997 stakeholders meeting. Registrants must make their own room reservations for the Holiday Inn Riverwalk by January 30, 1998 by calling 1–800–422–2419 and mention ''EPA Arsenic Meeting'' to guarantee the room rate of $94.

SUPPLEMENTARY INFORMATION:

A. Background

Arsenic (As) is a naturally occurring element found in the human body and is present in food, water, and air. Arsenic in drinking water occurs in ground water and surface water and is associated with certain natural geologic conditions, as well as with contamination from human activities. Arsenic ingestion is linked to skin cancer and arsenic inhalation to lung cancer. In addition, arsenic ingestion seems to be associated with vascular effects, gastrointestinal irritation, and cancers of the kidney, bladder, liver, lung, and other organs. Water primarily contains inorganic arsenic species (As^{V+} and As^{III+}), which tend to be more toxic than organic forms.

In 1976 EPA issued a National Interim Primary Drinking Water Regulation for arsenic at 50 parts per billion (ppb; µg/L). Under the 1986 amendments to SDWA, Congress directed EPA to publish Maximum Contaminant Level Goals (MCLGs) and promulgate National Primary Drinking Water Regulations (NPDWRs) for 83 contaminants, including arsenic. When EPA failed to meet the statutory deadline for promulgating an arsenic regulation, a citizens' group filed suit to compel EPA to do so. EPA entered into a consent decree to issue the regulation. EPA held internal workgroup meetings throughout 1994, addressing risk assessment, treatment, analytical methods, arsenic occurrence, exposure, costs, implementation issues, and regulatory options before deciding in early 1995 to defer the regulation in order to better characterize health effects.

On August 6, 1996, Congress amended the SDWA, adding section 1412(b)(12)(A) which requires, in part, that EPA propose a NPDWR for arsenic by January 1, 2000 and issue a final regulation by January 1, 2001. The current maximum contaminant level (MCL) of 50 µg/L remains in effect until the effective date of the revised rule.

The 1996 amendments to the SDWA also directed EPA to develop by February, 1997, a comprehensive arsenic research plan to assess health risks associated with exposure to low levels of arsenic. In December 1996, EPA announced the availability of the arsenic research plan, and the public had an opportunity to comment on the paper at a scientific peer review meeting in January, 1997. EPA reported to Congress in late January that the plan was publicly available and would be revised after consideration of the final report of the scientific peer review group, which was subsequently published May 8, 1997. In conducting the studies in the arsenic research plan, EPA will consult with the National Academy of Sciences, other Federal agencies, and other interested public and private parties.

B. Request for Stakeholder Involvement

EPA intends for the proposed NPDWR for arsenic to incorporate the best available science, risk assessment, treatment technologies, occurrence data, cost/benefit analyses, and stakeholder input on technical and implementation issues.

The stakeholders meeting will cover a broad range of issues including: (1) regulatory process, including risk management decisions; (2) arsenic risk assessment (exposure, health assessment, national occurrence); (3) key technical assessments (treatment technologies, treatment residuals, cost, analytical methods); (4) small system concerns; and (5) future stakeholder involvement. Background materials on arsenic in drinking water issues will be sent in advance of the meeting to those who register with the Safe Drinking Water Hotline by Wednesday, February 18, 1998.

EPA has announced this public meeting to hear the views of stakeholders on EPA's plans for activities to develop a NPDWR for arsenic. The public is invited to provide comments on the issues listed above and other issues related to the arsenic in drinking water regulation during the February 25, 1998 meeting and during future opportunities for stakeholder participation.

Dated: January 21, 1998.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–1931 Filed 1–26–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

ITU Proposal for Cost Recovery

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission seeks comment on the appropriateness and feasibility of a proposal by the International Telecommunications Commission (ITU) for cost recovery for registering and processing satellite notifications.

In particular, the Commission seeks comment on how the Commission could continue to make the ITU notifications while ensuring that the applicant makes cost recovery payments directly to the ITU.

DATES: Submit comments on or before February 27, 1998, and reply comments on or before March 27, 1998.

ADDRESSES: Send comments to Richard B. Engelman, Chief Planning and Negotiations Division, International Bureau, Federal Communications Commission, 2000 M Street, N.W., Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION: During the June 23–27, 1997 meeting of the International Telecommunications Union Council, the subject of ITU cost recovery for registering and processing satellite notifications, as well as other products and services including terrestrial notifications, was addressed. The Council agreed to Resolution 1113 that adopted the principle of cost recovery for satellite registrations and notifications. The Federal Communications Commission (FCC) seeks comment on the appropriateness and feasibility of the recovery by the ITU of such fees and how, if adopted, the ITU cost recovery fees should be administered within the FCC notification process.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1835 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45 and 97–160; DA 97–2623]

Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this Public Notice, released December 16, 1997, the Common Carrier Bureau revises and approves universal service contribution factors for the first quarter of 1998. These factors will be used to calculate first quarter contributions to universal service.

FOR FURTHER INFORMATION CONTACT: Diane Law, Common Carrier Bureau, Accounting and Audits Division, (202) 418–7400, or via E-mail to ''dlaw@fcc.gov.''

SUPPLEMENTARY INFORMATION: In the *Universal Service Order* released on May 8, 1997, the Commission established new federal universal service support mechanisms consistent with the Communications Act of 1934, as amended.[1] The Commission required all telecommunications carriers that provide interstate telecommunications services, providers of interstate telecommunications, and payphone service providers to contribute to the federal universal service support mechanisms.[2] The Commission found that contributions for the schools, libraries, and rural health care support mechanisms would be based on interstate, intrastate, and international end-user telecommunications revenues.[3] The Commission also found that contributions for the high cost, rural, and insular and low-income support mechanisms would be based on interstate and international end-user telecommunications revenues.[4]

On July 18, 1997, the Commission released an Order directing the National Exchange Carrier Association (NECA) to create an independently functioning not-for-profit subsidiary, the Universal Service Administrative Company (USAC), through which it will administer temporarily certain aspects of the federal universal service support mechanisms.[5] The Commission also directed NECA to create two independent, not-for-profit entities, Schools and Libraries Corporation and Rural Health Care Corporation, to administer certain aspects of the schools, libraries, and rural health care support mechanisms.[6] The Commission instructed USAC, Schools and Libraries Corporation, and Rural Health Care Corporation to submit projections of demand and administrative expenses for their respective support mechanisms for the first quarter of 1998 to the Commission at least sixty days before the start of the first quarter of 1998.[7] USAC also was required to compile total interstate, intrastate, and international end-user telecommunications revenues and submit that information to the Commission.[8] The Commission stated that it would publish these figures and the proposed quarterly contribution factors in a Public Notice.[9]

On November 13, 1997, using the information submitted on October 31, 1997 by the Universal Service Administrative Company (USAC), Schools and Libraries Corporation, and Rural Health Care Corporation (collectively, the administrative corporations), the Accounting and Audits Division (Division) announced the proposed universal service contribution factors for the first quarter of 1998.[10] Pursuant to the Commission's rules, those contribution factors would have been deemed approved on November 28, 1997 if the Commission had taken no action regarding the proposed contribution factors.[11] On November 26, 1997, however, the Division extended the review period for the proposed first quarter 1998 universal service contribution factors until December 5, 1997.[12] On December 5, 1997, the Division further extended the period of time during which the Commission could modify the proposed universal service contribution factors for the first quarter of 1998 until December 12, 1997.[13] On December 12, 1997, the Division extended the review period for the proposed contribution factors until December 16, 1997.[14]

On December 16, 1997, the Commission released the *Third Order on Reconsideration in CC Docket 96–45*. In that Order, the Commission concluded that it could reduce the maximum amounts collected during the first six months of 1998 for the schools and libraries and rural health care support mechanisms without jeopardizing the sufficiency of the support mechanisms.[15] Consistent with the Commission's action on reconsideration, in this Public Notice, the Bureau revises the projections of demand for the low income and rural health care support mechanisms and

[1] Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776 (1997) (*Universal Service Order*).

[2] *Universal Service Order*, 12 FCC Rcd at 9173–9178, 9183–9185.

[3] *Universal Service Order*, 12 FCC Rcd at 9203, 9205.

[4] *Universal Service Order*, 12 FCC Rcd at 9200, 9202–9203.

[5] Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration*, CC Dockets No. 97–21, 96–45, FCC 97–253 (rel. July 18, 1997) (*NECA Report and Order*).

[6] *NECA Report and Order* at para. 57.

[7] *NECA Report and Order* at para. 47.

[8] *NECA Report and Order* at paras. 43–48. *See also* 47 CFR 54.709(a)(2), (3), and 54.711(b).

[9] *NECA Report and Order* at para. 48.

[10] Proposed First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97–2392 (rel. Nov. 13, 1997). On November 19, 1997, AT&T filed comments on the November 13th Public Notice. *See* Letter from Rick D. Bailey, AT&T, to Magalie Roman Salas, FCC, dated November 19, 1997.

[11] 47 CFR 54.709(a)(3).

[12] Extended Review Period for First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97–2510 (rel. Nov. 26, 1997).

[13] Further Extension of Review Period for First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97–2560 (rel. Dec. 5, 1997).

[14] Additional Extension of Review Period for First Quarter Universal Service Contribution Factors, *Public Notice*, DA 97–2600 (rel. Dec. 12, 1997).

[15] Federal-State Joint Board on Universal Service, *Third Order on Reconsideration*, CC Docket 96–45, FCC 97–411 (rel. Dec. 16, 1997).

approves revised universal service contribution factors for the first quarter of 1998.

The Commission concluded in the *Third Order on Reconsideration in CC Docket 96–45* that it should not impose unnecessary financial burdens on service provider contributors to universal service by collecting funds that exceed demand. Accordingly, the Bureau has reviewed all of the administrative corporations' projections and has determined that the estimated demand for the low income support mechanism appears to be too high. Based on our analysis, we project that annual demand for the low income support mechanism should be approximately $500 million.[15a] This annual figure of $500 million yields a quarterly demand projection of $125 million, instead of the $136.3 million projected by USAC. Therefore, we find that the first quarter projection of demand for the low income support mechanism should be $125 million.

The Bureau also adjusts the first quarter total program costs for the rural health care support mechanism, consistent with the *Third Order on Reconsideration in CC Docket 96–45*, from $100 million to $25 million.[16]

On November 26, 1997, the Commission released the *Second Order on Reconsideration in CC Docket No. 96–45*, which authorized the Administrator to bill contributors and collect contributions on a monthly, rather than a quarterly basis.[17] That Order will reduce the interest income for the first quarter of 1998.[18] The amount of interest earned for the high cost and low income support mechanisms decreased because contributions will be collected on a monthly, as opposed to quarterly, basis, while support will continue to be distributed on a monthly basis. As a result of the 75-day window filing period, initial support for the schools and libraries and rural health care support mechanisms will be distributed in the second quarter.[19] The amount of interest earned for the schools and libraries and rural health care support mechanisms decreased slightly. Accordingly, we have adjusted the projected amount of interest income.

Therefore, first quarter projections of demand and administrative expenses are as follows (revised figures are in bold):[20]

[In millions of dollars]

Program	Program demand	Administrative expenses	Interest income	Total program costs
Schools and Libraries	**299.3**	2.7	**(2.0)**	300.0
Rural Health Care	**23.0**	[20]2.2	**(0.2)**	**25.0**
Subtotal	**322.3**	4.9	**(2.2)**	**325.0**
High Cost	434.0	1.1	**(1.0)**	**434.1**
Low Income	**125.0**	0.6	**(0.3)**	**125.3**
Subtotal	**559.0**	1.7	**(1.3)**	**559.4**
Total	**881.3**	6.6	**(3.5)**	**884.4**

[15a] This $500 million projection of annual demand is based on the following: According to the 1997 Monitoring Report, 5.2 million customers participated in Lifeline in 1996. Monitoring Report, CC Docket No. 87–339, May 1997, pgs. 86–87, table 2.3. Assuming participation rates among existing customers remain constant, low income support for existing Lifeline participants will be $436 million for the year. (5.2 million people times $7, which is the maximum amount of federal support for Lifeline subscribers in states that provide matching funds, multiplied by 12 months). In the *Universal Service Order*, the Commission estimated that, by extending the low income support mechanism to non-participating states, approximately 1.9 million new low-income consumers would become eligible for the support mechanism. *Universal Service Order*, 12 FCC Rcd at 8966, n. 903. Assuming one-third of eligible consumers participate in the support mechanism and that non-participating states do not provide matching funds, low income support for new Lifeline participants will be $40 million for the year. (627,000 people (.33 x 1.9 million people) x $5.25 (the maximum amount of federal support for Lifeline subscribers in states that do not provide matching funds) x 12 months). We have assumed a one-third participation rate because the participation rate for Washington D.C.'s low income program is 32.3 percent. Chesapeake and Potomac Tel. Co., Formal Case No. 850, Order No. 9927, page 166 (rel. Jan. 29, 1992). In the *Universal Service Order*, the Commission estimated that annual funding for LinkUp will increase to $23.6 million. Universal Service Order, 12 FCC Rcd at 8966, n. 903. Thus, the projection of annual low income demand is approximately $500 million. ($436 million plus $40 million plus $23.6 million).

[16] The Rural Health Care Corporation may collect up to $25 million in the first quarter of 1998. *Third Order on Reconsideration* at para. 4.

[17] Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, *Second Order on Reconsideration in CC Docket 97–21*, CC Docket Nos. 97–21, 96–45, FCC 97–400 (rel. Nov. 26, 1997).

[18] In calculating interest income, USAC, Schools and Libraries Corporation, and Rural Health Care Corporation assumed payments for the entire quarter would arrive on January 1, 1998. USAC assumed the first payments for the high cost and low income support mechanisms would be distributed at the end of February. Schools and Libraries Corporation and Rural Health Care Corporation assumed that the first payments for the schools, libraries, and rural health care support mechanisms would be distributed 40 days after January 1, 1998.

[19] Schools and Libraries Corporation and Health Care Corporation Adopt Length of Filing Windows, *Public Notice*, DA 97–2349 (rel. Nov. 6, 1997). *See also* 47 CFR 69.616, 69.618(a)(7), 69.619(a)(7) (instructing the Schools and Libraries and Rural Health Care Corporations to authorize USAC to submit payments within 20 days of the receipt of requisite forms and instructing USAC to distribute payments within 20 days of receiving authorization). We anticipate that the window period for Schools and Libraries Corporation and Rural Health Care Corporation will not begin before the second week in January 1998, funds will not be distributed until after the 75-day window period has closed, and approximately 40 days have passed (20 days for submission of payments, 20 days to distribute payments, pursuant to 47 CFR 69.616, 69.618(a)(7), 69.619(a)(7)). Thus, payments for the schools and libraries and rural health care support mechanisms will not be distributed until May 1998.

[20] Administrative expenses appear to be high relative to projected quarterly demand, because start-up costs have been allocated to the first quarter. We anticipate that administrative expenses will total less than two percent of annual program costs.

Based on information contained in the Universal Service Worksheets, FCC Form 457, USAC submitted the following information regarding end-user telecommunications revenues on November 13, 1997:

Total Interstate, Intrastate, and International End-User Telecommunications Revenues from January 1, 1997–June 30, 1997: $89.827 billion.

Total Interstate and International End-User Telecommunications Revenues from January 1, 1997–June 30, 1997: $35.001 billion.[21]

USAC recommended that, in calculating the contribution bases, the Commission adjust end-user telecommunications revenues downward to account for possible uncollectible contributions and possible errors in the projections of demand and administrative expense. The proposed contribution factors set forth in the November 13, 1997 Public Notice thus were based on USAC's recommended contribution bases.[22] The revised contribution factors set forth below, however, are based on contribution bases that include no adjustments for uncollectibles or errors in projection. Based on the low level of carrier-to-carrier uncollectibles for access charges,[23] we have concluded that projected levels of uncollectible contributions should be minimal. Furthermore, given the quarterly evaluation of demand, we find that we do not need to take into account possible errors in projections when setting the contribution factors. Any projection-related errors can be corrected in subsequent quarters.[24]

Finally, we note that the contribution factors proposed by USAC and set forth in the Public Notice were derived by dividing quarterly total program costs by revenues for a six-month period. Although these factors, if approved, would have been used to collect funds for the first quarter, they would have been applied to the six-month revenues reported on individual contributor's Universal Service Worksheets. To obtain contribution factors that will be applied to revenues that approximate first quarter revenues, the revised contribution factors set forth below are based on contribution bases that are divided by two. This results in a more accurate portrayal of the contribution factors but does not change the amounts collected.

Based on the figures submitted by USAC, Schools and Libraries Corporation, and Rural Health Care Corporation, and revised as set forth above, the approved contribution factors for the first quarter of 1998 are as follows:

Contribution factor for the schools and libraries and rural health care support mechanisms:

Total Program Costs / Contribution Base (Interstate, International, and Intrastate) = $0.325 billion / ($89.827 billion / 2) = **0.0072.**

Contribution factor for the high cost and low income support mechanisms:

Total Program Costs / Contribution Base (Interstate and International) = $0.559 billion / ($35.001 billion / 2) = **0.0319.**

These factors are the approved first quarter 1998 universal service contribution factors. To calculate contributions, USAC shall multiply these factors by one half of contributors' end-user telecommunications revenues for January 1, 1997 through June 30, 1997, as reported on Universal Service Worksheets. USAC will bill and collect those contributions on a monthly basis.

For further information, contact Diane Law, Universal Service Branch, Accounting and Audits Division, Common Carrier Bureau, at (202) 418–7382.

Federal Communications Commission.

Timothy A. Peterson,

Deputy Division Chief, Common Carrier Bureau.

[FR Doc. 98–1834 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

[21] Letter from William Stern, NECA to Secretary, FCC, dated November 13, 1997.

[22] Letter from John A. Ricker, NECA to Universal Service Branch, dated November 10, 1997.

[23] The Commission estimates that carrier-to-carrier uncollectible rates are 0.2 percent. This estimate was calculated using 1996 ARMIS data. (1996 ARMIS 4301, Traffic Sensitive Total Uncollectibles (Column R, Row 1060) divided by Traffic Sensitive Total Revenues (Column R, Row 1090)).

[24] *See also* Letter from Rick D. Bailey, AT&T, to Magalie Roman Salas, FCC, dated November 19, 1997 at page 4.

FEDERAL COMMUNICATIONS COMMISSION

Meeting of the Advisory Committee for the 1999/2000 World Radiocommunication Conference (WRC–99 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–99 Advisory Committee will be held on Tuesday, February 10, 1998, at the Federal Communications Commission. The purpose of the meeting is to begin preparations for the 1999 World Radiocommunication Conference.

DATES: February 10, 1998; 9:30 a.m.–12:00 p.m.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0420.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–99 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 1999 World Radiocommunication Conference (WRC–99). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the initial meeting of the WRC–99 Advisory Committee. The WRC–99 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the first meeting is as follows:

Agenda

First Meeting of the WRC–99 Advisory Committee, Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554

February 10, 1998; 9:30 a.m.–12:00 p.m.

1. Opening Remarks
2. Approval of Agenda
3. Report on FCC Reorganization of WRC Preparatory Process
4. Suggestions for Improving the Preparatory Process
5. Report on Recent ITU-R meetings
6. Advisory Committee Structure and Meeting Schedule
7. Other Business

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–1836 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 98–110]

Conference Call Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 22, 1998, the Commission released a public notice announcing the February 9, 1998, conference call meeting of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2313. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released January 22, 1998.

The North American Numbering Council (NANC), has scheduled a meeting to be held by conference call on February 9, 1998, from 11 a.m. until 1:30 p.m. EST. The conference bridge number is 1–888–582–4100, PIN 6621102. Due to limited port space, NANC members and Commission staff will have first priority on the call. Members of the public may join the call as remaining port space permits.

This notice of the February 9, 1998, NANC conference call meeting is being published in the **Federal Register** less than 15 calendar days prior to the meeting due to NANC's need to discuss a new, time sensitive issue before the next scheduled meeting. This statement complies with the General Services Administration Management Regulations implementing the Federal Advisory Committee Act. *See* 41 CFR § 101–6.1015(b)(2).

This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. Participation on the conference call is limited. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda

1. Discussion of New York Public Service Commission Petition for Expedited Waiver of 47 CFR § 52.19(c)(3)(ii), filed January 12, 1998.

2. NANC's responsibilities under FCC 97–51, in the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements.

3. Proposal for Activity of the NANC Steering Committee, Paul Hart, USTA, Memorandum to NANC members of December 18, 1997.

4. Other business.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–1960 Filed 1–26–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meetings; Open Commission Meeting Thursday, January 29, 1998

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 29, 1998, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Mass Media—Title: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider petitions for reconsideration filed in response to the Commission's Fifth Report and Order in the digital television proceeding.

2—Common Carrier—Title: Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services (CC Docket No. 95–20); 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements. Summary: The Commission will consider action concerning the provision by Bell Operating Companies of intraLATA enhanced services. This item is also part of the Commission's 1998 biennial review of regulations.

3—Common Carrier—Title: Billed Party Preference for InterLATA 0+ Calls (CC Docket No. 92–77). Summary: The Commission will consider proposed rules concerning charges and practices of operator services providers (OSPs) in connection with calls from public phones and other aggregator locations such as payphones, hotels, hospitals, and educational institutions.

After consideration of these items, the Commission will hold an en banc presentation on the status of local telephone competition.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800 or fax (202) 857–3805 and 857–3184. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its—inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, DC. metropolitan area), telephone 1–800–962–0044. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Dated January 22, 1998.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–2030 Filed 1–23–98; 11:49 am]

BILLING CODE 6712–01–F

FEDERAL ELECTION COMMISSION

[Notice 1998–2]

Privacy Act of 1974; Republication and Notice of New Routine Uses for Disclosure

AGENCY: Federal Election Commission.

ACTION: Notice of effective date.

SUMMARY: On December 15, 1997, the Federal Election Commission published a proposed notice of amended and/or revised systems of records. There having been no comments or changes made in the amended/revised systems, these

proposed systems of records become effective January 27, 1998.

Dated: January 21, 1998.

Joan Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–1842 Filed 1–26–98; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks 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 offices 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 February 10, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. James D. Evans, Miami, Florida; to acquire additional voting shares of Equitable Bank, Fort Lauderdale, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Michael W. Welge, Chester, Illinois; to acquire additional voting shares of Chester Bancorp, Inc., Chester, Illinois, and thereby indirectly acquire Chester National Bank, Chester, Illinois, and Chester National Bank, Perryville, Missouri.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. James Michael Adcock, and David Wesley Schubert, both of Shawnee, Oklahoma, as Trustees of the Don Bodard 1995 Revocable Trust; to acquire voting shares of First Medicine Lodge Bancshares, Inc., Medicine Lodge, Kansas, and thereby indirectly acquire First National Bank of Medicine Lodge, Medicine Lodge, Kansas.

Board of Governors of the Federal Reserve System, January 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1824 Filed 1–26–98; 8:45 am]

BILLING CODE 6210-01-F

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. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 February 20, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National City Bancshares, Inc., Evansville, Indiana; to merge with Vernois Bancshares, Inc., Mount Vernon, Illinois, and thereby indirectly acquire Bank of Illinois, Mount Vernon, Illinois. Comments regarding this application must be received by February 11, 1998.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. First Savings Bank of Washington Bancorp, Inc., Walla Walla, Washington; to merge with Towne Bancorp, Inc., Woodinville, Washington, and thereby indirectly acquire Towne Bank, Woodinville, Washington.

2. J, J, & B Capital, L.P., Los Angeles, California; to become a bank holding company by acquiring 59.5 percent of the voting shares of Founders National Bank of Los Angeles, Los Angeles, California.

Board of Governors of the Federal Reserve System, January 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1823 Filed 1–26–98; 8:45 am]

BILLING CODE 6210-01-F

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. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 February 23, 1998.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Banc One Corporation, Columbus, Ohio; to acquire and thereby merge with

First Commerce Corporation, New Orleans, Louisiana, and thereby indirectly acquire First National Bank of Commerce, New Orleans, Louisiana; City National Bank of Baton Rouge, Baton Rouge, Louisiana; Rapides Bank & Trust Company in Alexandria, Alexandria, Louisiana; The First National Bank of Lafayette, Lafayette, Louisiana; The First National Bank of Lake Charles, Lake Charles, Louisiana; Central Bank, Monroe, Louisiana; and First United Bank of Farmerville, Farmerville, Louisiana.

In connection with this application, Applicant also has applied to acquire First Commerce Service Corporation, New Orleans, Louisiana, and thereby engage in providing data processing and data transmission services, facilities, data bases, advice and access to such services, facilities, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First United Bancshares, Inc., El Dorado, Arkansas; to merge with First Republic Bancshares, Inc., Rayville, Louisiana, and thereby indirectly acquire First Republic Bank, Rayville, Louisiana.

2. Unity Bancshares, L.L.C., St. John, Missouri; to become a bank holding company by acquiring 60.1 percent of the voting shares of St. Johns Bancshares, Inc., St. John, Missouri, and thereby indirectly acquire St. Johns Bank and Trust Company, St. John, Missouri.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. AmCorp Financial Inc., Ardmore, Oklahoma; to acquire 100 percent of the voting shares of First State Bank, Morton, Texas. In addition, the bank's main office will be relocated to Keller, Texas, and the bank will be renamed American Bank, Keller, Texas.

Board of Governors of the Federal Reserve System, January 22, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1938 Filed 1–26–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. City Holding Company, Charleston, West Virginia; to acquire Del Amo Savings Bank, F.S.B., Torrance, California, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 21, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–1825 Filed 1–26–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 12:00 noon, Monday, February 2, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on January 14, 1998.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. to business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 23, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2112 Filed 1–23–98; 3:32 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Board of Governors of the Federal Reserve System (FRB).

ACTION: Notice of report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking and Financial Services of the United States House of Representatives.

SUMMARY: This report was prepared by the FRB pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1831n(c)). Section 121 requires each Federal banking and thrift agency to report annually to the above specified Congressional Committees regarding any differences between the accounting or capital standards used by such agency and the accounting or capital standards used by other banking and thrift agencies. The report must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gerald A. Edwards, Deputy Associate Director (202/452–2741), Norah Barger, Assistant Director (202/452–2402),

Barbara Bouchard, Manager (202/452–3072), or Arthur Lindo, Supervisory Financial Analyst (202/452–2695), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Congressional Committees Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

Introduction and Overview

This is the eighth annual report [1] on the differences in capital standards and accounting practices that currently exist among the three banking agencies (the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS).[2]

Overview

As stated in the previous reports to Congress, the three bank regulatory agencies have, for a number of years, employed a common regulatory framework that establishes minimum capital adequacy ratios for commercial banking organizations. In 1989, all three banking agencies and the OTS adopted a risk-based capital framework that was based upon the international capital accord (Basle Accord) developed by the Basle Committee on Banking Regulations and Supervisory Practices (Basle Supervisors Committee) and endorsed by the central bank governors of the G–10 countries.

The risk-based capital framework establishes minimum ratios of capital to risk-weighted assets. The Basle Accord requires banking organizations to have total capital (Tier 1 plus Tier 2) equal to at least 8 percent and Tier 1 capital equal to at least 4 percent of risk-weighted assets. Tier 1 capital includes common stock and surplus, retained earnings, qualifying perpetual preferred stock and surplus, and minority interest in consolidated subsidiaries, less disallowed intangibles such as goodwill. Tier 2 capital includes certain supplementary capital items such as general loan loss reserves, subordinated debt, and certain other preferred stock and convertible debt capital instruments, subject to appropriate limitations and conditions. The amount of Tier 2 includable in regulatory capital is limited to 100 percent of Tier 1. In addition, institutions that incorporate market risk exposure into their risk-based capital requirements may use ''Tier 3'' capital (i.e., short-term subordinated debt with certain restrictions on repayment provisions) to support their exposure to market risk. Tier 3 capital is limited to approximately 70 percent of an institution's measure for market risk. Risk-weighted assets are calculated by assigning risk weights of zero, 20, 50, and 100 percent to broad categories of assets and off-balance sheet items based upon their relative credit risk. The OTS has adopted a risk-based capital standard that in most respects is similar to the framework adopted by the banking agencies. Differences between the OTS capital rules and those of the banking agencies are noted elsewhere in this report.

The measurement of capital adequacy in the present framework is mainly directed toward assessing capital in relation to credit risk. In December 1995, the G–10 Governors endorsed an amendment to the Basle Accord that will, beginning in January 1998, require internationally-active banks to measure and hold capital to support their market risk exposure. Specifically, banks will be required to hold capital against their exposure to general market risk associated with changes in interest rates, equity prices, exchange rates, and commodity prices, as well as for exposure to specific risk associated with equity positions and certain debt positions in the trading portfolio. The FRB, FDIC, and OCC issued in August 1996 amendments to their respective risk-based capital standards that implemented the market risk amendment to the Accord. The banking agencies' amendments contain a threshold amount of trading activity: institutions with trading assets and liabilities greater than or equal to 10 percent of assets or trading assets and liabilities greater than or equal to $1 billion are required to apply the market risk rules. The OTS did not amend its capital rules in this regard since savings institutions do not have such significant levels of trading activity.

In addition to the risk-based capital requirements, the agencies also have established leverage standards setting forth minimum ratios of capital to total assets. The three banking agencies employ uniform leverage standards, while the OTS has established, pursuant to FIRREA, a somewhat different standard. On October 27, 1997, the agencies issued for public comment a proposal that would eliminate these differences.

All of the agencies view the risk-based capital standards as a minimum supervisory benchmark. In part, this is because the risk-based capital framework focuses primarily on credit risk; it does not take full or explicit account of certain other banking risks, such as exposure to changes in interest rates. The full range of risks to which depository institutions are exposed are reviewed and evaluated carefully during on-site examinations. In view of these risks, most banking organizations are expected to, and generally do, maintain capital levels well above the minimum risk-based and leverage capital requirements.

The staffs of the agencies meet regularly to identify and address differences and inconsistencies in their capital standards. The agencies are committed to continuing this process in an effort to achieve full uniformity in their capital standards. In addition, the agencies have considered the remaining differences as part of a regulatory review undertaken to comply with Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), which specifies that the agencies ''make uniform all regulations and guidelines implementing common statutory or supervisory policies.''

Efforts To Achieve Uniformity

Leverage Capital Ratios

The three banking agencies employ a leverage standard based upon the common definition of Tier 1 capital contained in their risk-based capital guidelines. These standards, established in the second half of 1990 and in early 1991, require the most highly-rated institutions to meet a minimum Tier 1 capital ratio of 3 percent. For all other institutions, these standards generally require an additional cushion of at least 100 to 200 basis points, i.e., a minimum leverage ratio of at least 4 to 5 percent, depending upon an organization's financial condition. As required by FIRREA, the OTS has established a 3

[1] The first two reports prepared by the Federal Reserve Board were made pursuant to section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The subsequent reports were made pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which superseded section 1215 of FIRREA.

[2] At the federal level, the Federal Reserve System has primary supervisory responsibility for state-chartered banks that are members of the Federal Reserve System, as well as for all bank holding companies and certain operations of foreign banking organizations. The FDIC has primary responsibility for state nonmember banks and FDIC-supervised savings banks. National banks are supervised by the OCC. The OTS has primary responsibility for savings and loan associations.

percent core capital ratio and a 1.5 percent tangible capital leverage requirement for thrift institutions. Certain adjustments discussed in this report apply to the core capital definition used by savings associations.

On October 27, 1997, the four agencies issued a proposal for public comment addressing the leverage standards (62 FR 55686). Under the proposal, institutions rated a composite 1 under the Uniform Financial Institutions Rating System (UFIRS)[3] would be subject to a minimum 3.0 percent leverage ratio and all other institutions would be subject to a minimum 4.0 percent leverage ratio. This change would simplify and streamline the Board's, FDIC's, and OCC's leverage rules. In addition, changes proposed by the OTS, if adopted, would make all the agencies' rules uniform. The comment period for the proposal ended on December 26, 1997. Agency staffs intend to issue a final amendment in early 1998.

Efforts to Incorporate Non-Credit Risks

The Federal Reserve has been working with the other U.S. banking agencies and with regulatory authorities abroad to develop methods of measuring certain market and price risks and determining appropriate capital standards for these risks. These efforts have related to interest rate risk arising from all activities of a bank and to market risk associated principally with an institution's trading activities.

Regarding domestic efforts, the banking agencies have, for several years, been working to develop capital standards pertaining to interest rate risk. In June 1996, the U.S. banking agencies issued a joint policy statement describing a common framework for the supervision of interest rate risk in banking organizations. It calls for a review of the qualitative characteristics and adequacy of an institution's interest rate risk management, as well as an assessment of risk relative to its earnings and the economic value of its capital. The framework is consistent with 1995 revisions to the U.S. risk-based capital rules that incorporated the exposure of that economic value to changes in interest rates as an important element in the evaluation of capital adequacy. In September 1997, the Basle Supervisors Committee, with the agreement of the G–10 governors, released a paper, based on the U.S. joint policy statement, that contains a set of principles for the management of interest rate risk.

In 1995 the Basle Supervisors Committee issued an amendment to the Basle Accord that requires internationally-active banks to hold capital against market risk exposure. The FRB, FDIC and OCC amended their respective risk-based capital guidelines in 1996 to implement the amendment to the Accord. Under the agencies' guidelines, affected institutions must use an internal value-at-risk model to measure market risk and calculate corresponding capital requirements. The market risk rules become mandatory for certain institutions in January 1998. The OTS does not intend, at this time, to issue a rule on market risk since the savings institutions they supervise do not have significant levels of trading activity.

As mentioned in the introduction, the agencies have been meeting to fulfill the requirements of Section 303 of the Riegle Act that calls for uniform rules and guidelines. In this regard, in October 1997, the agencies issued for public comment a proposal that would eliminate existing minor differences among the agencies' risk-based capital treatment for the following assets: presold residential properties, junior liens on 1- to 4-family residential properties, and banks' holdings of mutual funds. In addition, the agencies worked together on the following capital issues.

Recourse

The agencies published in the **Federal Register** on November 5, 1997, (62 FR 5994), uniform, proposed rules that would use credit ratings to match the risk-based capital assessment more closely to an institution's relative risk of loss in certain asset securitizations.

Unrealized Gains on Certain Equity Securities

In October 1997 the agencies issued for public comment an interagency proposal that would permit institutions to include in Tier 2 capital up to 45 percent of unrealized gains on certain available-for-sale equity securities (62 FR 55682).

Capital Impact of Recent Changes to Accounting Standards

From time to time, the Financial Accounting Standards Board (FASB) issues new and modified financial accounting standards. The adoption of some of these standards for regulatory reporting purposes has the potential of affecting the definition and calculation of regulatory capital. Accordingly, the staffs of the agencies work together to propose uniform regulatory capital responses to such accounting changes. Over this past year, the agencies have dealt with certain capital effects of Statement of Financial Accounting Standard (FAS) No. 125, *''Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities''* which supersedes FAS No. 122, *''Accounting for Mortgages Servicing Rights.'' FAS 125, ''Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities.''*

The agencies issued a proposal on August 4, 1997, to amend their capital standards to address the treatment of servicing assets on both mortgage assets and financial assets other than mortgages (62 FR 42006). The public comment period ended on October 3, 1997. The proposed rule reflects changes in accounting standards for servicing assets made in FAS 125. FAS 125 extended the accounting treatment for mortgage servicing to servicing on all financial assets. The proposed amendment would raise the capital limitation on the sum of all mortgage servicing assets and purchased credit card relationships from 50 percent of Tier 1 capital to 100 percent of Tier 1 capital. Furthermore, servicing assets on financial assets other than mortgages would be deducted from Tier 1 capital. A final rule should be in place in the first part of 1998.

Capital Differences

Differences among the risk-based capital standards of the OTS and the three banking agencies are discussed below.

Certain Collateral Transactions

The four agencies, on August 16, 1996, published a joint proposed rulemaking that would, if implemented, eliminate capital differences among the agencies' risk-based capital treatment for collateralized transactions (61 FR 42565).

The Federal Reserve permits certain collateralized transactions to be risk-weighted at zero percent. This preferential treatment is available only for claims fully collateralized by cash on deposit in the bank or by securities issued or guaranteed by OECD central governments or U.S. government agencies. A positive margin of collateral must be maintained on a daily basis fully taking into account any change in the banking organization's exposure to the obligor or counterparty under a claim in relation to the market value of the collateral held in support of that claim. Other collateralized claims, or

[3] The UFIRS is used by supervisors to summarize their evaluations of the strength and soundness of financial institutions in a comprehensive and uniform manner.

portions thereof, are risk-weighted at 20 percent.

The OCC permits portions of claims collateralized by cash or OECD government securities to receive a zero percent risk weight, provided that the collateral is marked to market daily and a positive margin is maintained. The FDIC's and OTS's rules permit portions of claims collateralized by cash or OECD government securities to receive a 20 percent risk weight.

Under the agencies' proposed rule, portions of claims collateralized by cash or OECD government securities could be assigned a zero percent risk weight, provided the transactions meet certain criteria, which would be uniform among the agencies. Agency staffs intend to finalize the outstanding proposal in early 1998.

FSLIC/FDIC—Covered Assets (Assets Subject to Guarantee Arrangements by the FSLIC or FDIC)

The three banking agencies generally place these assets in the 20 percent risk category, the same category to which claims on depository institutions and government-sponsored agencies are assigned. The OTS places these assets in the zero percent risk category.

Limitation of Subordinated Debt and Limited-life Preferred Stock

The three banking agencies limit the amount of subordinated debt and limited-life preferred stock that may be included in Tier 2 capital to 50 percent of Tier 1 capital. In addition, maturing capital instruments must be discounted by 20 percent in search of the last five years prior to maturity. The OTS has no limitation on the total amount of limited-life preferred stock or maturing capital instruments that may be included within Tier 2 capital. In addition, the OTS allows savings institutions the option of: (1) discounting maturing capital instruments issued on or after November 7, 1989, by 20 percent a year over the last 5 years of their term; or (2) including the full amount of such instruments provided that the amount maturing in any of the next seven years does not exceed 20 percent of the thrift's total capital.

Subsidiaries

Consistent with the Basle Accord and long-standing supervisory practices, the three banking agencies generally consolidate all significant majority-owned subsidiaries of the parent organization for capital purposes. This consolidation assures that the capital requirements are related to all of the risks to which the banking organization is exposed. As with most other bank subsidiaries, banking and finance subsidiaries generally are consolidated for regulatory capital purposes. However, in cases where banking and finance subsidiaries are not consolidated, the Federal Reserve, consistent with the Basle Accord, generally deducts investments in such subsidiaries in determining the adequacy of the parent bank's capital.

The Federal Reserve's risk-based capital guidelines provide a degree of flexibility in the capital treatment of unconsolidated subsidiaries (other than banking and finance subsidiaries) and investments in joint ventures and associated companies. For example, the Federal Reserve may deduct investments in such subsidiaries from an organization's capital, may apply an appropriate risk-weighted capital charge against the proportionate share of the assets of the entity, may require a line-by-line consolidation of the entity, or otherwise may require that the parent organization maintain a level of capital above the minimum standard that is sufficient to compensate for any risk associated with the investment.

The guidelines also permit the deduction of investments in subsidiaries that, while consolidated for accounting purposes, are not consolidated for certain specified supervisory or regulatory purposes. For example, the Federal Reserve deducts investments in, and unsecured advances to, Section 20 securities subsidiaries from the parent bank holding company's capital. The FDIC accords similar treatment to securities subsidiaries of state nonmember banks established pursuant to Section 337.4 of the FDIC regulations.

Similarly, in accordance with Section 325.5(f) of the FDIC regulations, a state nonmember bank must deduct investments in, and extensions of credit to, certain mortgage banking subsidiaries in computing the parent bank's capital. The Federal Reserve does not have a similar requirement with regard to mortgage banking subsidiaries. The OCC does not have requirements dealing specifically with the capital treatment of either mortgage banking or securities subsidiaries. The OCC, however, does reserve the right to require a national bank, on a case-by-case basis, to deduct from capital investments in, and extensions of credit to, any nonbanking subsidiary.

The deduction of investments in subsidiaries from the parent's capital is designed to ensure that the capital supporting the subsidiary is not also used as the basis of further leveraging and risk-taking by the parent banking organization. In deducting investments in, and advances to, certain subsidiaries from the parent's capital, the Federal Reserve expects the parent banking organization to meet or exceed minimum regulatory capital standards without reliance on the capital invested in the particular subsidiary. In assessing the overall capital adequacy of banking organizations, the Federal Reserve may also consider the organization's fully consolidated capital position.

Under the OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries that are engaged in activities permissible for national banks and subsidiaries that are engaged in ''impermissible'' activities for national banks. Subsidiaries of thrift institutions that engage only inpermissible activities are consolidated on a line-by-line basis if majority-owned and on a pro rata basis if ownership is between 5 and 50 percent. As a general rule, investments, including loans, in subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent.

Mortgage-Backed Securities (MBS)

The three banking agencies, in general, place privately-issued MBS in a risk category appropriate to the underlying assets but in no case to the zero percent risk category. In the case of privately-issued MBS where the direct underlying assets are mortgages, this treatment generally results in a risk weight of 50 percent or 100 percent. Privately-issued MBS that have government agency or government-sponsored agency securities as their direct underlying assets are generally assigned to the 20 percent risk category.

The OTS assigns privately-issued high quality mortgage-related securities to the 20 percent risk category. These are, generally, privately-issued MBS with AA or better investment ratings.

Both the banking and thrift agencies automatically assign to the 100 percent risk weight category certain MBS, including interest-only strips, residuals, and similar instruments that can absorb more than their pro rata share of loss.

Agricultural Loan Loss Amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 are permitted to defer and amortize losses incurred on agricultural loans between January 1, 1984 and December 31, 1991. The program also applies to losses incurred between January 1, 1983 and December 31, 1991, as a result of reappraisals and sales of

agricultural Other Real Estate Owned (OREO) and agricultural personal property. These loans must be fully amortized over a period not to exceed seven years and, in any case, must be fully amortized by year-end 1998. Savings institutions are not eligible to participate in the agricultural loan loss amortization program established by this statute.

Treatment of Junior Liens on 1- to 4-Family Residential Properties

In some cases, a banking organization may make two loans on a single residential property, one secured by a first lien, the other by a second lien. In such a situation, the Federal Reserve views these two transactions as a single lien, provided there are no intervening liens. The total amount of these transactions would be assigned to either the 50 percent or the 100 percent risk category depending upon whether certain other criteria are met.

One criterion is that the loan must be made in accordance with prudent underwriting standards, including an appropriate ratio of the current loan balance to the value of the property (the loan-to-value ratio or LTV). When considering whether a loan is consistent with prudent underwriting standards, the Federal Reserve evaluates the LTV ratio based on the combined loan amount. If the combined loan amount satisfies prudent underwriting standards, both the first and second lien are assigned to the 50 percent risk category. The FDIC also combines the first and second liens to determine the appropriateness of the LTV ratio, but it applies the risk weights differently than the Federal Reserve. If the LTV ratio based on the combined loan amount satisfies prudent underwriting standards, the FDIC risk weights the first lien at 50 percent and the second lien at 100 percent, otherwise both liens are risk weighted at 100 percent. The OCC treats all first and second liens separately, with qualifying first liens risk weighted at 50 percent and non-qualifying first liens and all second liens risk weighted at 100 percent. The OTS has interpreted its rule to treat first and second liens to a single borrower as a single extension of credit, similar to the Federal Reserve.

Under the proposal issued by the agencies in October 1997, the agencies would follow the OCC capital treatment for first and second liens.

Pledged Deposits and Nonwithdrawable Accounts

The capital guidelines of the OTS permit thrift institutions to include in capital certain pledged deposits and nonwithdrawable accounts that meet the criteria of the OTS. Income Capital Certificates and Mutual Capital Certificates held by the OTS may also be included in capital by thrift institutions. These instruments are not relevant to commercial banks, and, therefore, they are not addressed in the banking agencies' capital rules.

Construction Loans on Presold Residential Property

The agencies all assign a qualifying loan to a builder to finance the construction of a presold 1- to 4-family residential property to the 50 percent risk category provided certain conditions are satisfied. The Federal Reserve and the FDIC permit a 50 percent risk weight once the residential property is sold, whether the sale occurs before or after the construction loan has been made. The OCC and the OTS permit the 50 percent risk weight treatment only if the property is sold to an individual who will occupy the residence upon completion of construction before the extension of credit to the builder.

The agencies' October proposal set forth the treatment followed by the Federal Reserve and the FDIC.

Mutual Funds

The three banking agencies generally assign all of a bank's holding in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. The OCC also permits, on a case-by-case basis, an institution's investment to be allocated on a pro rata basis among the risk categories based on the percentages of a portfolio authorized to be invested in a particular risk weight category. The OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time. The OTS also permits, on a case-by-case basis pro rata allocation among risk categories based on the fund's actual holdings. All of the agencies' rules provide that the minimum risk weight for investment in mutual funds is 20 percent.

The agencies have proposed following the banking agencies' general treatment and permitting institutions, at their option, to assign such investment on a pro rata basis according to the investment limits in the mutual fund prospectus.

Accounting Standards

Over the years, the three banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed Uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the three banking agencies for recognition and measuring purposes are consistent with generally accepted accounting principles (GAAP). The agencies adopted GAAP as the reporting basis for the Call Report, effective for March 1997 reports. The adoption of GAAP for Call Report purposes eliminated the differences in accounting standards among the agencies that were set forth in previous reports to Congress. Thus, there are no material differences in regulatory accounting standards for regulatory reports filed with the federal banking agencies by commercial banks, savings banks, and savings associations.

By order of the Board of Governors of the Federal Reserve System, January 21, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–1812 Filed 1–26–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. *Self-Evaluation and Recordkeeping Required by the Regulation Implementing Section 504 of the Rehabilitation Act of 1973 (45 CFR 84.6(c))*—Extension—0990–0124—Recipients of DHHS funds must conduct a single-time evaluation of their policies and practices for compliance with Section 504 of the Rehabilitation Act of 1973. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions; *Annual Number of Respondents:* 2,120; *Frequency of Response:* once; *Burden per Response:* 16 hours; *Total Annual Burden:* 33,920 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written

comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: January 16, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–1845 Filed 1–26–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 14½% for the quarter ended December 31, 1997. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 20, 1998.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 98–1844 Filed 1–26–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Population-Specific Issues.

Times and Dates: 9:00 a.m.–5:00 p.m., February 9, 1998; 9:00 a.m.–4:00 p.m., February 10, 1998.

Place: Wyndam Metro Center Hotel, 10220 North Metro Parkway East, Phoenix, Arizona.

Status: Open.

Purpose: The Subcommittee is in the process of examining a number of data needs and issues associated with Medicaid managed care. The purpose of this site visit to Arizona is to obtain information on one State's Medicaid managed care program, with special attention to data needs, data systems, data uses and data issues. Presentations are planned involving representatives of State agencies, providers, plans, and patient advocacy groups who will describe their data needs and issues relating to Medicaid managed care. A subsequent site visit to Massachusetts also is planned.

Contact Person for more Information: Substantive program information as well as a roster of committee members may be obtained from Carolyn Rimes, lead Subcommittee staff, Health Care Financing Administration, DHHS, 7500 Security Boulevard, C–3–21–06, Baltimore, Maryland 21244–1850, telephone (410) 786–6620, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050. Additional information about the full Committee is available on the NCVHS website, where the tentative agenda for the Subcommittee meeting will also be posted when available: http://aspe.os.dhhs.gov/ncvhs

Dated: January 20, 1998.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 98–1843 Filed 1–26–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0535]

Agency Information Collection Activities: Institutional Review Boards: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's protection of human subjects recordkeeping and reporting requirements for institutional review boards (IRB's). IRB's are groups composed of members of varying backgrounds which are charged with reviewing the ethics and risk/benefit aspects of clinical studies involving human subjects to assure that the rights and welfare of human subjects are adequately protected.

DATES: Submit written comments on the collection of information by March 30, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Institutional Review Boards—(21 CFR Part 56.115)—(OMB Control Number 0910–0130)—Extension

When reviewing clinical research studies regulated by FDA, IRB's are required to create and maintain records describing their operations, and make the records available for FDA inspection when requested. These records include: (1) Written procedures describing the structure and membership of the IRB and the methods which the IRB will use in performing its functions; (2) the research protocols, informed consent documents, progress reports, and reports of injuries to subjects submitted by investigators to the IRB; (3) minutes of meetings showing attendance, votes and decisions made by the IRB, the number of votes on each decision for, against, and abstaining, the basis for requiring changes in or disapproving research; (4) records of continuing review activities; (5) copies of all correspondence between investigators and the IRB; (6) statements of significant new findings provided to subjects of the research; (7) and a list of IRB members by name, showing each member's earned degrees, representative capacity, and experience in sufficient detail to describe each member's contributions to the IRB's deliberations, and any employment relationship between each member and the IRB's institution. This information is used by the FDA in conducting audit inspections of IRB's to determine whether IRB's and clinical investigators are providing adequate protections to human subjects participating in clinical research.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
56.115	2,000	14.6	10,000	65	131,400

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The recordkeeping requirement burden is based on the following formula: Approximately 2,000 IRB's review FDA-regulated research involving human subjects annually. The burden for each of the paragraphs under 21 CFR 56.115 has been considered as one for purposes of estimating the burden. Each paragraph cannot reasonably be segregated from one another because all are interrelated. FDA has about 2,000 IRB's in its inventory. The 2,000 IRB's meet on an average of 14.6 times annually. The mean number of IRB meetings per year was derived from a study conducted by the agency and published by the Office of Planning and Evaluation. The agency estimates that approximately 4.5 hours of person time per meeting are required to transcribe and type the minutes of the meeting, to maintain records of continuing review activities, copies of all correspondence between the IRB and investigators, member records, and written IRB procedures which are approximately five pages per IRB.

Dated: January 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1944 Filed 1–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96P–0316]

Determination That Minocycline Hydrochloride Tablets Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that minocycline hydrochloride tablets were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for minocycline hydrochloride tablets.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Regulations also provide that the agency must make a determination as to

whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1)). FDA may not approve an ANDA that does not refer to a listed drug.

In a citizen petition dated August 26, 1996 (Docket No. 96P–0316/CP), submitted in accordance with 21 CFR 314.122, Clausen & Associates, Inc., requested that the agency determine whether minocycline hydrochloride tablets were withdrawn from sale for reasons of safety or effectiveness. Minocycline hydrochloride (Minocin) tablets are the subject of approved NDA 50–451 held by Lederle Laboratories. In 1996, Lederle withdrew minocycline hydrochloride tablets from sale.

FDA has reviewed its records and, under § 314.161, has determined that minocycline hydrochloride tablets were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will maintain minocycline hydrochloride tablets in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to minocycline hydrochloride tablets may be approved by the agency.

Dated: January 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1849 Filed 1–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98M–0036]

Xytronyx, Inc.; Premarket Approval of the Periogard Periodontal Tissue Monitor

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Xytronyx, Inc., San Diego, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Periogard Periodontal Tissue Monitor (PTM). After reviewing the recommendation of the Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 23, 1997, of the approval of the application.

DATES: Petitions for administrative review by February 26, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Alfred W. Montgomery, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION: On September 19, 1996, Xytronyx, Inc., San Diego, CA 92121, submitted to CDRH an application for premarket approval of the PTM. The device is a visual, periodontal test kit and is indicated for use as a rapid, chair-side, visual test for the qualitative determination of aspartate aminotransferase (AST) in gingival crevicular fluid. The PTM kit detects elevated levels of AST associated with tissue necrosis. It is intended to be used as an objective, biochemical adjunct to traditional methods of monitoring patients to assist in the decision to apply treatment and in the evaluation of treatment effectiveness.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Dental Products Panel and/or the Clinical Chemistry and Toxicology Devices Panel of the Medical Devices Advisory Committee, FDA advisory committees, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by the panel. On June 23, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 26, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 31, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 98–1942 Filed 1–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98M–0038]

Guidant Corp.; Premarket Approval of VENTAK® AV™ AICD™ Model 1810/ Model 1815 Automatic Implantable Cardioverter Defibrillator (AICD™) with the Model 2833 Software Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Guidant Corp., St. Paul, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the VENTAK® AV™ AICD™ System. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 18, 1997, of the approval of the application.

DATES: Petitions for administrative review by February 26, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carole C. Carey, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8609.

SUPPLEMENTARY INFORMATION: On August 20, 1996, Guidant Corp., St. Paul, MN 55112–5798, submitted to CDRH an application for premarket approval of VENTAK® AV™ AICD™ Model 1810/ Model 1815 Automatic Implantable Cardioverter Defibrillator (AICD™) with the Model 2833 Software Application which consists of the following: Model 1810/Model 1815 pulse generator and Model 2833 Software Application to be used with commercially available Cardiac Pacemakers, Inc., Programmer/ Recorder/Monitor (PRM). The device is a multiprogrammable automatic, implantable dual-chamber pacemaker and cardioverter defibrillator, and is indicated for use in patients who are at high risk of sudden cardiac death due to ventricular arrhythmias and who have experienced one of the following situations: (1) Survival of at least one episode of cardiac arrest (manifested by the loss of consciousness) due to a ventricular tachyarrhythmia; (2) recurrent, poorly tolerated sustained ventricular tachycardia (VT); (3) prior myocardial infarction, left ventricular ejection fraction of ≤ 35 percent, and a documented episode of nonsustained VT, with an inducible ventricular tachyarrhythmia. Patients suppressible with IV procainamide or an equivalent antiarrhythmic have not been studied. *NOTE: The clinical outcome of hemodynamically stable, sustained-VT patients is not fully known.* Safety and effectiveness studies have not been conducted. The VENTAK® AV™ AICD™ pulse generator is not intended for use solely as a primary bradycardia support device.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On July 18, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details. Petitioners may, at any time on or before February 26, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 5, 1998.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 98–1943 Filed 1–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anesthetic and Life Support Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Anesthetic and Life Support Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 5, 1998, 8 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4090, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12529. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear presentations and discuss the occurrence of spinal/epidural hematomas with the concurrent use of approved low molecular weight heparins or heparinoids and spinal/epidural anesthesia or spinal puncture. The committee will also consider labeling for low molecular weight heparins and heparinoids concerning these adverse events. The approved drug products under discussion and their sponsors are: (1) Lovenox® (enoxeparin sodium) Injection, Rhone-Poulenc Rorer Pharmaceuticals, Inc.; (2) Fragmin® (dalteparin sodium) Injection, Pharmacia & Upjohn; (3) Orgaran® (danaparioid sodium) Injection, Organon, Inc.; and (4) Normiflo™ (ardeparin sodium) Injection, Wyeth Laboratories, Inc.

Procedure: On February 5, 1998, from 8 a.m. to 3:45 p.m., the meeting is open to the public. 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 January 29, 1998. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 29, 1998, 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.

Closed Committee Deliberations: On February 5, 1998, from 3:45 p.m. to 5:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The investigational new drug and Phase I and II drug products in process will be presented and recent action on selected new drug applications will be discussed.

FDA regrets that it was unable to publish this notice 15 days prior to the February 5, 1998, Anesthetic and Life Support Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Anesthetic and Life Support Drugs Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2024 Filed 1–23–98; 11:47 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food 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: Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 11, 12, and 13, 1998, 8:30 a.m. to 5 p.m.

Location: DoubleTree Hotel, Pentagon City, 300 Army Navy Dr., Arlington, VA.

Contact Person: Catherine M. DeRoever, Center for Food Safety and Applied Nutrition (HFS–22), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251, FAX 202–205–4970, E-mail CDEROEVE@BANGATE.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 11, 12, and 13, 1998, the committee will undertake discussions on dietary supplements. Issues raised in the report of the White House Commission on Dietary Supplement Labeling relating to postmarket surveillance and consumer research will be discussed. Also, two aspects relating to good manufacturing practices (GMP's) for dietary supplements will be addressed. The agency is interested in recommendations for ensuring the identity for different types of dietary ingredients and on recordkeeping requirements. On February 13, 1998, two committee working groups will continue discussing assignments stemming from the Keystone report on health claims.

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 February 9, 1998. Oral presentations from the public will be scheduled between approximately 4 p.m. and 5 p.m. on February 11 and 12, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 9, 1998, 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.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C., app. 2).

Dated: January 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2023 Filed 1–23–98; 11:47 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Open Meeting For Representatives of Health Professional Organizations

AGENCY: Food and Drug Administration

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting with representatives of health professional organizations. The meeting will be chaired by Sharon Smith Holston, Deputy Commissioner for External Affairs. The agenda will include presentations and discussions on the topics of the FDA Modernization Act of 1997, and the role of FDA in the regulation of products used in complementary and alternative medicine. There will also be a brief update on tobacco.

DATES: The meeting will be held on Monday, February 9, 1998, from 1:30 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Bethesda Hyatt, One Metro Center, Bethesda, MD.

REGISTRATION: There is no registration fee, however, space is limited. Persons will be registered in the order in which calls are received. Please call Betty B. Palsgrove at 301–827–6618 to register. Registrations also may be transmitted by fax to 1–800–344–3332 or 301–443–2446. Please include the name and title of the person attending and the name of the organization.

FOR FURTHER INFORMATION CONTACT: Peter H. Rheinstein, M.D., J.D., Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6630.

SUPPLEMENTARY INFORMATION:

The purpose of the meeting is to provide an opportunity for representatives of health professional organizations and other interested persons to be briefed by senior FDA staff. It will also provide an opportunity for informal discussion on these topics of particular interest to health professional organizations.

This public meeting is free of charge; however, space is limited. Registration for the meeting will be accepted in the order received and should be sent to the contact person. Registration should include the name and title of the person attending and the name of the organization being represented, if any.

Dated: January 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1850 Filed 1–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Imaging Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Medical Imaging Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 9, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Leander B. Madoo, Center for Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–80–741–8138 (301–443–0572 in the Washington, DC area), code 12540. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the safety and efficacy of new drug application (NDA) 20–887 AcuTect™, Diatide, Inc., a radiopharmaceutical agent for the detection and localization of acute venous thrombosis.

Procedure: On February 9, 1998, from 8 a.m. to 1 p.m. and from 2 p.m. to 5 p.m. the meeting is open to the public. 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 February 2, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 2, 1998, 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.

Closed Committee Deliberations: On February 9, 1998, from 1 p.m. to 2 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information relating to NDA 20–887 AcuTect™ (5 U.S.C. 552b(c)(4)).

FDA regrets that it was unable to publish this notice 15 days prior to the February 9, 1998, Medical Imaging Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Medical Imaging Drugs Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 22, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2022 Filed 1–23–98; 11:47 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0017]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance on Validation of Analytical Procedures: Definition and Terminology (#63), and Validation of Analytical Procedures: Methodolgy (#64); Availability; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of two draft guidance for industry (GFI) documents entitled ''Validation of Analytical Procedures: Definition and Terminology'' (number 63) and ''Validation of Analytical Procedures: Methodology'' (number 64). These related draft GFI documents have been adapted for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH) from two guidelines, Q2A and Q2B, that were adopted by the International Conference on Harmonisation (ICH) of Technical Requirements for Registration of Pharmaceuticals for Human Use. The draft guidance is intended to provide guidance on characteristics that should be considered during the validation of analytical procedures included as part of registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States.

DATES: Submit written comments on these draft GFI documents by March 30, 1998.

ADDRESSES: Submit written comments on the two draft GFI documents to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD 20857. Comments should be identified with the full title of the draft GFI document and the docket number found in the heading of this document.

Submit written requests for single copies of these draft GFI documents to the Communications and Education Team (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Copies of these draft guidance documents may be obtained on the Internet from the CVM Home Page (http://www.cvm.fda.gov).

FOR FURTHER INFORMATION CONTACT:

Regarding the GFI's: William G. Marnane, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0678. E-mail: wmarnane@bangate.fda.gov.

Regarding VICH: Sharon R. Thompson, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1798. E-mail: sthompso@bangate.fda.gov.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities, industry associations, and individual sponsors to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seeking scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and reduce the differences in technical requirements for drug development among regulatory agencies.

FDA has actively participated in the ICH for several years to develop harmonized technical requirements for the registration of human pharmaceutical products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary pharmaceutical products. The VICH is concerned with developing harmonized technical requirements for the registration of veterinary pharmaceutical products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH meetings are held under the auspices of the Office International des Épizooties (OIE). During the initial phase of the VICH, an OIE representative chairs the VICH Steering Committee. The VICH Steering Committee is composed of member representatives from the European Commission; the European Medicines Evaluation Agency; the European Federation of Animal Health; the U.S. Food and Drug Administration; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; and the Japanese Ministry of Agriculture, Forestry and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the Government of Australia/ New Zealand, one representative from the industry in Australia/ New Zealand, one representative from MERCOSUR (Argentina, Brazil, Uruguay and Paraguay), and one representative from Federacion Latino-Americana de la Industria para la Salud Animal. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the Confédération Mondiale de L'Industrie de la Santé Animale (COMISA). A COMISA representative also participates in the VICH Steering Committee meetings.

At a meeting held on August 20 and 21, 1997, the VICH Steering Committee agreed that the draft GFI documents entitled ''Validation of Analytical Procedures: Definition and Terminology'' and ''Validation of Analytical Procedures: Methodology'' should be made available for public comment. These draft GFI documents were prepared by the VICH Quality Working Group and are based on the ICH Guidelines (Q2A and Q2B) that have already been adopted by FDA for human pharmaceuticals. With one exception, the deletion of the text ''(e.g. metered dose inhalers)'' included in the ICH guideline Q2B, Section 3, the documents are identical.

The draft GFI document entitled, ''Validation of Analytical Procedures: Definition and Terminology,'' discusses the characteristics that should be considered during the validation of the analytical procedures included in an application for registration of veterinary medicinal products in the European Union, Japan, and the United States. This document pertaining to ''Definition and Terminology'' is not intended to cover testing requirements or procedures, rather it is intended to serve as a collection of terms and definitions. These common definitions such as ''analytical procedures,'' ''specificity,'' ''precision,'' ''accuracy,'' etc., are meant to bridge the differences that often exist among various compendia and requirements of the European Union, Japan, and the United States. The draft GFI document entitled, ''Validation of Analytical Procedures: Methodology,'' discusses common analytical procedures and provides guidance and recommendations on how to consider various validation characteristics for each analytical procedure. It also indicates the data that should be included in an application for registration. Comments about these draft GFI documents will be considered by the FDA and the VICH Quality Working Group. Ultimately, FDA intends to adopt the VICH Steering Committee's final guidelines and publish them as future GFI documents.

If finalized, these documents will represent current FDA thinking on characteristics for consideration during the validation of the analytical procedures included as part of applications. The draft GFI documents will not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternate approaches may be used if they satisfy the requirements of applicable statutes, regulations, or both.

Interested persons may, on or before March 30, 1998, submit to the Dockets Management Branch (address above) written comments on the draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and with the full title of the guidance document. The comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. After review of these comments, FDA will implement the guidance document with any appropriate changes. Thereafter, interested persons may submit written comment on the guidance document directly to the CVM Communications and Education Team (address above).

Dated: January 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–1848 Filed 1–26–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

ACTION: Notice.

SUMMARY: The collection of information described below will be submitted to OMB for approval under the provisions

of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance officer at the address and/or phone numbers listed below.

DATES: Comments must be submitted on or before March 30, 1998.

ADDRESSES: Comments and suggestions on specific requirements should be sent to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Stephen R. Vehrs, Refuge Program Specialist, Division of Refuges, 703/358–2397.

SUPPLEMENTARY INFORMATION: The Service proposes to submit the following information collection clearance requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

The issuance of a Permit by the Fish and Wildlife Service for access to units of the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee *et seq.*) as amended; the Refuge Recreation Act (16 U.S.C. 460K–3); the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57); and as implemented by regulations in 50 CFR 25–38.

The information requested prior to issuing the Permit is required to obtain a benefit, and will assist the Service in administering System programs in accordance with the above statutory authorities. The Improvement Act requires that a wildlife dependent recreational use or any other uses of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes for which the refuge was established. The information is needed by the Service to make this determination before a permit can be issued.

The permit is required for any person entering a national wildlife refuge, unless otherwise provided under the provisions of 50 CFR, subchapter C. The permittee must abide by all the terms and conditions set forth in the permit.

Information collected in submitting an application for a permit, prior to issuing a permit, may be used to evaluate and conclude the eligibility of, or merely document, permit applicants. The Service will require the use of permits as a condition in new and revised regulations pursuant to the Refuge Improvement Act.

The Service will provide Special Use Permit forms as requested by interested citizens. The required written forms and/or verbal application information will be sued by the Service to ensure that the applicant is eligible to receive a Permit.

Title: United States Department of the Interior, Fish and Wildlife Service, Special Use Permit.

Bureau form number: 3–1383.

Frequency of collection: On occasion.

Description of respondents: Individuals or households; State, local, or Tribal governments; businesses or other for profit and not-for-profit institutions.

Number of respondents: 10,000.

Estimated completion time: The reporting burden for FWS Form 3–1383 (Special Use Permit) is estimated to be 30 minutes.

Burden estimate: 5,000 hours.

Dated: January 15, 1998.

Carolyn A. Bohan,

Acting Assistant Director for Refuges and Wildlife.

[FR Doc. 98–1862 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–697830

Applicant: Assistant Regional Director, Ecological Services, Region 3, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

The applicant requests to renew and amend his current permit to take the following species for scientific purposes and the enhancement of propagation or survival of the species in the wild in accordance with listing, recovery outlines, recovery plans, and/or other Service work for those species:

Mammals

bat, gray (*Myotis grisescens*)
bat, Indiana (*Myotis sodalis*)
bat, Ozark big-eared (*Plecotus townsendii ingens*)
wolf (*Canis lupus*)

Birds

eagle, bald (*Haliaeetus leucocephalus*)
falcon, peregrine (*Falco peregrinus*)
plover, piping (*Charadrius melodus*)
tern, least tern (*Sterna antillarum*)
warbler, Kirtland's (wood) (*Dendroica kirtlandii*)

Reptiles

snake, copperbelly water (northern population) (*Nerodia erythrogaster neglecta*)

Fish

cavefish, Ozark (*Amblyopsis rosae*)
darter, Niangua (*Etheostoma nianguae*)
madtom, Scioto (*Noturus trautmani*)
madtom, Neosho (*Noturus placidus*)
sturgeon, pallid (*Scaphirhynchus albus*)

Clams

clubshell (*Pleurobema clava*)
fanshell [*Cyprogenia stegaria* (=*irrorata*)]
mussel, ring pink (=golf stick pearly) (*Obovaria retusa*)
mussel, winged mapleleaf (*Quadrula fragosa*)
pearlymussel, cracking [*Hemistena* (=*Lastena*) *lata*]
pearlymussel, Curtis' [*Epioblasma* (=*Dysnomia*) *florentina curtisi*]
pearlymussel, Higgins' eye (*Lampsilis higginsi*)
pearlymussel, orange-foot pimple back (*Plethobasus cooperianus*)
pearlymussel, pink mucket [*Lampsilis* (=*abrupta*) *orbiculata*]
pearlymussel, purple cat's paw pearly mussel [*Epioblasma* (=Dysnomia) *obliquata obliquata* (=*sulcata sulcata*)]
pearlymussel, tubercled-blossom [*Epioblasma* (=*Dysnomia*) *torulosa torulosa*]
pearlymussel, turgid-blossom [*Epioblasma* (=*Dysnomia*) *turgidula*]
pearlymussel, white cat's paw [*Epioblasma* (=*Dysnomia*) *obliquata perobliqua*]
pearlymussel, white wartyback (*Plethobasus cicatricosus*)

pigtoe, rough (*Pleurobema plenum*)
pocketbook, fat [*Potamilus* (=*Proptera*) *capax*]
riffleshell, northern (*Epioblasma torulosa rangiana*)

Snails

snail, Iowa Pleistocene (*Discus macclintocki*)

Insects

beetle, American burying (=giant carrion) (*Nicrophorus americanus*)
beetle, Hungerford's crawling water (*Brychius hungerfordi*)
butterfly, Karner blue (*Lycaeides melissa samuelis*)
butterfly, Mitchell's satyr (*Neonympha mitchellii mitchellii*)
dragonfly, Hine's (=Ohio) emerald (*Somatochlora hineana*)

Plants

Aconitum noveboracense (northern wild monkshood)
Apios priceana (Price's potato-bean)
Asclepias meadii (Mead's milkweed)
Asplenium (=*Phyllitis*) *scolopendrium* (=*japonica*) var. *americanum* (American hart's-tongue fern)
Boltonia decurrens (decurrent false aster)
Cirsium pitcheri (Pitcher's thistle)
Dalea foliosa (=*Petalostemum f.*) (leafy prairie-clover)
Erythronium propullans (Minnesota dwarf trout lily)
Geocarpon minimum (no common name)
Hymenoxys herbacea (=*acaulis* var. *glabra*) (lakeside daisy)
Iris lacustris (dwarf lake iris)
Isotria medeoloides (small whorled pogonia)
Lespedeza leptostachya (prairie bush-clover)
Lesquerella filiformis (Missouri bladder-pod)
Lindera melissifolia (pondberry)
Mimulus glabratus var. *michiganensis* (Michigan monkey-flower)
Oxytropis campestris var. *chartacea* (Fassett's locoweed)
Platanthera leucophaea (eastern prairie fringed orchid)
Platanthera praeclara (western prairie fringed orchid)
Sedum integrifolium ssp. *leedyi* (Leedy's roseroot)
Solidago houghtonii (Houghton's goldenrod)
Spiraea virginiana (Virginia spiraea)
Trifolium stoloniferum (running buffalo clover)

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111—4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x224); FAX: (612/725–3526).

Dated: January 20, 1998.

Matthias A. Kerschbaum,

Acting Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 98–1859 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

Permit No. 837580

Applicant: Robert Weppler, Riverside, California.

The applicant requests a permit to take (harass by survey) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in southern California in conjunction with presence or absence surveys for the purpose of enhancing its survival.

Permit No. 799486

Applicant: Jan Randall, San Francisco, California.

The applicant requests an amendment of her permit to take (capture and remove eight individuals from the wild) the giant kangaroo rat (*Dipodomys ingens*) in conjunction with scientific research in Merced, Fresno, Monterey, San Luis Obispo, Kings, Kern, and Santa Barbara Counties, California, for the purpose of enhancing its survival.

Permit No.'s: 838028, 785138, 832945, 810768, 837301, 781217, 797999

Applicants: Michael G. Van Hattem, San Juan Capistrano, California; David Levine, Laguna Beach, California; Lisa M. Kegarice, San Bernardino, California; Harmsworth Associates, Dove Canyon, California; Jeffrey L. Lincer, Poway, California; Chambers Group, Inc., Irvine, California; Merkel and Associates, San Diego, California.

These applicants request a permit or a permit amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout the species range in California, for the purpose of enhancing its survival.

Permit No. 781384

Applicant: Thomas A. Leslie, Wildomar, California.

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys and ecological research throughout the species range in California, for the purpose of enhancing its survival.

Permit No. 814215

Applicant: Claude Edwards, San Diego, California.

The applicant requests an amendment to his permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys and observational studies throughout the species range in California, for the purpose of enhancing its survival.

Permit No. 821229

Applicant: David G. Crawford, Agoura Hills, California.

The applicant requests an amendment to his permit to take (harass by survey) the Delhi-Sands flower loving fly (*Rhaphiomidas terminatus abdominalis*) in Riverside and San Bernardino Counties, California, and take (harass by survey) the tidewater goby (*Eucyclobius newberryi*) throughout its range in California in conjunction with presence or absence surveys, for the purpose of enhancing their survival.

Permit No. 838015

Applicant: Stephan Henry Sprague, Anaheim, California.

The applicant requests a permit to take (harass by survey) the Delhi-Sands flower loving fly (*Rhaphiomidas terminatus abdominalis*), Quino checkerspot butterfly (*Euphydryas editha quino*), and the coastal California gnatcatcher (*Polioptila californica californica*) in conjunction with presence or absence surveys throughout

each species range, for the purpose of enhancing their survival.

Permit No. 787645

Thomas Olsen Associates, Inc., Hemet, California.

The applicant requests an amendment to his permit to take (harass by survey) the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in conjunction with presence or absence surveys in Pima County, Arizona, for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before February 26, 1998.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: January 21, 1998.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–1884 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–08–1210–04]

Notice of Intent To Prepare and Environmental Impact Statement on Oil and Gas Development Within the Bisti/De-Na-Zin Wilderness Area; Invitation for Public Participation and Call for Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement, invitation for public involvement, and call for information on oil and gas minerals and other resources.

SUMMARY: The Bureau of Land Management (BLM), Farmington District Office is initiating preparation of an Environmental Impact Statement (EIS) on proposed oil and gas development of three existing leases within the Bisti/De-Na-Zin Wilderness Area. The public is invited to participate in this planning effort with the identification of additional issues and planning criteria.

This notice is also to solicit oil and gas mineral and other resource information and indications of interest and need. Mineral extraction companies, environmental organizations, state, Tribal, and local governments, and the general public are encouraged to submit information to the BLM to assist in the determinations of oil and gas development potential and possible conflicts with other resources.

The planning document will be prepared by an interdisciplinary team of specialists within the Farmington District Office. Two public scoping meetings will be held: in Farmington, New Mexico on February 24, 1998 in the San Juan College Henderson Fine Arts Building, room 9012 at 7:00 p.m.; and in Santa Fe, New Mexico on February 25, 1998 in the BLM New Mexico State Office, 1474 Rodeo Road, at 7:00 p.m. Public hearings will be announced after the completion of a Draft EIS.

DATES: Comments relating to the identification issues and planning criteria, and responses to this call for oil and gas mineral and other resource information will be accepted through the close of business March 20, 1998.

ADDRESSES: Comments and requests to be included on the mailing list should be sent to: Lee Otteni, District Manager; Bureau of Land Management, Farmington District Office; 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401. Proprietary data should be identified as such to ensure confidentiality.

FOR FURTHER INFORMATION CONTACT: Christopher V. Barns at the address above, or call 505–599–6338.

SUPPLEMENTARY INFORMATION: The existing leases are found in the Hunter Wash portion of the Bisti/De-Na-Zin Wilderness Area on 2,630.93 acres of the following public lands:

T. 24 N., R. 12 W., NMPM,
Sec. 3, lots 8, 9, 16, 17;
Sec. 4, lots 5 to 20, inclusive;
Sec. 8, lots 1, 2, 7 to 16, inclusive;
Sec. 9, lots 3, 4, 5, 6, 12, 13;
Sec. 17, lots 1 to 16, inclusive; and
Sec. 18, lots 13 to 20, inclusive.

The issues anticipated to be addressed by this EIS include the conflicting mandates of protecting wilderness resources and values while honoring valid existing oil and gas rights.

The proposed planning criteria include:

1. All proposed actions and alternatives considered must comply with current laws and federal regulations.
2. The EIS will weigh long-term benefits and detriments against short-term benefits and detriments.
3. This planning process will provide for public involvement including early notice and frequent opportunity for interested citizens and groups to participate in and comment on the preparation of plans and related guidance.

Dated: January 21, 1998.

M.J. Chávez,

State Director.

[FR Doc. 98–1882 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–1020–00]

Environmental Analysis; Cedar City District, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management, Cedar City District, has completed an Environmental Analysis (EA)/Finding of No Significant Impact (FONSI) of the Proposed Plan Amendments to the Cedar/Beaver/Garfield/Antimony and the Paria, Vermilion and Zion Management Framework Plans. The Proposed Amendments involve the addition of five new land tenure adjustment criteria (LTAs). These LTAs could be used to facilitate changes in land ownership enhancing the ability to provide for economic growth as well as provide additional protection for sensitive resources.

DATES: The protest period for these Proposed Plan Amendments will commence with the date of publication of this notice and last for 30 days. Protests must be received on or before January 27, 1998.

ADDRESSES: Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, 1849 C Street, N.W.,

Washington, D.C. 20240 within 30 days after the date of publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Verlin Smith, Area Manager, Kanab Resource Area, at 318 North First East, Kanab, Utah 84741, (801) 644–2672. Copies of the proposed Plan Amendments are available for review at the Kanab Field Office.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to Section 202(a) of the Federal Land Management Act (1976) and 43 CFR Part 1610. These Proposed Amendments are subject to protests by any party who has participated in the planning process. Protest must be specific and contain the following information:

—The name, mailing address, phone number, and interest of the person filing the protest.
—A statement of the issue(s) being protested.
—A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps etc., of the Proposed Plan Amendment.
—A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
—A concise statement as to why the protester believes the BLM State Director is incorrect.

Dated: January 15, 1998.

G. William Lamb,

State Director, Utah.

[FR Doc. 98–1635 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00;GP8–0087]

Notice of Meeting of the Eastern Washington Resource Advisory Council

AGENCY: Interior, Bureau of Land Management, Spokane District.

ACTION: Meeting of the Eastern Washington Resource Advisory Council; February 20, 1998, in Spokane, Washington.

SUMMARY: A meeting of the Eastern Washington Resource Advisory Council will be held on February 20, 1998. The meeting will convene at 8:00 a.m., at the Spokane District Office of the Bureau of Land Management, 1103 N. Fancher, Spokane, WA 99212. The meeting will adjourn at approximately 4:00 p.m. or upon completion of business. Public comments will be heard from 11:00 a.m. until 11:30 a.m. If necessary to accommodate all wishing to make public comments, a time limit may be placed upon each speaker. At an appropriate time, the meeting will adjourn for approximately one hour for lunch. The purposes of the meeting are to interact with the Director of the Bureau of Land Management in a video teleconference with other Resource Advisory Councils, to identify issues for the Council to address in 1998, and to schedule future 1998 meetings.

FOR FURTHER INFORMATION CONTACT: Richard Hubbard, Bureau of Land Management, Spokane District Office, 1103 North Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated January 21, 1998.

Joseph K. Buesing,

District Manager.

[FR Doc. 98–1881 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that 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 Office of Management and Budget (OMB) control number.

DATES: Submit written comments by March 30, 1998.

ADDRESSES: Direct all written comments to the Rules Processing Team, Minerals Management Service, Mail Stop 4020, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of this collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart F, Oil and Gas Well-Workover Operations.

OMB Control Number: 1010–0043.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*), as amended, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. To carry out these responsibilities, MMS has issued regulations at 30 CFR Part 250. Subpart F, Oil and Gas Well-Workover Operations, of that part contains requirements and procedures for well-workover operations in the OCS.

The MMS uses the information collected under subpart F to analyze and evaluate planned well-workover operations in the OCS to ensure that operations result in personnel safety and protection of the environment. The evaluation is used in decisions on whether to approve, disapprove, or to require modification to the proposed well-workover operations. If respondents submit proprietary information, it will be protected under 30 CFR 250.18, Data and information to be made available to the public. No items of a sensitive nature are collected. The requirement to respond is mandatory.

Estimated Number and Description of Respondents: There are approximately 130 Federal OCS oil and gas or sulphur lessees.

Frequency: On occasion, varies by section.

Estimated Annual Reporting and Recordkeeping Hour Burden: There are 445 burden hours currently approved for this collection.

Comments: The MMS will summarize written responses to this notice and address them in its submission for OMB approval. All comments will become a matter of public record. We will also consult with a representative number of respondents on the accuracy of the burden estimate. As a result of the comments we receive and consultations, we will make any necessary adjustments for our submission to OMB. In calculating the burden, MMS may have assumed that respondents perform some of the requirements and maintain

records in the normal course of their activities. The MMS considers these to be usual and customary. Commenters are invited to provide information if they disagree with this assumption, and they should tell us what the burden hours and costs imposed by this collection of information are.

(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping cost burden for the collection of this information. The MMS needs your comments on this item. Your response should split the cost estimate into two components: (a) Total capital and startup cost component; and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: Before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: January 12, 1998.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–1861 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting: Committee for the Preservation of the White House

In compliance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the Committee for the Preservation of the White House. The meeting will be held at the Old Executive Office Building, Washington, DC at 10 a.m., Friday, February 6, 1998. It is expected that the agenda will include policies, goals and long range plans. The meeting will be open, but subject to appointment and security clearance requirements. Clearance information must be received by February 2, 1998.

Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m., weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW, Washington, DC 20242.

James I. McDaniel,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 98–1889 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions pending through December 31, 1997, and contract actions that have been completed or discontinued since the last publication of this notice on October 27, 1997. From the date of this publication, future quarterly notices during this calendar year will be limited to modified, new, completed, or discontinued contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–236–1061 extension 224.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1998. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional

directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) **Federal Register**
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(O&M) Operation and Maintenance
(P-SMBP) Pick-Sloan Missouri Basin Program
(R&B) Rehabilitation and Betterment
(PPR) Present Perfected Right
(RRA) Reclamation Reform Act
(NEPA) National Environmental Policy Act
(SOD) Safety of Dams
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

Pacific Northwest Region

Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706–1234, telephone 208–378–5346.

1. Irrigation, M&I, and miscellaneous water users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim water service contracts for irrigation, M&I, or miscellaneous use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Lake Chelan Reclamation District, Chief Joseph Dam Project, Washington; Consolidated ID, Spokane Valley Project, Washington; Individual Contractors, Crooked River Project, Oregon; Lower Payette Ditch Company Ltd., Pioneer Ditch Company, Boise Project, Idaho; Tumalo ID, Crescent Lake Dam Project, Oregon; Monroe Creek ID, Mann Creek Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Parsons Ditch Company, Poplar ID, Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon; Roza ID, Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the RRA (Pub. L. 97–293).

5. Bridgeport ID, Chief Joseph Dam Project, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

6. Douglas County, Milltown Hill Project, Oregon: SRPA loan repayment contract; proposed combination loan and grant obligation of approximately $31 million.

7. Palmer Creek Water District Improvement Company, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 13,000 acre-feet.

8. U. S. Fish and Wildlife Service and Boise-Kuna ID, Boise Project, Idaho: Memorandum of Agreement for the use of approximately 400 acre-feet of storage space annually in Anderson Ranch Reservoir. Water to be used for wildlife mitigation purposes (ponds and wetlands).

9. North Unit ID, Deschutes Project, Oregon: Long-term municipal water service contract for provision of approximately 125 acre-feet annually from the project water supply to the City of Madras.

10. Lewiston Orchards ID, Lewiston Orchards Project, Idaho: Repayment contract for reimbursable cost of dam safety repairs to Reservoir ''A.''

11. North Unit ID, Deschutes Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Wickiup Dam.

12. Twenty-one individual contractors, Umatilla Project, Oregon: Repayment agreements for reimbursable cost of dam safety repairs to McKay Dam.

13. North Unit ID, Deschutes Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to convey nonproject water.

14. South Boise Mutual Irrigation Company, Ltd. and United Water Idaho, Boise Project, Idaho: Agreement amending contracts to approve the acquisition and municipal use of Anderson Ranch Reservoir water by United Water Idaho, and the transfer of Lucky Peak Reservoir water to the United States.

15. Baker Valley ID, Baker Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to store nonproject water.

16. Okanogan ID, Okanogan Project, Washington: SOD contract to repay district's share of cost to install an Early Warning System.

17. Rogue River Valley and Medford IDs, Rogue River Basin Project, Oregon: SOD contract to repay each district's share of cost to repair Fish Lake Dam.

18. Trendwest Resorts, Yakima Project, Washington: Long-term water exchange contract for assignment of Teanaway River and Big Creek water rights to Reclamation for instream flow use in exchange for annual use of up to 3,500 acre-feet of water from Cle Elum

Reservoir for a proposed resort development.

19. Milner ID, Minidoka-Palisades Projects, Idaho: Amendment of storage contracts to reduce the district's spaceholding in Palisades Reservoir by up to 5,162 acre-feet, thereby allowing use of this space by Reclamation for flow augmentation.

20. Burley and Southwest IDs, Minidoka Project, Idaho: Warren Act contract with charge to allow for use of project facilities to convey nondistrict water to Southwest ID.

21. City of Cle Elum, Yakima Project, Washington: Contract for up to 2,170 acre-feet of water for municipal use.

The following contract actions have been completed in the Pacific Northwest Region since this notice was last published on October 27, 1997.

1. (15) Stanfield and Westland IDs and 69 individual contractors, Umatilla Project, Oregon: Repayment contracts for reimbursable cost of dam safety repairs to McKay Dam. Agreements have been executed with 50 individual contractors; a contract executed October 17, 1997, with Stanfield ID; and a contract executed January 1998 with Westland ID.

2. (24) J. R. Simplot Company and Partners, Boise Project, Idaho: Long-term contract for 3,000 acre-feet of Anderson Ranch Reservoir storage for M&I use. Contract executed November 10, 1997.

3. (25) Eagle Island Water Users Association, Inc., Boise Project, Idaho: Amendment of water service contract to reduce the Association's spaceholding in Lucky Peak Reservoir by approximately 5,300 acre-feet, thereby allowing use of this space by Reclamation for flow augmentation. Amendment executed November 10, 1997.

4. (27) The Dalles ID, The Dalles Project, Oregon: Amendatory SRPA loan repayment contract to modify the repayment schedule, including extension of repayment period from 30 to 34 years. Contract executed December 12, 1997.

Mid-Pacific Region

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–979–2401.

1. Irrigation water districts, individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region projects other than CVP: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually.

Note: Copies of the standard forms of temporary water service contracts for the various types of service are available upon written request from the Regional Director at the address shown above.

2. Contractors from the American River Division, Buchanan Division, Cross Valley Canal, Delta Division, Friant Division, Hidden Division, Sacramento River Division, Shasta Division, and Trinity River Division, CVP, California: Renewal of existing long-term and interim renewal water service contracts with contractors whose contracts expire between 1998 and 2000; water quantities for these contracts total in excess of 1.7M acre-feet. These contract actions will be accomplished through interim renewal contracts pursuant to Public Law 102–575.

3. Redwood Valley County WD, SRPA, California: District is considering restructuring the repayment schedule pursuant to Public Law 100–516 or initiating new legislation to prepay the loan at a discounted rate. Prepayment option under Public Law 102–575 has expired.

4. Sacramento River water rights contractors, CVP, California: Contract amendment for assignment under voluntary land ownership transfers to provide for the current CVP water rates and update standard contract articles.

5. Naval Air Station and Truckee Carson ID, Newlands Project, Nevada: Amend water service Agreement No. 14–06–400–1024 for the use of project water on Naval Air Station land.

6. El Dorado County Water Agency, San Juan WD, and Sacramento County Water Agency, CVP, California: M&I water service contracts to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan WD, and 22,000 acre-feet for Sacramento County Water Agency, authorized by Public Law 101–514.

7. U.S. Fish and Wildlife Service, California Department of Fish and Game, Grassland WD, CVP, California: Water service contracts to provide water supplies for refuges and private wetlands within the CVP pursuant to Public Law 102–575 and Federal Reclamation Laws; quantity to be contracted for is approximately 450,000 acre-feet.

8. Glenn-Colusa ID, Sutter Extension WD, Biggs-West Gridley WD, Central California ID, San Luis Canal Company, Grasslands WD, Buena Vista Water Storage District, and the State of California Department of Water Resources, CVP, California: Pursuant to Public Law 102–575, conveyance agreements for the purpose of wheeling refuge water supplies and funding of district facility improvements, and exchange agreements to provide water for refuge and private wetlands.

9. Mountain Gate Community Services District, CVP, California: Amendment of existing long-term water service contract to include right to renew. This amendment will also conform the contract to current Reclamation law, including Public Law 102–575.

10. Santa Barbara County Water Agency, Cachuma Project, California: Repayment contract for SOD work on Bradbury Dam.

11. CVP Service Area, California: Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by the Central Valley Project Improvement Act for terms of up to 3 years.

12. City of Roseville, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water provided from the Placer County Water Agency. This contract will allow CVP facilities to be used to deliver nonproject water to the City of Roseville for use within their service area.

13. Sacramento Municipal Utility District, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and assignment of up to 15,000 acre-feet of project water to the Sacramento County Water Agency. The amended contract will conform to current Reclamation law.

14. Mercy Springs WD, CVP, California: Assignment of Mercy Springs WD's water service contract to Pajaro Valley Water Management Agency. The assignment will provide for delivery of up to 13,300 acre-feet annually of water to the Agency from the CVP for agricultural purposes.

15. Santa Barbara County Water Agency, Cachuma Project, California: Contract to transfer responsibility for O&M and O&M funding of certain Cachuma Project facilities to the member units.

16. Stony Creek WD, Black Butte Dam and Lake, Sacramento River Division, CVP, California: A proposed amendment of Stony Creek WD's water service contract, No. 2–07–20-W0261, to allow the contractor to change from paying for all project water, whether used or not, to paying only for project water scheduled or delivered and to add another month to the irrigation period.

17. M&T, Inc., Sacramento River Water Rights Contractors, CVP, California: A proposed exchange agreement with M&T, Inc., to take its Butte Creek water rights water from the Sacramento River in exchange for CVP water.

18. East Bay Municipal Utility District, CVP, California: Amendment to the long-term water service contract No. 14–06–200–5183A, to change the points of diversion.

19. Madera and Lindsay-Strathmore IDs, and Delta Lands Reclamation District No. 770, CVP, California: Execution of 2- to 3-year Warren Act contracts for conveyance of nonproject water in the Friant-Kern and/or Madera Canals when excess capacity exists.

20. Napa County Flood Control and Water Conservation District, Solano Project, California: Renewal of water service contract No. 14–06–200–1290A, which expires February 28, 1999.

21. Solano County Water Agency, Solano Project, California: Renewal of water service contract No. 14–06–200–4090, which expires February 28, 1999.

22. Reno, Sparks, and Washoe County; Washoe and Truckee Storage Projects; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and consistent with the terms and conditions of the Truckee River Water Quality Settlement Agreement.

23. Sierra Pacific Power Company, Washoe and Truckee Storage Projects, Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and consistent with the terms and conditions of the proposed Truckee River Operating Agreement.

24. Casitas Municipal Water District, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

25. Centerville Community Services District, CVP, California: A long-term supplemental repayment contract for reimbursement to the United States for conveyance costs associated with CVP water conveyed to Centerville.

26. El Dorado ID, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow CVP facilities to be used to deliver nonproject water to the district for use within their service area.

27. Placer County Water Agency, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and reduction in the amount of project water to be delivered from a maximum of 117,000 acre-feet to a maximum of 35,000 acre-feet. The amended contract will conform to current Reclamation law.

Lower Colorado Region

Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. Milton and Jean Phillips, Kenneth or Ann Easterday, Robert E. Harp, Cameron Brothers Construction Co., Ogram Farms, Bruce Church, Inc., Sunkist Growers, Inc., Clayton Farms, BCP, Arizona: Water service contracts, as recommended by Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to an additional 15,557 acre-feet per year total.

2. Arizona State Land Department, State of Arizona, BCP, Arizona: Contract for 6,607 acre-feet per year of Colorado River water for agricultural use and related purposes on State-owned land.

3. Armon Curtis, Arlin Dulin, Jack Rayner, Glen Curtis, Jamar Produce Corporation, and Ansel T. Hall, BCP, Arizona: Water service contracts: purpose is to amend their contracts to exempt them from the RRA.

4. Brooke Water Co., Havasu Water Co., City of Quartzsite, McAllister Subdivision, and Arizona State Land Department, BCP, Arizona: Contracts for additional M&I allocations of Colorado River water to entities located along the Colorado River in Arizona for up to 2,657 acre-feet per year as recommended by the Arizona Department of Water Resources.

5. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona* v. *California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for the National Park Service's Federal Establishment PPR of 500 acre-feet of diversions annually and the National Park Service's Federal Establishment PPR pursuant to Executive Order No. 5125 (April 25, 1930).

6. Mohave Valley ID, BCP, Arizona: Amendment of current contract for additional Colorado River water, change in service area, diversion points, RRA exemption, and PPR.

7. Miscellaneous PPR entitlement holders, BCP, Arizona and California: New contracts for entitlement to Colorado River water as decreed by the U.S. Supreme Court in *Arizona* v. *California*, as supplemented or amended, and as required by section 5 of the Boulder Canyon Project Act. Miscellaneous PPR holders are listed in the January 9, 1979, Supreme Court Supplemental Decree in *Arizona* v. *California et al.*

8. Miscellaneous PPR No. 11, BCP, Arizona: Assign a portion of the PPR from Holpal to McNulty et al.

9. Federal Establishment PPR entitlement holders, BCP, Arizona: Individual contracts for administration of Colorado River water entitlement of the Colorado River, Fort Mojave, Quechan, Chemehuevi, and Cocopah Indian Tribes.

10. United States facilities; BCP; Arizona, California, and Nevada: Reservation of Colorado River water for use at Federal facilities and lands administered by Reclamation.

11. Windsor Beach State Park, Lake Havasu City, BCP, Arizona: Contract for 90 acre-feet entitlement to Colorado River domestic water.

12. Bureau of Land Management, BCP, Arizona: Contract for 1,176 acre-feet per year, for irrigation use, of Arizona's Colorado River water that is not used by higher priority Arizona entitlement holders.

13. Curtis Family Trust *et al.*, BCP, Arizona: Contract for 2,100 acre-feet per year of Colorado River water for irrigation.

14. Beattie Farms SW, BCP, Arizona: Contract for 1,890 acre-feet per year of unused Arizona entitlement for irrigation use.

15. Section 10 Backwater, BCP, Arizona: Contract for 250 acre-feet per year of unused Arizona entitlement for environmental use until a permanent water supply can be obtained.

16. U.S. Fish and Wildlife Service, Lower Colorado River Refuge Complex, BCP, Arizona: Proposed agreement for the administration of existing Colorado River water entitlement of refuge lands located in Arizona, resolving water rights coordination issues, and to provide for additional entitlement for nonconsumptive use of flow through water.

17. Hilander C ID, Colorado River Basin Salinity Control Project, Arizona: Water delivery contract for 4,500 acre-feet.

18. Maricopa-Stanfield IDD, CAP, Arizona: District has requested the United States to defer payments and restructure its $78 million distribution system repayment obligation.

19. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

20. Gila River Indian Community, CAP, Arizona: Master repayment/O&M contract for the CAP-funded distribution system to serve up to approximately 77,000 acres of land.

21. Tohono O'odham Nation, SRPA, Arizona: Repayment contract for a $7.3 million loan for the Schuk Toak District.

22. San Tan ID, CAP, Arizona: Amend distribution system repayment contract No. 6–07–30-W0120 to increase the repayment obligation approximately $168,000.

23. Central Arizona Drainage and Irrigation District, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30-W0048 to reschedule repayment terms pursuant to U.S. Bankruptcy Court, District of Arizona.

24. City of Needles, Lower Colorado Water Supply Project, California: Amend contract No. 2–07–30-W0280 to extend Needles subcontracting authority to the Counties of Imperial and Riverside.

25. Imperial ID/Coachella Valley WD and/or the Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve All-American Canal seepage water in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act dated November 17, 1988.

26. Coachella Valley WD and/or the Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve seepage water from the Coachella Branch of the All-American Canal in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

27. United States Navy, BCP, Niland, California: Contract for 23 acre-feet of surplus Colorado River water for domestic use delivered through the Coachella Canal.

28. Southern Nevada Water Authority, Robert B. Griffith Water Project, BCP, Nevada: Amend the repayment contract to provide for the incorporation of the Griffith Project into the expanded southern Nevada Water System, funded and built by Southern Nevada Water Authority, to facilitate the diversion, treatment, and conveyance of additional water out of Lake Mead for which the Authority has an existing entitlement to use.

29. Salt River-Pima Maricopa Indian Community, CAP, Arizona: O&M contract for its CAP water distribution system.

30. McMicken ID/Town of Goodyear, CAP, Arizona: Amend McMicken's CAP subcontract to reduce its entitlement by 507 acre-feet and Goodyear's water/service subcontract to increase its entitlement by 507 acre-feet.

31. Community Water Company of Green Valley/New Pueblo Water Co., CAP, Arizona: Execute an assignment assigning 237 acre-feet of New Pueblo's CAP water entitlement to Community. Amend Community's CAP subcontract to increase its entitlement by 237 acre-feet. Upon execution of the assignment from New Pueblo to Community, New Pueblo's CAP water service subcontract would terminate.

32. Bullhead City, BCP, Arizona: Assignment of 1,800 acre-feet of water and associated service area from Mohave County Water Conservation District to Bullhead City, Arizona.

33. Mr. Robert H. Chesney, BCP, Arizona: Amend contract No. 5–07–30–W0321 to increase the cubic-foot-per-second diversion and install a low-lift pump.

34. U.S. Army Proving Ground, BCP, Arizona: Agreement for 1,883 acre-feet of Colorado River water.

35. Arizona State Lands, BCP, Arizona: Water delivery contract for 1,400 acre-feet of Colorado River water for domestic use.

36. Miscellaneous PPR No. 38, BCP, California: Assign Schroeder's portion of the PPR to Murphy Broadcasting and change the place of use and type of the water use.

37. Berneil Water Co., CAP Arizona: Subcontracts associated with partial assignment of water service to the City of Scottsdale, Cave Creek Water Company, and the City of Phoenix.

38. Tohono O'odham Nation, CAP Arizona: Repayment contract for construction costs associated with distribution system on Central Arizona IDD.

39. Tohono O'odham Nation, Arizona: Contracts for Schuk Toak and San Xavier Districts for repayment of Federal expenditures for construction of distribution systems.

40. Arizona State Land Department, BCP, Arizona: Water delivery contract for delivery of up to 9,000 acre-feet per year of unused apportionment and surplus Colorado River water for irrigation.

41. Don Schuler, BCP, California: Temporary delivery contract for surplus and/or unused apportionment of Colorado River water for domestic and industrial use on 18 lots of recreational homes in California.

42. Bureau of Land Management, BCP, California: Agreement for 1,000 acre-feet of Colorado River water in accordance with Secretarial Reservation.

43. Bureau of Land Management, Lower Colorado Water Supply Project, California: Agreement for a consumptive use of 1,150 acre-feet of water for use on Bureau of Land Management-administered lands in California adjacent to the Colorado River.

44. Bureau of Land Management, BCP, Arizona: Agreement for 4,010 acre-feet of Colorado River water in accordance with Secretarial Reservations.

45. Arizona State Lands, CAP, Arizona: Assignment of 3,900 acre-feet of CAP water to the City of Scottsdale.

46. Town of Youngtown, CAP, Arizona: Assignment of 380 acre-feet of CAP water to Sun City Water Company.

The following contract actions have been completed or discontinued in the Lower Colorado Region since this notice was last published on October 27, 1997.

1. (5) City of Parker, BCP, Arizona: Contract for additional M&I allocation of Colorado River water as recommended by the Arizona Department of Water Resources.

2. (15) Crystal Beach Water Conservation District, BCP, Arizona: Contract for delivery of 132 acre-feet per year of Colorado River water for domestic use, as recommended by the Arizona Department of Water Resources.

3. (27) McMicken Irrigation District/Avondale, CAP, Arizona: Amend McMicken's CAP subcontract to reduce its entitlement by 647 acre-feet, and amend Avondale's CAP water service subcontract to increase its entitlement by 647 acre-feet of CAP water.

4. (28) City of Scottsdale and other M&I water subcontractors, CAP, Arizona: Subcontract amendments associated with assignment of M&I water service subcontracts from Camp Verde Water System, Inc., to provide the City of Scottsdale with an additional 17,823 acre-feet of CAP water.

5. (34) San Diego County Water Authority, San Diego, California, San Diego Project: Title transfer of the first and second barrels of the San Diego Aqueduct.

6. (42) Salt River Project, Inc., Salt River Project, Arizona: Repayment contract for SOD construction activities at Horse Mesa Dam and Mormon Flat Dam.

7. (4) Discontinued—Cibola Valley IDD, BCP, Arizona: Cibola Valley IDD was looking at the possibility of transferring, leasing, selling, or banking its entitlement of 22,560 acre-feet for use in Arizona, California, or Nevada

8. (9) Discontinued—Julia Soto Zozaya and Steve M. Zozaya, Mohave County, BCP, Arizona: Miscellaneous PPR contract for 720 acre-feet of irrigation water. This item has been included in No. 7.

9. (11) Discontinued—Atchison, Topeka and Santa Fe Railway Company, BCP, California: The company intends to transfer its miscellaneous PPR for the diversion of 1,260 acre-feet and consumptive use of 273 acre-feet of Colorado River water to the City of

Needles. This item has been included in No. 7.

10. (21) Yuma Mesa IDD, Gila Project, Arizona: Amendment to provide for increase in domestic water deliveries (from 10,000 to 20,000 acre-feet) within its overall use in the district.

11. (24) Agricultural and M&I water users, CAP, Arizona: Water service subcontracts for percentages of available supply reallocated in 1992 for irrigation entities and up to 640,000 acre-feet per year allocated in 1983 for M&I use.

12. (39) Discontinued—Southern Nevada Water Authority, BCP, Nevada: Contract to use Federal facilities and land to divert water from Lake Mead at non-Federal expense.

13. (53) Discontinued—Arizona Public Service, BCP, Arizona: Colorado River water diversion contract for 1,500 acre-feet for domestic use at Yucca Power Plant near Yuma, Arizona.

Upper Colorado Region

Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

1. Individual irrigators, M&I, and miscellaneous water users, Initial Units, Colorado River Storage Project; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) Harrison F. Russell and Patricia E. Russell, Aspinall Unit, CRSP, Colorado: Contract for 1 acre-foot to support an augmentation plan, Case No. 97CW39, Water Division Court No. 4, State of Colorado, to provide for a single family residential well, including home lawn and livestock watering (non-commercial).

(b) Lazear Domestic Water Corporation, Aspinall Unit, CRSP, Colorado: Contract for 44 acre-feet to support an augmentation plan, Case No. 95CW209, Water Division Court No. 4, State of Colorado, to provide domestic water service to up to 100 residences, lawns, gardens, and livestock watering.

(c) East Alum Creek Ranch Corporation, Aspinall Unit, CRSP, Colorado: Contract for 23 acre-feet to support an augmentation plan, Case No. 97CW198, Water Division Court No. 4, State of Colorado, to provide East Alum Creek Ranch Subdivision with domestic, lawn irrigation, pond evaporation, and livestock water.

(d) Horizon Ranch Corporation, Aspinall Unit, CRSP, Colorado: Contract for 4 acre-feet to support an augmentation plan, Case No. 97CW201, Water Division Court No. 4, State of Colorado, to provide Horizon Ranch with domestic, lawn irrigation, pond evaporation, and livestock water.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two; contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

3. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico; contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

4. Pine River ID, Pine River Project, Colorado: Contract to allow the district to convert up to 3,000 acre-feet of project irrigation water to municipal, domestic, and industrial uses.

5. San Juan-Chama Project, New Mexico: San Juan Pueblo repayment contract for up to 2,000 acre-feet of project water for irrigation purposes. Taos Area—The Taos Area Aceqias, the Town and County of Taos are forming a joint powers agreement to form an organization to enter into a repayment contract for up to 2,990 acre-feet of project water to be used for irrigation and M&I in the Taos, New Mexico area.

6. City of El Paso, Rio Grande Project, Texas and New Mexico: Amendment to the 1941 and 1962 contracts to expand acreage owned by the city to 3,000 acres; extend terms of water rights assignments; and allow assignments outside city limits under authority of the Public Service Board.

7. The National Park Service, Colorado Water Conservation Board, Wayne N. Aspinall Unit, CRSP, Colorado: Contract to provide specific river flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

8. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Long-term water service contract for municipal, domestic, and irrigation use.

9. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Substitute supply plan for the administration of the Gunnison River.

10. Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, Colorado River Water Conservation District, Uncompahgre Project, Colorado: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

11. Southern Ute Indian Tribe, Florida Project, Colorado: Supplement to contract No. 14–06–400–3038, dated May 7, 1963, for an additional 181 acre-feet of project water, plus 563 acre-feet of water pursuant to the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement.

12. Country Aire Estates, Forrest Groves Estates, and Los Ranchitos, Florida Project, Colorado: Water service contracts for a total of 86 acre-feet annually of domestic water as replacement water in State of Colorado approved augmentation plans. The water supply for these contracts are flow rights purchased and owned by the United States for project development and are not specifically a part of the project water supply.

13. Grand Valley Water Users Association, Orchard Mesa ID, and Public Service Company of Colorado, Grand Valley Project, Colorado: Water service contract for the utilization of project water for cooling purposes for a steam electric generation plant.

14. Public Service Company of New Mexico, CRSP, Navajo Unit, New Mexico: Amendatory water service contract for diversion of 20,200 acre-feet, not to exceed a depletion of 16,200 acre-feet of project water for cooling purposes for a steam electric generation plant.

15. Provo Reservoir Water Users Company, Wasatch Irrigation Company, Timpanogas Irrigation Company, Exchange Irrigation Company, Washington Irrigation Company, and the City of Provo; CUP, Utah: Water exchange contracts, water rights in several mountain lakes and reservoirs are being exchanged for equivalent contract water rights in Jordanelle Reservoir.

16. Sanpete County Water Conservancy District, Narrows Project, Utah: Application for a SRPA loan and grant to construct a dam, reservoir, and pipeline to annually supply approximately 5,000 acre-feet of water through a transmountain diversion from upper Gooseberry Creek in the Price River drainage (Colorado River Basin) to the San Pitch—Sevier River (Great Basin).

17. Emery County Water Conservancy District, Emery County Project, Utah: Warren Act contract to allow temporary storage of nonproject water in Joes Valley Reservoir and/or Huntington North Reservoir.

18. Town of Taos, San Juan-Chama Project, New Mexico: Contract to purchase water from Town of Taos to increase native flows in Rio Grande for benefit of the Silvery Minnow.

19. City of Albuquerque, San Juan-Chama Project, New Mexico: Amend water storage contract No. 3–CS–53–01510 to exempt the City of Albuquerque from acreage limitation and reporting provisions.

20. El Paso County Water Improvement District No. 1, Rio Grande Project, Texas and New Mexico: Supplemental contract between El Paso County Water Improvement District No. 1 and the United States to allow the conversion of project water from irrigation to M&I within the El Paso area.

21. Individual Irrigators, Dolores Project, Colorado: The United States proposes to lease up to 1,500 acre-feet of project water declared surplus under the authority of the Warren Act of 1911.

Great Plains Region

Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

1. Individual irrigators, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term up to 1 year.

2. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

3. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round water sales from the regulatory capacity of Ruedi Reservoir. Negotiation of water service and repayment contracts for approximately 17,000 acre-feet annually for M&I use; contract with Colorado Water Conservation Board for remaining 21,650 acre-feet of marketable yield for interim use by U.S. Fish and Wildlife Service for benefit of endangered fishes in the Upper Colorado River Basin.

4. Garrison Diversion Unit, P-SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Garrison Diversion Unit Reformulation Act of 1986; negotiation of repayment contracts with irrigators and M&I users.

5. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Pursuant to section 501 of Public Law 101–434, negotiate amendatory contract to increase irrigable acreage within the project.

6. Lakeview ID, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir. Pursuant to section 9(e) of the Reclamation Project Act of 1939 and Public Law 100–516.

7. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P-SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

8. North Platte Project, Pathfinder ID: Negotiation of contract regarding SOD program modification of Lake Alice Dam No. 1 Filter/Drain.

9. Northern Cheyenne Indian Reservation, Montana: In accordance with section 9 of the Northern Cheyenne Reserved Water Rights Settlement Act of 1992, the United States and the Northern Cheyenne Indian Tribe are proposing to contract for 30,000 acre-feet per year of stored water from Bighorn Reservoir, Yellowtail Unit, Lower Bighorn Division, P-SMBP, Montana. The Tribe will pay the United States both capital and O&M costs associated with each acre-foot of water the Tribe sells from this storage for M&I purposes.

10. Mid-Dakota Rural Water System, Inc., South Dakota: Pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992, the Secretary of the Interior is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a nonprofit corporation for the planning and construction of a rural water supply system.

11. Angostura ID, Angostura Unit, P-SMBP, South Dakota: The district had a contract for water service which expired on December 31, 1995. An interim 3-year contract provides for a continuing water supply and the district to operate and maintain the dam and reservoir. The proposed long-term contract would provide a continued water supply for the district and the district's continued O&M of the facility.

12. Cities of Loveland and Berthold, Colorado, Colorado-Big Thompson Project, Colorado: Long-term contracts for conveyance of nonproject M&I water through Colorado-Big Thompson Project facilities pursuant to the Town Sites and Power Development Act of 1906.

13. P-SMBP, Kansas and Nebraska: Initiate negotiations for renewal of long-term water supply contracts with Kansas-Bostwick, Nebraska-Bostwick, Frenchman Valley, and Frenchman-Cambridge IDs.

14. Northwest Area Water Supply, North Dakota: Long-term contract for water supply from Garrison Diversion Unit facilities. Draft basis of negotiation has been submitted to the Regional Office for review.

15. Fort Shaw and Greenfields IDs, Sun River Project, Montana: Contract for SOD costs for repairs to Willow Creek Dam. Greenfields ID has signed a 1-year repayment contract for its share of the SOD costs. Basis of negotiation for Fort Shaw ID has been submitted to the Denver Office for review.

16. P-SMBP, Kansas: Water service contracts with Kirwin and Webster IDs in the Solomon River Basin in Kansas will be extended for a period of 4 years in accordance with Pub. L. 104–326 enacted October 19, 1996. Water service contracts will be renewed prior to expiration.

17. P-SMBP, Nebraska: Water service contracts with the Loup Basin Reclamation District for Sargent and Farwell IDs in the Middle Loup River Basin in Nebraska will be extended for a period of 4 years in accordance with Public Law 104–326 enacted October 19, 1996.

18. City of Cheyenne, Kendrick Project, Wyoming: Negotiation of contract to renew for an additional term of 5 years. Contract for up to 10,000 acre-feet of storage space for replacement water on a yearly basis in Seminoe Reservoir. A temporary contract has been issued pending negotiation of the long-term contract.

19. Highland-Hanover ID, P-SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction costs.

20. Upper Bluff ID, P-SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction cost.

21. Fort Clark ID, P-SMBP, North Dakota: Negotiate an interim water service contract to continue delivery of project water pending renewal of a long-term water service-repayment contract.

22. Canadian River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a consideration for project land transferred to the National Park Service, and a 3-year deferment of payments.

23. Nueces River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a 5-year deferment of payments.

24. Western Heart River ID, P-SMBP, Heart Butte Unit, North Dakota: Negotiation of water service contract to continue delivery of project water to the district.

25. Lower Marias Unit, P-SMBP, Montana: Water service contract expired June 1997. Initiating renewal of existing contract for 25 years for up to 480 acre-feet of storage from Tiber Reservoir to irrigate 160 acres. Basis of negotiation is in the process of being completed; existing contract was extended for 1 year pending negotiation of long-term contract.

26. Lower Marias Unit, P-SMBP, Montana: Initiating 25-year water service contract for up to 750 acre-feet of storage from Tiber Reservoir to irrigate 250 acres.

27. Glendo Unit, P-SMBP, Wyoming: Initiate negotiations for renewal of long-term water service contracts with Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company. The current contracts expire in 1998.

28. Glendo Unit, P-SMBP, Nebraska: Initiate negotiations for renewal of long-term water service contracts with Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and Irrigation District. The current contracts expire in 1998.

29. Belle Fourche Unit, P-SMBP, South Dakota: Basis of negotiation has been approved for the negotiation of a long-term repayment contract deferring the Belle Fourche ID's 1997 construction payment and also reduction of the district's annual payment.

30. Fryingpan-Arkansas Project, Colorado: Repayment contract with Southeastern Colorado Water Conservancy District for repayment of cost of SOD modifications to Pueblo Dam.

31. Dickinson Heart River Mutual Aid Corporation, P-SMBP, Dickinson Unit, North Dakota: Negotiate renewal of water service contract for irrigation of lands below Dickinson Dam in western North Dakota.

32. Greenfields ID, Sun River Project, Montana: Contract for SOD costs for repairs to Pishkun Dike No. 4.

33. Public Service Company of Colorado: Agreement to furnish surplus water from the historic users pool at Green Mountain Reservoir for the purpose of generating hydroelectric power at the Grand Valley Power Plant, Palisade, Colorado.

Dated: January 20, 1998.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 98–1883 Filed 1–26–98; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Environmental Partnership Program in Central and Eastern Europe (CEE) and the New Independent States (NIS) of the Former Soviet Union

ACTION: Availability of applications.

SUMMARY: The U.S. Agency for International Development (USAID) seeks applications from qualified U.S. organizations or consortia of organizations for award of a three to five-year Cooperative Agreement in support of a program to promote market-oriented solutions to environmental problems facing local governments and industries in Central and Eastern Europe (CEE) and the New Independent States (NIS) of the former Soviet Union. The successful applicant will coordinate a partnership grants program that will facilitate linkages among organizations within the CEE and the NIS and between U.S. entities and partners within the region, and promote CEE/NIS business opportunities for U.S. firms in the environmental sector. USAID seeks an organization with demonstrated capability to identify opportunities for partnering, as well as the capacity to nurture and facilitate such partnerships. Applicants must be prepared to contribute non-USAID resources toward meeting the overall cost of the program; all partnership grants within the program will also be made on a cost-sharing basis. This competitive RFA will be awarded as a component of a new initiative, entitled ''Environmental Partnership Program (EPP),'' which is a result of a year-long series of discussions on appropriate transition strategies for environmentally sound economic improvements by the U.S. in CEE/NIS. The goal of the overall EPP is to forge relationships with new partners, particularly private partners, to expand and accelerate environmental trade, investment and policy reform in this region. In addition to market-oriented solutions to environmental problems facing localities and industry in these countries, the purpose of the EPP is to stimulate sustainable environmental trade and investment linkages between the U.S. and the ENI region. It will complement, and be supported by, existing and future USAID programs to meet the continued need for strengthening environmental policies and regulatory frameworks within CEE/NIS nations. In some cases, it is expected, within the context of the overall EPP, limited technical assistance will be provided to ensure that policies exist and are implemented to support the investments stimulated by the program's primary work. USAID anticipates that the Program will serve as a catalyst across the region to increase public/private participation in environmentally sound economic development by: (1) Stimulating dialogue between these sectors and action on policies that encourage private participation in environmental projects; and (2) assisting ENI-based environmental decision-makers in accessing information on environmental technologies, approaches and services or locating partners who can help them solve priority environmental problems that are predominantly transboundary or regional in nature (air and water pollution, climate-change mitigation, solid and toxic waste cleanup, etc.). The RFA will fully describe the competitive application process, as well as the overall EPP and the Program Description for the proposed cooperative agreement. The RFA will outline what information is to be submitted for review by USAID. As stated above, the successful applicant will be expected to contribute to the proposed Program's cost in cash and/or in kind, in order to demonstrate commitment to the principles of the EPP and maximize its potential impact. The Agreement will be incrementally funded by USAID, subject to availability of funds.

DATES: The RFA will be available o/a January 12, 1998.

SUPPLEMENTARY INFORMATION:

Electronic Access: The preferred method of distribution of USAID procurement information is via the Internet or by request of a solicitation of a 3.5″ floppy disk (WordPerfect 5.1/5.2 format). The RFA, once issued, may be downloaded from the Agency Website at: http//www.info.usaid.gov. From this homepage, select ''Business and Procurement Opportunities,'' then ''USAID Procurements,'' then ''Download Available USAID Solicitations.'' Receipt of this RFA through the Internet must be confirmed by written notification to the contact person listed above. It is the responsibility of the recipient of this RFA to ensure that it has been received

from the Internet in its entirety as USAID bears no responsibility for data errors resulting from the transmission on conversion processes.

FOR FURTHER INFORMATION CONTACT: Elaine Smialek, fax (202) 216–3396; esmialek@usaid.gov.

Dated: January 15, 1998.

Judith D. Johnson,

Division Chief, M/OP/ENI

[FR Doc. 98–1921 Filed 1–26–98; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on January 8, 1998, a proposed Consent Decree in *United States* v. *Abbott Laboratories, et al.,* Civil Action No. 98–1013–JAF, was lodged with the United States District Court for the District of Puerto Rico. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency (''EPA'') against defendants Abbott Laboratories, American Cyanamid Company, Browning-Ferris Industries of Puerto Rico, Inc., E.I. DuPont de Nemours & Company, Merck & Company, Inc., the Municipality of Barceloneta, Pharmacia & Upjohn Caribe Inc., Roche Products, Inc., Schering-Plough Products, Inc., and Union Carbide Corporation relating to the Barceloneta Landfill Superfund Site (''Site'') located near the Municipality of Barceloneta, Puerto Rico. The Complaint alleges that each of the defendants is liable under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607.

Pursuant to the Consent Decree, the settling defendants will implement the remedy selected in the July 5, 1996 Record of Decision (the ''ROD'') for the Site, now estimated to cost approximately $10.5 million, reimburse the United States for $425,000 of past costs, and make payment of EPA's future response costs, as defined in the Consent Decree, and up to $400,000 of EPA's oversight costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Abbott Laboratories, et al.,* Civil Action No. 98–1013–JAF, D.J. Ref. 90–11–3–1574.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Federal Building, Chardon Avenue, Hato Rey, Puerto Rico, 00918 and at Region II, Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10007–1866 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $69.25 payable to the Consent Decree Library. If a copy of the Consent Decree without the attachments is sufficient, please specify that fact and enclose a check in the amount of $26.00.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–1920 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Pursuant to Department policy, 18 CFR 50.7, notice is hereby given that on December 18, 1997, a proposed Consent Decree in *Chester Residents Concerned for Quality Living, et al., and Commonwealth of Pennsylvania and United States of America* v. *Delaware County Regional Water Control Authority* (''DELCORA''), Civil Action No. 94–CV–5639 was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States, as a plaintiff-intervenor, sought civil penalties and injunctive relief pursuant to Section 113 of the Clean Air Act, 42 U.S.C. 7413, against DELCORA for violations of the Clean Air Act in connection with the operation of sludge incinerators at DELCORA's sewage treatment plant located in Chester, Pennsylvania. Under the proposed Consent Decree DELCORA agrees to pay a civil penalty of $120,000, implement injunctive relief to prevent future violations at the plant, and perform a Supplemental Environmental Project to reduce exposure to lead among newborn infants in Chester, Pennsylvania.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *Chester Residents Concerned for Quality Living, et al., and Commonwealth of Pennsylvania and United States of America* v. *Delaware County Regional Water Control Authority* (''DELCORA''), D.J. Ref. 90–5–2–1–2071.

The Consent Decree may be examined at the Office of the United States Attorney, 5615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, at U.S. EPA Region 3, 841 Chestnut Building, Philadelphia, PA 19107, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $9.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–1918 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Young Refining Company*, Civil Action No. 1–96–CV–1002–JEC, was lodged on December 31, 1997, with the United States District Court for the Northern District of Georgia. The consent decree settles a claim brought under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), for response costs incurred by the United States at the Basket Creek Drum Disposal site (the ''Basket Creek site'') in

Douglasville, Georgia. Under the proposed consent decree, Continental Trading Company and Dr. Fred W.J. Liu will pay $67,500 to the United States in reimbursement of response costs incurred by the Environmental Protection Agency (''EPA'') in connection with the Basket Creek site. Most of the removal of hazardous substances from the Basket Creek Site was conducted by Chem-Nuclear Systems, Inc. EPA has incurred costs of approximately $678,000 in connection with the Basket Creek Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Young Refining Company*, DOJ Ref. #90–11–2–755.

The proposed consent decree may be examined at the office of the United States Attorney, Richard Russell Federal Building, Suite 1800, 75 Spring Street, SW., Atlanta, Georgia 30335; the Region 4 Office of the Environmental Protection Agency, 61 Forsythe St., SE., Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–1919 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum (''PERF'') Project 95–11

Notice is hereby given that, on October 2, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') Project 95–11, titled ''Advanced NDE for Acoustic Emission Interpretation'', has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Exxon Research and Engineering Company, Florham Park, NJ; Shell Oil Company, Houston, TX; Aramco Services Company, Houston, TX; Chevron Research and Technology Company, Richmond, CA; Mobil Technology Company, Paulsboro, TX; and BP International Place, Sunbury-on-Thames, Middlesex TW167LN United Kingdom. The nature and objective of the research program is to deliver software and/or protocols to permit reliable use of AEI for onstream applications.

Participation in this venture will remain open to all interested persons and organizations until the final Project Completion Date which is presently anticipated to occur approximately twenty-one months after the project commences. Also the parties intend to file additional written notification disclosing all changes in membership. Information about participating in Project 95–11 may be obtained by contacting Emery B. Lendvai-Lintner, Exxon Research and Engineering Company, P.O. Box 101, Florham Park, NJ 07932–0101.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–1917 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 3–98]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Friday, February 20, 1998, 10:00 a.m.

SUBJECT MATTER: (1) Issuance of Proposed and Final Decisions on Claims Against Albania; (2) Hearings on the Record on Objections to Proposed Decisions on Claims Against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, January 21, 1998.

Judith H. Lock,

Administrative Officer.

[FR Doc. 98–2045 Filed 1–23–98; 12:18 pm]

BILLING CODE 4410–01–U

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Prison population reports midyear counts and advance yearend counts-National prisoner statistics; Revision of a currently approved collection.

This information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until March 30, 1998. This process is conducted in accordance with the Paperwork Reduction Act of 1955.

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.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or need additional information, please contact James Stephan, Statistician, Bureau of Justice Statistics, 810 7th Street NW, Washington, DC 20531, or via facsimile (202) to 202–307–1463.

Overview of This Information Collection

(1) Type of information collection. Revision of currently approved collection.

(2) The title of the Form/Collection: Prison Population Reports Midyear Counts; and Prison Population Report Advance Yearend Counts—National Prisoner Statistics.

(3) The agency form number and the applicable component of the Department sponsoring the collection. Form: NPS–1A; and NPS–1B. Corrections Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: State Departments of Corrections. Others: The Federal Bureau of Prisons. For the NPS–1A form, 52 central reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of June 30 of the current year and June 30 of the previous year, the number of male and female inmates under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates; and

(b) As of June 30 of the current year, and June 30 of the previous year, the number of male and female inmates in their custody with maximum sentences of more than one year, one year or less; and unsentenced inmates.

For the NPS–1B form, 52 central reporters (one from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) As of December 31 of the current year, and December 31 of the previous year, the number of male and female inmates under their jurisdiction with maximum sentences of more than one year, one year or less; and unsentenced inmates;

(b) The number of inmates housed in county or other local authority correctional facilities, or in other state or Federal facilities on December 31 of the current year solely to ease prison crowding;

(c) As of the direct result of state prison crowding during the current year, the number of inmates released via court order, administrative procedure or statute, accelerated release, sentence reduction, emergency release, or other expedited release; and

(d) The aggregate rated, operational, and design capacities, by sex, of each State's correctional facilities at yearend.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioner, researchers, students, the media, and others interested in criminal justice statistics.

(5) An estimate of the total number of respondents and the amount of time needed for an average respondent to respond: 52 respondents each taking an average 2.5 hours to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: 130 annual burden hours.

If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW Washington, DC 20530.

Dated: January 21, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–1847 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP(BJS)–1151]

Continuation of Federal Justice Statistics Program

AGENCY: Office of Justice Programs, Bureau of Justice Statistics (BJS), Justice.

ACTION: Solicitation for award of cooperative agreement.

SUMMARY: The purpose of this notice is to announce a public solicitation for the continuation of the Bureau of Justice Statistics' (BJS) Federal Justice Statistics Program (FJSP). The FJSP serves as the national resource for data describing the processing of criminal cases in the Federal criminal justice system. Under this program, data generated by Federal criminal justice agencies are collected, maintained, analyzed, and archived. Data are also linked across agencies to permit more complex analyses of Federal criminal justice issues. Regular annual reports and special topical reports are prepared that describe the Federal criminal justice system, Federal defendants and offenses, and other special issues of interest. In addition, special tabulations are prepared, pursuant to BJS direction, in response to requests from government officials. The project to be funded under the proposed cooperative agreement will continue the program's current activities.

DATES: Proposals must be postmarked on or before March 31, 1998.

ADDRESSES: Proposals should be mailed to: Applications Coordinator, Bureau of Justice Statistics, 810 7th Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: John Scalia, Program Manager, Federal Justice Statistics Program, Bureau of Justice Statistics, (202) 616–3276.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Justice Statistics Federal Justice Statistics Program (FJSP) was initiated in 1982 to serve as a central resource for information describing the processing of Federal criminal defendants and characteristics of those defendants. The program collects data from different components of the Federal criminal justice system and tracks the progress of suspects from investigation through prosecution, adjudication, sentencing, and corrections. The program represents the primary BJS effort describing the Federal criminal justice system and responds directly to the legislative authorization that BJS ''collect, analyze, and disseminate comprehensive Federal justice transaction statistics (including statistics on issues of Federal justice interest such as public fraud and high technology crime)'' as set forth in 42 U.S.C. § 3732(c)(15).

In keeping with the original program plan which was designed to minimize data collection costs, no original data collection is supported under this program. Data are obtained from operational Federal agencies including the Executive Office for the United States Attorneys, the Administrative Office of the United States Courts, the Bureau of Prisons, and the United States Sentencing Commission. In order to trace the flow of cases from one stage to another and to supplement any individual agency's data, computer matching techniques have been developed that permit the linking of

data obtained from different sources. The linking of these data permit more complex and detailed analysis of particular issues.

Throughout the history of the FJSP, a regular series of reports has been produced. These reports include the annual *Compendium of Federal Justice Statistics* (available on the Internet at www.ojp.usdoj.gov/bjs/abstract/cfjs93.htm) which describes transactions in the Federal criminal justice system for a particular year; and a series of Special Reports addressing specific aspects of the Federal criminal justice system, specific offenses, or other special issues of interest. Recent Special Report include: *Prisoner Petitions in the Federal Courts* (available on the Internet at www.ojp.usdoj.gov/bjs/abstract/ppfc96.htm), *Juvenile Delinquents in the Federal Criminal Justice System* (www.usdoj.gov/bjs/abstract/jdfcjs.htm), and *Noncitizens in the Federal Criminal Justice System* (www.usdoj.gov/bjs/abstract/nifcjs.htm). In addition, the program serves as the primary source of information for other BJS statistical series that describe individuals in the Federal criminal justice system; program staff have also responded to ad hoc BJS requests for specific data tabulations and analyses.

In addition, the FJSP supports the efforts of the Coordinating Committee on Federal Criminal Case Processing Statistics. This interagency committee—represented by the Administrative Office of the U.S. Courts, the Bureau of Justice Statistics, the Executive Office for the U.S. Attorneys, the Federal Bureau of Prisons, and the United States Sentencing Commission—was established as a forum for discussing issues related to the collection of data describing the Federal criminal justice system and the reporting of Federal criminal case processing statistics. With the support of the Coordinating Committee, beginning in 1998 BJS will annually publish *Federal Criminal Case Processing Statistics.* This report—which will supplement each agency's annual statistical report—will highlight specific aspects of the Federal criminal justice system as well as describe significant trends in Federal criminal case processing. The statistics presented will be tabulated according to procedures agreed upon by each participating agency.

Objectives

The purpose of this award is to support the continuation of the Federal Justice Statistics Program. The recipient of funds will serve as the Federal Justice Statistics Resource Center whereby the recipient will continue to collect, maintain, and archive data from Federal justice agencies, produce annual reports (the *Compendium of Federal Justice Statistics* and *Federal Criminal Case Processing*), and topical special reports. Any Special Reports prepared by the recipient will be prepared under the direction of BJS staff. In addition, BJS staff may also initiate Special Reports. The recipient will be expected to assist BJS staff with Special Reports by providing the necessary data for analysis and, when requested, assisting in the preparation of data tabulations and reviewing the methodology used to analyze the data.

Type of Assistance

Assistance will be made available under a cooperative agreement. Awards will be made for a period of 12 months with an option for two additional continuation years conditional upon the availability of funds and the quality of the initial performance and products. Costs are estimated at not to exceed $650,000 for the initial 12-month period. Funding for subsequent years may include reasonable increases for cost-of-living and changes in scope of work, where applicable.

Statutory Authority

The cooperative agreement to be awarded pursuant to this solicitation will be funded by the Bureau of Justice Statistics consistent with its mandate as set forth in 42 U.S.C. 3732.

Eligibility Requirements

Both for-profit and nonprofit organizations may apply for funds. Consistent with Office of Justice Programs fiscal requirements, no fees may be charged against this project by profit-making organizations.

Scope of Work

The objective of the proposed program is to continue basic activities initiated under the ongoing BJS Federal Justice Statistics Program. Specifically, the recipient of funds will serve as the Federal Justice Statistics Resource Center. The Resource Center will—

1. *Maintain and expand the Federal Justice Statistics Program Database.* This will involve the collection, processing, and maintenance of data provided by Federal agencies participating in the program. The agencies currently participating in the program are: the Executive Office for the United States Attorneys, the Administrative Office of the United States Courts, the Bureau of Prisons, and the United States Sentencing Commission. (In addition to providing data describing the Federal courts' criminal docket, the Administrative Office also provides data describing the activities of the Federal pretrial services agencies and the Federal Probation and Supervision Service. The Federal Judicial Center has provided data describing the Federal courts' appellate docket.) The recipient should attempt to expand the program to include other Federal law enforcement agencies. The recipient will also be responsible for processing data to meet uniform classification categories and for linking data to permit analysis of data obtained from different sources.

2. *Prepare tapes and related documentation for archiving in the national archive maintained by BJS.* The public use data tapes of the source data shall conform to BJS standards for submission to the National Archive of Criminal Justice Data at the University of Michigan. In addition, the recipient will prepare a set of standard analysis data files from each agency's source data for each fiscal year. These standard analysis data files will describe a particular cohort of defendants and will include all variables included in the source data and all variables created for the *Compendium of Federal Justice Statistics.* These standard analysis files will be included on a CD-ROM to be produced by BJS. The recipient will document each of the standard analysis data files and all programs used to create BJS reports. Such documentation, to the extent possible, will be maintained in an electronic database from which users can query variables of interest. This electronic data dictionary will also be included on the CD-ROM prepared by BJS. In addition, the recipient will document the methodology used to produce the *Compendium of Federal Justice Statistics*—including the production of the standard analysis data files.

3. *Prepare the Compendium of Federal Justice Statistics and the Federal Criminal Case Processing Statistics report and submit both text and tables in camera-ready format for each Federal fiscal year.*

4. *Prepare BJS Special Reports, data tabulations, analyses, data sets, and other data manipulations in response to BJS requests.* Any Special Reports proposed by the recipient will be designed in coordination with BJS. BJS will approve all Special Report topics proposed by the recipient. The recipient will provide tabulations, as requested, describing Federal offenders to support BJS's National Correctional Reporting Program and the National Judicial Reporting Program.

5. *Provide BJS with electronic access to the Federal Justice Statistics Resource*

Center (including all source data, standard analysis data files, and software used to produce BJS reports) and computing resources, as necessary. In addition, the recipient must provide BJS staff with daily access to the standard analysis data files (for the most recent reporting period available) in a form in which variables name and values correspond to those included in the FJSP electronic data dictionary.

6. *Provide support to the interagency Coordinating Committee on Federal Criminal Case Processing Statistics.* The recipient will work with BJS to support the efforts of the Coordinating Committee on Federal Criminal Case Processing Statistics including the production of reconciled case processing statistics, matching records across agencies' databases, identifying differences in data collection and reporting methods, and other technical assistance, as requested.

7. *Provide Internet access to the Federal Justice Statistics Resource Center.* The recipient will provide direct access via the Internet to all FJSP data files (including those files prepared by prior recipients of this award) and the electronic data dictionary. In addition, the recipient will work with BJS to provide a World Wide Web-accessible query system for the Federal Justice Statistics Resource Center. The recipient must provide Internet users with the capability of performing queries of the FJSP data bases in order to extract basic information describing individuals processed in the Federal criminal justice system. Users should be able to disaggregate these data by Federal judicial district.

Award Procedures

Proposals should describe, in appropriate detail, the procedures to be undertaken in furtherance of each of the activities described under the **Scope of Work**. Information provided should focus on activities to be conducted during the initial 12-month period but should also include a more general discussion of three-year objectives for the program. Information on staffing levels and qualifications should be included for each task and descriptions of experience relevant to the project should be included. Resumes of the proposed project director and key staff should be included in the proposal.

Applications will be competitively reviewed by BJS. Final authority to enter into a cooperative agreement is reserved for the Director, BJS, or his designee, who may, in his discretion, determine that none of the applications shall be funded.

Applications will be evaluated on the overall extent to which they respond to criminal justice priorities, conform to the goals of the Federal Justice Statistics Program, and appear to be fiscally feasible and efficient. Applicants will be evaluated on the basis of—

1. Knowledge of, and experience in, working with different components of the criminal justice system with particular emphasis on knowledge of operational, management, and statistical data collected and maintained by various Federal criminal justice components;
2. Statistical expertise in the area of data analysis, data linkage, and research;
3. Experience in the application of statistical data to the analysis of criminal justice issues;
4. Demonstrated ability to prepare high quality statistical reports;
5. Availability of qualified professional and support staff and of suitable equipment for data processing and data manipulation;
6. Demonstrated fiscal, management, and organizational capability suitable for providing sound program direction for this multifaced effort;
7. Demonstrated ability to design and maintain interactive sites on the World Wide Web; and
8. Reasonableness of estimated costs for the total project and for individual cost categories.

Application and Award Process

An original and two (2) copies of the full proposal must be submitted on SF 424 (Rev. 1988), *Application for Federal Assistance.* Proposals must be accompanied by a Budget Detail Worksheet (replaced the SF 424A, *Budget Information*); OJP Form 4000/3 (Rev.1–93), *Program Narrative* and *Assurances*' OJP Form 4061/6, *Certification Regarding Lobbying; Disbarment, Suspension, and Other Responsibility Matters*; Drug-Free Workplace requirements; and OJP Form 7120/1 (Rev. 1–93), Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal funds from the Office of Justice Programs and are not state of local units of government). If appropriate, applicants must also complete the certificate regarding lobbying activities. All applicants must sign Certified Assurances that they are in compliance with the Federal laws and regulations which prohibit discrimination in program or activity that receives Federal funds. To obtain appropriate forms, contact Getha Hilario, BJS Management Assistant, at (202) 616–3500.

Proposals must include both narrative descriptions and a detailed budget. The program narrative shall describe activities as described in the previous section. The detailed budget and the budget narrative must provide estimated costs including salaries of staff involved in the project and the percentage of time devoted to the project, fringe benefit rate itemization and costs, travel costs, proposed equipment, supplied, and other expenses. Contractual services or equipment must be procured following Office of Justice Programs grant procurement procedures.

Dated: January 21, 1998.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 98–1864 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1153]

National Institute of Justice Solicitation for Drug Court Evaluation II

AGENCY: National Institute of Justice (NIJ), Office of Justice Programs.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Solicitation for Drug Court Evaluation II.''

DATES: The deadline for applications is close of business March 13, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6771.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

NIJ is soliciting proposals to evaluate 16 drug court sites, which are administered by the Office of Justice Programs, Drug Court Program Office (DCPO). The evaluation will take place in two separate phases. A single initial grant of up to $500,000 will be awarded for a 12–24 month period. A second

supplemental grant will be awarded for the second phase of the research, ranging from 12–24 months, the award amount dependent on the work required.

The first phase of research will include: a conceptual description of the 16 DCPO drug court sites; development of comprehensive descriptive, historical, and attitudinal data about drug court programs; and measurement of the data available for program evaluation. As part of phase one researchers will develop a viable strategy for evaluating program impact and success that will serve as a proposal for the supplemental grant to be awarded for phase two of the research.

Phase two of the research will assess the success of the drug courts at meeting their goals, including: desistance from criminal behavior and drug use, retention in treatment, and changes in life circumstances and productivity.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation for Drug Court Evaluation II, 1998'' (refer to document no. SL000241). The solicitation is available electronically via the World Wide Web, connect to the National Institute of Justice homepage at http://ojp.usdoj.gov/nij/funding.htm.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–1898 Filed 1–26–98; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 20, 1998.
   Time: 9:00 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review applications for Humanities Projects in Media/Enterprise, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.
2. *Date:* February 23, 1998.
   Time: 9:00 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review applications for Humanities Projects in Libraries and Archives, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.
3. *Date:* February 27, 1998.
   Time: 9:00 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs, for projects at the January 12, 1998 deadline.

Nancy E. Weiss,

Advisory Committee, Management Officer.

[FR Doc. 98–1865 Filed 1–26–98; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454 AND STN 50–456]

Commonwealth Edison Company; Notice of Withdrawal of Application for Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (the licensee) to withdraw its January 31, 1997, application for proposed amendments to Facility Operating License Nos. NPF–37 and NPF–66, for Byron Station, Units 1 and 2, located in Ogle County, Illinois.

The proposed amendment would have modified the facility technical specifications (TS) to reduce the Byron, Unit 1, limiting TS value for the primary coolant dose equivalent iodine-131 (DEI) concentration from 0.35 to 0.20 microcuries per gram. The intent of this proposed TS revision was to limit the offsite dose at the exclusion area boundary to a small fraction of the radiation exposure guidelines in 10 CFR Part 100. In the interim, ComEd performed an operability assessment and administratively reduced the Byron, Unit 1, DEI to 0.20 microcuries per gram. On November 7, 1997, ComEd started its Byron, Unit 1, fall 1997 refueling outage during which the steam generators (SG) are being replaced. The replacement SG begin installed at Byron, Unit 1, will not have the relatively large end of cycle SG tube leakage attributed to the original SG. Accordingly, the license amendment requests submitted on January 31, 1997, was no longer needed.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 12, 1997, (62 FR 11489). However, by letter dated November 11, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 31, 1997, and the licensee's letter dated November 11, 1997, which withdrew the application for the license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 60481.

Dated at Rockville, Maryland, this 8th day of January, 1998.

For the Nuclear Regulatory Commission.

M. David Lynch,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation

[FR Doc. 98–1900 Filed 1–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455 and STN 50–456, STN 50–457]

Commonwealth Edison Company; (Byron Station, Units 1 and 2); (Braidwood Station, Units 1 and 2); Exemption

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License Nos. NPF–37, NPF–66, NPF–72, and NPF–77, which authorize operation of Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The Byron facility consists of two pressurized-water reactors located at the licensee's site in Ogle County, Illinois. The Braidwood facility consists of two pressurized-water reactors located at the licensee's site in Will County, Illinois.

II

In its letter dated April 3, 1997, as supplemented on June 19, 1997, ComEd requested an exemption from the Commission's regulations. Title 10 of the Code of Federal Regulations, Part 50, Section 60 (10 CFR 50.60), ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation,'' states that all lightwater nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as stated in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines pressure-temperature (P-T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime, and specifies that these P-T limits must be at least as conservative as the limits obtained by conforming to the methods of analysis and the margins of safety of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G. 10 CFR 50.55a requires that any reference to ASME Code Section XI in 10 CFR Part 50 refers to addenda through the 1988 Addenda and editions through the 1989 Edition of the Code unless otherwise noted. It is specified in 10 CFR 50.60(b) that alternatives to the requirements described in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To mitigate low-temperature overpressure transients that would produce pressure excursions exceeding the required limits while the reactor is operating at low temperatures, the licensee installed a low-temperature overpressure protection (LTOP) system. The system includes pressure-relieving devices called power-operated relief valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the required limits. To prevent the PORVs from lifting as a result of normal operating pressure surges, some margin is needed between the PORV setpoint and the normal operating pressure. In addition, when instrument uncertainty is considered, the operating window between the PORV setpoint and the minimum pressure required for reactor coolant pump seals is small and presents difficulties for plant operation.

The licensee has requested the use of the 1996 Addenda to the ASME Code, Section XI, Appendix G, which allows the use of lower stress intensity factors for determining the applied stress intensity from pressure and thermal stresses, and allows use of an LTOP system setpoint so that system pressure does not exceed 110 percent of the P-T limits. The 1996 Addenda to the ASME Code, Section XI, Appendix G, is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. ASME Code, Section XI, Appendix G, 1996 Addenda, has been approved by the ASME Code Committee.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested entity or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. * * *''

The underlying purpose of 10 CFR 50.60 and 10 CFR Part 50 Appendix G is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of Appendix G to 10 CFR Part 50, requires that the reactor vessel be operated with P–T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of Section XI of the ASME Code. 10 CFR 50.55a requires that any reference to ASME Code Section XI in 10 CFR Part 50, Appendix G, refers to addenda through the 1988 Addenda and editions through the 1989 Edition of the ASME Code, unless otherwise noted.

Appendix G of the ASME Code requires that the P-T limits be calculated: (a) Using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter of the vessel wall thickness (¼ T) and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the reactor vessel material.

For determining the P–T limits, the licensee proposed to use the safety margins based on the 1996 Addenda to the ASME Code in lieu of the 1989 Edition. When compared to the 1989 Edition of the ASME Code, the 1996 Addenda permits the use of a lower stress intensity factor for determining the applied stress intensity from pressure and thermal stresses. This results in a slight reduction in the applied stress intensity and a corresponding shift in the allowable pressure at a given temperature in the non-conservative direction; however, this difference is minor when compared to the explicit conservatisms incorporated into Appendix G, and the changes in the stress intensity factor are supported by the work performed for NRC and for others by J.A. Keeney and T.L. Dickson at Oak Ridge National Laboratory (ORNL).

For determining the LTOP system setpoint, the licensee proposed to use safety margins based on the 1996 Addenda to the ASME Code. The 1996

Addenda allows determination of the setpoint for mitigating LTOP events so that the maximum pressure in the vessel would not exceed 110 percent of the P–T limits that are determined using the 1996 methodology. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety for the reactor vessel during LTOP transients and, thus, will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. Further, by relieving the operational restrictions, the potential for undesirable lifting of the PORV would be reduced, thereby improving plant safety.

It should be noted that the provision to set the PORV setpoint so that system pressure remains below 110 percent of the P–T limits has already been incorporated into the Byron and Braidwood licensing basis. This provision was approved by an exemption to 10 CFR 50.60 granted to Byron, Units 1 and 2, on November 29, 1996, to Braidwood, Unit 1 on July 13, 1995, and to Braidwood, Unit 2 on December 12, 1997, to allow the use of ASME Code Case N–514. Therefore, although it represents a change from the 1989 Edition of the ASME Code, it is not a change to the current licensing basis for the facilities.

IV

For the foregoing reasons, the NRC staff has concluded that ComEd's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), in that 10 CFR 50.60 need not be applied in order to achieve the underlying purpose of this regulation, which is to provide adequate fracture toughness of the reactor pressure boundary.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60 so that the P–T limits may be determined using the 1996 Addenda to the ASME Code, Section XI, Appendix G, and the LTOP system setpoint may be determined so that system pressure does not exceed 110 percent of the P–T limits.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (63 FR 2268).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of January, 1998.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1902 Filed 1–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation, Vermont Yankee Nuclear Power Station; Exemption

I

The Vermont Yankee Nuclear Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–28, which authorizes operation of the Vermont Yankee Nuclear Power Station. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility consists of a single-unit boiling-water reactor located at the licensee's site in Windham County, Vermont.

II

Section 70.24 of Title 10 of the Code of Federal Regulations (10 CFR 70.24), ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and also requires that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means for identifying quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for the services of a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he or she should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at Vermont Yankee is in the form of nuclear fuel; the quantity of SNM other than fuel that is stored on site in any given location is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at Vermont Yankee and has determined that it is extremely unlikely for such an accident to occur if the licensee meets the following seven criteria:

1. Only three new fuel assemblies are allowed out of a shipping cask or storage rack at one time.

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level, in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.

3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level, in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with a

moderator at the density corresponding to optimum moderation.

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level, in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.

5. The quantity of forms of SNM other than nuclear fuel, that is stored on site in any given area is less than the quantity necessary for a critical mass.

6. Radiation monitors, as required by General Design Criterion (GDC) 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U–235 enrichment is limited to 5.0 weight percent.

By letter dated December 16, 1997, the licensee requested an exemption from 10 CFR 70.24. The licensee's letter dated January 13, 1998, provided additional information supporting the exemption. In the submittals, the licensee addressed criteria 1, 2, 4, 5, 6, and 7. Criterion 3 is satisfied because the licensee's submittal dated January 13, 1998, states that the cycle 20 fuel will be channeled and stored in the spent fuel storage pool until it is loaded in the core and that the licensee has no plans to store new fuel in the new fuel storage vault. The Commission's technical staff has reviewed the licensee's submittals and has determined that Vermont Yankee meets the criteria for prevention of inadvertent criticality; therefore, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling or storage areas at Vermont Yankee.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur; furthermore, the licensee has radiation monitors that meet GDC 63 in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to GDC 63, constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

The Commission has determined that pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the Vermont Yankee Nuclear Power Corporation an exemption from the requirements of 10 CFR 70.24.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the human environment (63 FR 2425).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 20th day of January 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1901 Filed 1–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–22]

Westinghouse Electric Corporation (CBS Corporation); Westinghouse Test Reactor; Notice of Withdrawal of Application for Consent to Transfer Facility License and Conforming Amendment

The U.S. Nuclear Regulatory Commission (the Commission) has permitted the withdrawal of the August 18, 1997 application for consent to transfer Facility License No. TR–2 for the Westinghouse Test Reactor, located at the Westinghouse Waltz Mill site in Westmoreland County, Pennsylvania, and application for a conforming license amendment; submitted by Westinghouse Electric Corporation (CBS Corporation).

The proposed action would have approved the transfer of License No. TR–2 from the Westinghouse Electric Corporation to a new corporation that would have taken the name Westinghouse Electric Corporation, but would not have included in its lines of business certain media operations. The proposed action would have also amended the license to reflect the proposed transfer of the license.

The Commission had previously issued a Notice of Consideration of Approval of Transfer of License and Issuance of a Conforming Amendment to Facility License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing published in the **Federal Register** on September 26, 1997 (62 FR 50628). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on October 1, 1997 (62 FR 51493). However, by letter dated December 18, 1997, the licensee withdrew the August 18, 1997 application.

The licensee withdrew the application because its plan to reorganize and create a new corporation changed.

For further details with respect to this action, see the application for amendment dated August 18, 1997, and the letter from licensee dated December 18, 1997, which withdrew the application. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland, this 20th day of January 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1899 Filed 1–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Draft Environmental Assessment; Relating to a Proposed License Amendment To Increase the Maximum Rated Thermal Power Level at the Monticello Nuclear Generating Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission has prepared a draft environmental assessment related to the Northern States Power Company's (NSP's) request for a license amendment to increase the maximum rated thermal power level from 1670 megawatts-thermal (MWt) to 1775 MWt. As stated in the NRC staff's position paper on the Boiling-Water Reactor Extended Power Uprate Program dated February 8, 1996, the staff has the option of preparing an environmental impact statement if it believes a significant impact results from the power uprate. The staff did not identify a significant impact related to the NSP's request and, therefore, the NRC staff documented its

environmental review in an environmental assessment (EA). In accordance with the February 8, 1996, staff position paper, the draft EA and finding of no significant impact is being published in the **Federal Register** for a 30-day comment period.

DATES: Comment period expires February 26, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T–6D–69, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 am to 4:15 pm, Federal Workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tae Kim, Office of Nuclear Reactor Regulation, Mail Stop O–13D18, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1392.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22, issued to Northern States Power Company, for operation of the Monticello Nuclear Generating Plant located in Wright County, Minnesota. The Commission's draft environmental assessment and finding of no significant impact related to the subject license amendment is provided below:

Environmental Assessment

1.0 Introduction

1.1 Description of Proposed Action

By letter dated July 26, 1996, as revised December 4, 1997, Northern States Power Company (NSP) requested an amendment to License No. DPR–22 for the Monticello Nuclear Generating Plant (MNGP) that would increase the maximum power level from 1670 megawatts-thermal (MWt) to 1775 MWt. This change is approximately 6.3 percent above the current maximum license power level and is considered an extended power uprate.

1.2 Need for the Proposed Action

NSP has projected the need for additional generation resources through a comparison of needs to available resources. NSP has projected a shortfall of generating capacity in the future. The proposed action would provide increased reactor power, thus adding an additional 26 MW of reliable electrical energy generating capacity without major hardware modifications to the plant. Hardware changes are not needed because of improvements in technology, performance, and design. These improvements have resulted in a significant increase in the difference between the calculated safety analysis results and licensing limits established by the original license.

2.0 Environmental Impacts

The issuance of the operating license for MNGP stated that any activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement (FES), which was issued in November 1972. The license for MNGP allowed a maximum reactor power level of 1670 MWt. NSP submitted an environmental evaluation supporting the proposed power uprate action and provided a summary of its conclusions concerning both the radiological and nonradiological environmental impacts of the proposed action. The evaluations performed by the licensee concluded that the environmental impacts of power uprate are well bounded or encompassed by previously evaluated environmental impacts and criteria established by the staff in the FES. A summary of the nonradiological and radiological effects on the environment that may result from the proposed amendment is provided below.

2.1 Nonradiological Impacts

2.1.1 Land use. Power uprate does not modify land use at the site. No new facilities, access roads, parking facilities, laydown areas, or onsite transmission and distribution equipment, including power line right of way, are needed to support the uprate or operation after uprate. No change to above or below ground storage tanks would occur as a result of power uprate and the uprate does not affect land with historical or archeological sites.

Based on the operating history at the MNGP, the effects of drift, icing, and fog have been negligible. The frequency of fog and drift were provided by the licensee at the time of original licensing and the impacts of that frequency of drift and fog are bounded by the evaluation contained in the FES. The FES assumed cooling tower operation of 7 months, with the total fogging time estimated at 45 hours per year. If the cooling tower fogging rate is assumed to increase proportional to the proposed power increase, the amount of fogging due to power uprate could increase by approximately 6.3 percent above the normal summer operating period of 4 months. Additionally, the licensee determined that power uprate may involve an extra week of cooling tower operation. Taking into account the additional fogging rate and the additional cooling tower operation, the conditions at power uprate are still bounded by the FES.

The increase in power level would cause a current and magnetic field increase on the onsite transmission line between the main generator and the plant substation. The line is located entirely within the fenced, licensee-controlled boundary of the plant, and it is not expected that members of the public or wildlife would be affected. Exposure from magnetic fields from the offsite transmission system is not expected to increase significantly.

2.1.2 Water Use. Power uprate does not involve a significant increase in water use at MNGP. Both ground and surface water appropriation limits are established by the Minnesota Department of Natural Resources. Operating history shows that over the last 5 years MNGP has used less than 13 million gallons of ground water per year. The annual limit established in the permit for groundwater use is 15 million gallons. Power uprate is not expected to change the groundwater usage and, therefore, operation within the allowable limit would continue. Under the surface water appropriation limit, MNGP may withdraw a maximum of 645 cubic feet per second (cfs) from the Mississippi River. There are special restrictions when the river flow is particularly high or low; however, power uprate is not expected to change the surface water requirements of the plant and, therefore, current appropriation limits would be maintained.

Power uprate would result in an increase in the evaporation rate of the cooling towers resulting in an increase in evaporative losses from the river. Assuming the evaporation rate of the cooling towers increases linearly in proportion to the power increase, the evaporation rate would increase to 4400 acre-ft/yr [acre-foot per year]. The value assumed in the FES was 5000 acre-ft/yr evaporative losses; therefore, the FES is still bounding.

Discharges to the water are governed by the National Pollutant Discharge Elimination System (NPDES) permit, issued by the State of Minnesota. Temperature and effluent limits at certain points are established in the permits. As a result of power uprate, a slight increase in circulating water

discharge temperature is projected to occur. This is due to an increase in heat rejected by the condenser due to the increased power levels and increased steam flow. A conservative estimate by the licensee predicts a maximum 1.7 °F [degrees Fahrenheit] increase in the temperature of the water entering the discharge canal. This increase would not result in exceeding the limits delineated in the FES or the limits established by the State in the permit. Additionally, temperature monitoring is continuous and this maximum temperature increase would occur only at certain times of the year with certain river flows. In the past, when MNGP has approached the limit designated in the NPDES permit, NSP has reduced power at the plant to maintain compliance; this will continue in the future. The slight increase in temperature does not require any changes to permit requirements and would not result in any significant impacts to the environment that are different from those previously identified or change the previous Clean Water Act Section 316(a) demonstration concerning thermal plume in the Mississippi River.

Power uprate would not introduce any new contaminants or pollutants and would not significantly increase the amount of potential contaminants previously allowed by the State. NSP will continue to adhere to effluent limitation and monitoring requirements as part of compliance with the NPDES permit. As a result of the additional week of cooling tower operation, a slight increase in normal bromine and sodium hypochlorite injection may be required; however, the effluent concentrations would continue to be well below the NPDES permit limits. Continuous flowrate monitoring at designated points will continue.

Over the years of operation, a number of modifications to the intake structure have been implemented to reduce cold shock, impingement, and entrainment of organisms and fish. Because the discharge canal inlet temperature is expected to increase 1.7 °F at power uprate, the overall discharge canal temperature is not significantly increased; therefore, the temperature decrease during cold shock is not significantly changed.

Additionally, impingement and entrainment mortality of drift organisms is not increased above what was previously evaluated by the staff.

2.1.3 Other impacts. No significant increases or changes to the noise generated by MNGP are expected as a result of power uprate; therefore, the FES remains bounding. A small number of endangered and threatened species exist within the licensee-controlled area at MNGP. Using information from the Minnesota Department of Natural Resources, the licensee performed a biological assessment of the impact of power uprate on these species. The assessment did not identify any impacts. Power uprate would not result in any significant changes to land use or water use, or result in any significant changes to the quantity or quality of effluents; therefore, no effects on the endangered or threatened species or on their habitat are expected as a result of power uprate.

The proposed power uprate would not change the method of generating electricity nor the method of handling any influent from the environment or nonradiological effluents to the environment. Therefore, no changes or different types of nonradiological environmental impacts are expected.

2.2 Radiological Impacts

MNGP has a number of radioactive waste systems designed to collect, process, and dispose of solid, liquid, and gaseous radioactive waste. No changes to these systems are required for power uprate conditions. The licensee considered the effect of the higher power level on solid radioactive wastes, liquid radioactive wastes, gaseous radioactive wastes, and radiation levels.

As a result of power uprate, a slight increase in solid waste from the reactor water cleanup (RWCU) system demineralizers and condensate demineralizers would occur. This is due to more frequent filter backwashes. Additional RWCU filter backwashes would result in less than 1 cubic meter of additional resin waste per year; condensate demineralizer filter backwashes are estimated to result in an additional 4 cubic meters of resin waste per year. Therefore, the projected increase in spent resin volume is less than 6 cubic meters per year, which would bring the total generation rate to approximately 55 cubic meters per year.

In addition to the solid process waste, there are solid reactor system wastes generated from the plant. These include irradiated fuel assemblies and control blades. Due to extended burnup and the higher enrichments, the number of irradiated fuel assemblies is not expected to significantly increase the volume of waste; however, the activity of the waste generated from spent control blades and incore ion changers may increase slightly. This is due to the higher flux conditions expected under power uprate. Improvements in technology and longer fuel cycles are expected to offset this slight increase. The increase in waste would be insufficient to impact the amount of waste generated at the site. Further, the licensee believes ongoing efforts at MNGP to reduce radioactive wastes will balance the slight increase in waste that would be generated as a result of power uprate.

The FES and Technical Specifications allow MNGP to discharge a limited amount of liquid radioactive waste. The FES concluded that, based on the allowed amounts, no adverse environmental impact would result from release of the allowable radioactive waste. However, since 1972, an administrative limit of zero radioactive liquid release has been imposed by NSP. MNGP expects to keep the zero release administrative limit and remain well within the bounds of the FES.

A slight increase in input to the liquid radioactive waste system is expected due to the increase in backwash frequency of the RWCU and condensate demineralizer system. However, the liquid radioactive waste input will be recycled instead of discharged and will not result in a significant increase in volume of liquid radioactive waste. Other sources of liquid radioactive waste such as valve packings, pump seal flows, drain waste, etc., are not expected to change or increase as a result of power uprate. Based on the above, it does not appear that power uprate will cause an increase in liquid radioactive waste above the presently allowed limits and will not affect compliance with the limits of 10 CFR Part 20 or Appendix I of 10 CFR Part 50.

Gaseous radioactive waste effluents consist of two pathways: reactor building ventilation system and offgas system pathway. Operational experience at MNGP shows a 4-year average release of 688 Ci/yr [curie per year] noble gas and 0.22 Ci/yr iodine and particulate release. The FES assumed release rates of 110,376 Ci/yr for noble gases and 0.75 Ci/yr for iodine and particulate releases. Assuming power uprate increases the offgas release rate linearly in proportion to the core thermal power increase, the increase in offgas stack release would be well below that assumed in the FES. Assuming the radioactivity of the reactor coolant system increases in a linear fashion proportional to the power increase, the reactor building release rate is well below that assumed in the FES. Based on the above, power uprate has an insignificant effect on the present production and activity of gaseous effluents released through the reactor building ventilation system and the offgas system pathways and the dose from effluent releases is well within the bounds of Appendix I to 10 CFR Part 50

and 10 CFR Part 20. The changes in core flux profile would result in increased consequences of a fuel defect for a bundle in a non-leak location; however, this continues to be bounded by the consequences for the peak bundle and those limits are not changed.

Power uprate does not introduce any new or different radiological release pathways and does not increase the probability of an operator error or equipment malfunction that would result in a radiological release.

Tables S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively, outline the environmental effects of uranium fuel cycle activities and fuel and radioactive waste transportation. The environmental evaluation supporting Table S–3 assumed a reference reactor with a specific capacity factor that results in an adjusted daily electricity production during a reference year. An average burnup and enrichment are also assumed. MNGP will not exceed the assumption of the reference reactor year, but will exceed the average burnup and fuel enrichment criteria as a result of power uprate. The environmental impacts of the higher burnup and enrichment values were documented in NUREG/CR–5009, ''Assessment of the Use of Extended Burnup Fuels in Light Water Power Reactors,'' and discussed in the Environmental Assessment and Finding of No Significant Impact, which was published in the **Federal Register** on February 29, 1988 (53 FR 6040). The staff concluded that no significant adverse effects will be generated by increasing the burnup levels as long as the maximum rod average burnup level of any fuel rod is no greater than 60 Gwd/MtU [gigawatt-days per metric ton of uranium]. The staff also stated that the environmental impacts summarized in Tables S–3 and S–4 for a burnup level of 33 Gwd/MtU are conservative and bound the corresponding impacts for burnup levels up to 60 Gwd/MtU and uranium-235 enrichments up to 5 weight percent. Based on the above, there are no adverse radiological or non-radiological impacts associated with the use of extended fuel burnup and/or increased enrichment and, therefore, power uprate will not significantly affect the quality of the human environment.

3.0 Alternatives

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the proposed action would result in no change in current environmental impacts of plant operation but would restrict operation to the currently licensed power level. The environmental impact of the proposed action and the alternative action are similar.

4.0 Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the MNGP.

5.0 Basis and Conclusions for Not Preparing an Environmental Impact Statement

The staff has reviewed the proposed power uprate for the MNGP relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff has concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined pursuant to 10 CFR 51.31 not to prepare an environmental impact statement for the proposed amendment but to prepare this draft finding of no significant impact.

For further details with respect to the proposed action, see the licensee's letter dated July 26, 1996, as revised by letter dated December 4, 1997, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 21st day of January 1998.

Cynthia A. Carpenter,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–1903 Filed 1–26–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY: Nuclear Regulatory Commission.

DATE: Weeks of January 26, February 2, 9, and 16, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 26

Wednesday, January 28

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

Week of February 2—Tentative

Wednesday, February 4

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

Week of February 9—Tentative

There are no meetings the week of February 9.

Week of February 16—Tentative

Thursday, February 19

9:30 a.m.—Meeting with Northeast Nuclear on Millstone (Public Meeting) (Contact: Bill Travers, 301–415–1200).

12:00 m.—Affirmation Session (Public Meeting) (if needed).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: January 23, 1998.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 98–2090 Filed 1–23–98; 2:25 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in

1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates are effective immediately and will be in effect through January 1999.

FOR FURTHER INFORMATION CONTACT: Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

Joseph J. Minarik,

Associate Director for Economic Policy, Office of Management and Budget.

[OMB Circular No. A–94, Revised, October 29, 1992]

Appendix C

(Revised January 1998)

Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses

Effective Dates. This appendix is updated annually around the time of the President's budget submission to Congress. This version of the appendix is valid through the end of January, 1999. Copies of the updated appendix and the Circular can be obtained from the OMB Publications Office (202–395–7332) or in an electronic form through the OMB home page on the world-wide WEB, http://www.whitehouse.gov/WH/EOP/omb. Updates of this appendix are also available upon request from OMB's Office of Economic Policy (202–395–3381), as is a table of past years' rates.

Nominal Discount Rates. Nominal interest rates based on the economic assumptions from the budget are presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

Nominal Interest Rates on Treasury Notes and Bonds of Specified Maturities (in Percent)

3-Year	5.6
5-Year	5.7
7-Year	5.8
10-Year	5.9
30-Year	6.1

Real Discount Rates. Real interest rates based on the economic assumptions from the budget are presented below. These real rates are to be used for discounting real (constant-dollar) flows, as is often required in cost-effectiveness analysis.

Real Interest Rates on Treasury Notes and Bonds of Specified Maturities (in Percent)

3-year	3.4
5-year	3.5
7-year	3.5
10-year	3.6
30-year	3.8

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 98–1826 Filed 1–26–98; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23004; 812–10134]

Daily Money Fund, et al.; Notice of Application

January 20, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'') granting an exemption under section 6(c) of the Act from sections 13(a), 18(f), and 21(b) of the Act, under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and (3) of the Act, and under rule 17d–1 under the Act to permit certain transactions in accordance with section 17(d) of the Act and rule 17d–1.

SUMMARY OF APPLICATION: The requested order would permit certain registered open-end funds and unregistered funds to enter into insurance agreements with an affiliated mutual insurance company (the ''Mutual Company''). The Mutual Company would provide limited insurance coverage for certain money market assets held by the funds.

APPLICANTS: Daily Money Fund, Fidelity Aberdeen Street Trust, Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series V, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Beacon Street Trust, Fidelity Boston Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Concord Street Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Destiny Portfolios, Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Government Securities Fund, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Institutional Cash Portfolios, Fidelity Institutional Tax-Exempt Cash Portfolios, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust, Fidelity Municipal Trust II, Fidelity Newbury Street Trust, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, North Carolina Capital Management Trust, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity Revere Street Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Summer Street Trust, Fidelity Trend Fund, Fidelity Union Street Trust, Fidelity Union Street Trust II, Fidelity U.S. Investments-Bond Fund, L.P., Fidelity U.S. Investments-Government Securities Fund, L.P., Variable Insurance Products Fund, Variable Insurance Products Fund II, Variable Insurance Products Fund III (collectively, the ''Trusts''); Fidelity Canadian Asset Allocation Fund, Fidelity U.S. Money Market Fund, Fidelity Asset Manager Fund, Fidelity Canadian Bond Fund, Fidelity Canadian Growth Company Fund, Fidelity Canadian Income Fund, Fidelity Canadian Short Term Asset Fund, Fidelity Capital Builder Fund, Fidelity Emerging Markets Bond Fund, Fidelity Emerging Markets Portfolio Fund, Fidelity European Growth Fund, Fidelity Far East Fund, Fidelity Growth America Fund, Fidelity International Portfolio Fund, Fidelity Japanese Growth Fund, Fidelity Latin America Growth Fund, Fidelity North American Income Fund, Fidelity RSP Global Bond Fund, Fidelity Small Cap America Fund, Fidelity True North Fund, Fidelity Managed Income Fund, Fidelity Focus Consumer Industries Fund, Fidelity Focus Financial Services Fund, Fidelity Focus Health Care Fund, Fidelity Focus Natural Resources Fund, Fidelity Focus Technology Fund (collectively, the ''Canadian Funds''); Fidelity Advisor U.S. Large-Cap Stock Fund (Bermuda) Ltd., Fidelity Advisor World Europe Fund (Bermuda) Ltd., Fidelity Advisor World Southeast Asia Fund (Bermuda) Ltd., Fidelity World Advisor World U.S. Limited Term Bond Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Government Investment Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Treasury Money Fund

(Bermuda) Ltd. (collectively, the ''Fidelity Advisor World Funds''); Fidelity Investments Canada, Ltd. (''FICL''); Fidelity Management and Research Company (''FMR''); Fidelity Distributors Corporation (''FDC''); National Financial Services Corporation (''NFSC'')[1]; each Trust and each registered investment company and series thereof that are currently or in the future advised by FMR or a person controlling, controlled by, or under common control with FMR (collectively with FMR, the ''Adviser'') or distributed by FDC or NFSC (collectively, the ''Registered Funds''); the Fidelity Advisor World Funds, the Canadian Funds, and other pooled investment funds advised or in the future advised by the Adviser, that are offered exclusively outside the United States to non-U.S. residents (the ''Unregistered Funds''); and state and local entities or accounts thereof advised or in the future advised by the Adviser that are exempt from regulation under the Act pursuant to section 2(b) of the Act (the ''2(b) Entities'') (collectively, the Registered Funds, the Unregistered Funds, and the 2(b) Entities are the ''Funds'').

FILING DATES: The application was filed on May 7, 1996, and amended on December 3, 1997.

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 SEC by 5:30 p.m. on February 16, 1998, 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 consented. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572 (Division of Investment Management, Office of Investment Company Regulation), or Mercer E. Bullard, Special Counsel, at (202) 942–0659 (Division of Investment Management, Office of Chief Counsel).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

A. Overview

1. Each of the Registered Funds is an open-end investment company registered under the Act and offers one or more portfolios. The Fidelity Advisor World Funds are portfolios of mutual funds established under the laws of Bermuda. The Canadian Funds are portfolios established under the laws of Canada. The only 2(b) Entity that currently may rely on the requested order is the Massachusetts Municipal Depository Trust (''Municipal Trust''), which is established pursuant to Massachusetts law.[2]

2. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, acts as investment adviser to each Registered Fund and its portfolios and provides the Registered Funds with administrative services. FICL acts as the investment adviser to the Canadian Funds. FDC and NFSC act as the distributors of all the Registered Funds. FMR, FICL, FDC, and NFSC are all direct or indirect subsidiaries of FMR Corp.

3. Applicants propose that certain Funds (''Participating Funds'') enter into insurance agreements with the Mutual Company. The Mutual Company would provide insurance coverage for certain loss events (''Loss Events'') described below with regards to certain money market securities (''Insurable Assets''). Initially, applicants expect that the only Participating Funds will be U.S. dollar denominated money market funds.[3] Other types of Funds may participate in the future if the Fund's Adviser and board of trustees determine that the insurance would be of value to the Fund and that the Fund had an independent need for the insurance coverage.

B. Mutual Company Operations

1. The Mutual Company will be organized as a Bermuda mutual insurance company and will be governed by a board of directors consisting of employees of FMR or FMR Corp. and other persons associated with the Mutual Company. As a mutual insurance company, the Mutual Company will not issue stock. Proprietary interests in the Mutual Company will belong only to the Participating Funds as policyholders. Each Participating Fund will have equal voting rights, *i.e.*, each Participating Fund will have one vote. The board of trustees (''Trustees'') of each Registered Fund will exercise the Fund's voting rights. The Funds will have voting rights with respect to (a) the election and removal of the Mutual Company's board of directors; (b) the dissolution or liquidation of the Mutual Company; (c) the amendment of the Mutual Company's articles of incorporation or other governing instrument; (d) any merger, consolidation or sale of substantially all of the Mutual Company's assets; and (e) additional matters relating to the Mutual Company as may be required or authorized by law.

2. Employees of the Adviser will be involved in the day-to-day operations of the Mutual Company, including determining and implementing the investment policies of the Mutual Company and managing its assets. The Mutual Company will employ an unaffiliated third party in Bermuda to conduct its administrative and ministerial activities.

3. The Mutual Company will operate on a break-even basis and any reserves and surplus will be used (a) to increase the Mutual Company's aggregate coverage and/or the risk retained by the Mutual Company and/or (b) to decrease the premiums charged by the Mutual Company. The Mutual Company will pay no dividends or distributions, and neither the Funds' interest in the Mutual Company nor the policies will be transferable. A Participating Fund that terminates its participation prior to the liquidation of the Mutual Company will not receive any proceeds, regardless of whether the Mutual Company has a surplus at the time. If the Mutual Company is liquidated when it has a surplus, Participating Funds at that time will divide the proceeds based on their relative levels of premium payments to the Mutual Company during its existence.

[1] The terms ''FDC'' and ''NFSC'' include any other company controlled by or under common control with FMR that acts in the future as distributor for the Trusts or their series.

[2] In order to participate in the Mutual Company, a 2(b) Entity (including the Municipal Trust) would have to determine that the proposed investments in instruments through the proposed transactions are consistent with state laws or administrative rules regulating the 2(b) Entity. If not, it must seek to have those laws or rules amended. Accordingly, the Municipal Trust is not named as an applicant because it considers it premature to join formally.

[3] Money market funds are funds that have as their objective the generation of income and the preservation of capital. Money market funds are subject to rule 2a–7 under the Act, which contains several conditions limiting the risk and volatility of securities in which a money market fund may invest.

C. Insurance Coverage

1. Insurable Assets are securities that, at the time of purchase, are money market securities eligible pursuant to rule 2a–7 under the Act (including repurchase agreements), other than: (i) U.S. Treasury securities backed by the full faith and credit of the U.S. Government, and (ii) other obligations all of the principal and interest of which are backed by the full faith and credit of the U.S. Government.

2. Loss Events include losses incurred by a Participating Fund in connection with a nonpayment of principal or interest by the issuer when due and payable, or the institution of a bankruptcy, insolvency, or similar proceeding with respect to the issuer and/or credit enhancement provider (if any) of an Insurable Asset. Loss Events also include losses in connection with a default relating to a credit enhancement. In addition, Loss Events include the inability of a Fund to recover fully the amount loaned under a repurchase agreement because of an event of default under the contract (''repo-related Loss Event''), and losses resulting if certain payments to a Participating Fund were subsequently considered a preference in bankruptcy (''preference-related Loss Event''). In the future, the definition of Loss Events could be expanded.

3. The Adviser or the Mutual Company will retain insurance professionals to set the aggregate annual premium based upon their assessment of the risk of Loss Events occurring with respect to Insurable Assets in which the Funds invest. The insurable professionals, using actuarial standards, will allocate the premium among the Participating Funds based on the risk characteristics of the different types of Insurable Assets held by each Fund.

4. The insurance policy (''Policy'') written by the Mutual Company will be structured as a claims-made policy. The Policy will have a term of one year and will be renewable. Neither the Mutual Company nor a Participating Fund will be permitted to terminate or decrease its coverage during a policy year. The Policy will have no cash surrender value, will not be transferable, and will not provide for the payment of any dividend or other distribution.

5. Loss recoveries by the Participating Funds will be limited to $100 million annually in the aggregate. A Participating Fund will recover for a Loss Event only to the extent that the amount of its loss exceeds the deductible amount of 0.30% of a Participating Fund's Insurable Assets, which will be applied on a per loss basis for each Fund. There are no limits (other than the Policy limit) on the amount of loss recoverable by a Participating Fund in a particular year or with respect to any single issuer.

6. The Mutual Company also would provide coverage for certain wrongful acts on the part of past or present officers, Trustees, or employees of a Participating Fund that result in the Fund sustaining a Loss Event. This coverage would not apply to FMR in its capacity as investment adviser to the Funds. Wrongful acts would include any breach of duty, neglect, error, misstatement, misleading statement, omission or other act committed or wrongfully attempted by an employee resulting in a Participating Fund sustaining a loss attributable to a Loss Event. The coverage is not fidelity bond coverage and will not be subject to rule 17g–1 under the Act. The coverage would generally expand the existing errors and omissions coverage maintained by a Participating Fund by covering losses not currently covered by the Fund's existing policy. For example, the Mutual Company would cover losses that result from wrongful acts in connection with the purchase of an investment that was not rule 2a–7 eligible and that are in an amount that exceeds the amount covered under the Participating Fund's existing errors and omissions policy.

D. Mutual Company Capitalization

1. As noted above, the Mutual Company will have an annual aggregate Policy limit of $100 million. The Mutual Company initially will cover the first $30 million in claims from payments collected from the Participating Funds and Fidelity, with third-party reinsurance covering the remaining $70 million. The first $30 million will be capitalized by the following sources: (i) A one-year loan by Fidelity of $250,000 (''Fidelity Note''), (ii) a one-year demand note by the participating funds of $450,000 in the aggregate (''Fund Notes''), (iii) first-year premiums of approximately $2.7 million, (iv) assessable premiums of approximately $11 million, and (v) a commitment by Fidelity of approximately $17 million. If the Mutual Company's reserves are insufficient to cover claims, it will use its other assets in the following order: (a) The Fund Notes, (b) the FMR Note, (c) the premium assessment, (d) FMR's commitment, and (e) reinsurance.

2. The amount of each Fund Note will be determined on a *pro rata* basis in the same proportion as the Fund's premium payment. Because the Fund Notes are demand notes, a Participating Fund will not be required to pay any monies to the Mutual Company unless these are one or more covered Loss Events exceeding the Mutual Company's available reserves and surplus funds. Fund Notes will be drawn upon and will be repaid to the Funds by the Mutual Company on a *pro rata* basis.

3. In addition, because annual premiums in the initial years of operation will be insufficient to permit the Mutual Company to provide the $30 million of coverage it will retain, the Company's insurance policies will be ''assessable.'' Thus, if a Loss Event occurs, each Participating Fund will be subject, in addition to its annual premium payments, to a special premium assessment initially estimated to be approximately two and one half times its annual premium payment. A Fund's annual and special assessment premiums will be paid from the general assets of the Fund, except that FMR will pay the premiums for Funds with ''all-inclusive'' management agreements, under which FMR is contractually obligated to pay all Fund expenses. The special premium assessment will be made on a *pro rata* basis by each Participating Fund in the same proportion as the Fund's then current *pro rata* shares of its regular premium payment, regardless of which Fund actually sustains a Loss Event. If reserves and surplus funds in the Mutual Company build up sufficiently, applicants expect the assessment rate to decline over time.

4. Assuming that all the Fund Notes are fully drawn upon and the Funds are subject to the maximum special premium assessment, applicants anticipate that the maximum commitment by all Participating Funds (which as of October 31, 1997, had approximately $98 billion in net assets) to the Mutual Company would initially amount to approximately $11 million resulting in a projected maximum commitment by the Funds that would not exceed .04% of the Funds' net assets. Thus, any monies required to be paid by a Participating Fund pursuant to the Fund Notes or special assessment in a given year would not cause the net asset value of a money market Fund to be reduced below $1.00 per share.

5. The Mutual Company also will receive a $17 million commitment from FMR backed by a letter of credit to cover Loss Events exceeding the Mutual Company's reserves and surplus funds and the Participating Funds' assessable policies. FMR's commitment to cover losses would stand behind the premiums and assessable policies of the Participating Funds and is expected to decline over time as reserves increase. The Mutual Company will pay FMR an

annual fee, at market rates, for the commitment. The rate of the annual fee will be the same amount as the lowest rate FMR would then pay a bank for a letter of credit in a comparable amount. The reinsurance obtained by the Mutual Company will stand behind the premiums, assessable policies, and FMR's commitment.

E. Insurance Claims

1. The order of the payment of claims will be based on the date the loss was incurred. In the event of multiple losses occurring on the same date in excess of the Policy limit, claims will be paid *pro rata* based on the amount of a fund's loss in excess of its deductible.

2. A Participating Fund that experiences a Loss Event typically would receive payment within approximately 30 days of filing an acceptable proof of loss with the Mutual Company. Entities providing reinsurance will be obligated to pay the Mutual Company within the same period of time. Normal insurance subrogation rights will be provided in connection with the insurance coverage.

3. Beginning the day of the Loss Event until the proceeds of a Participating Fund's claim are received from the Mutual Company, the net asset value of a Participating Fund that sustains a Loss Event will be computed by recording the amount of the expected recovery as a receivable on the books of the Fund, subject to the Policy limit. Prior to recording a receivable, a Participating Fund will have contacted the Mutual Company upon the occurrence of a Loss Event to determine the amount of available coverage. The recovery will be determined by calculating the amount of the Participating Fund's loss and comparing this number to the coverage remaining under the Policy limit for the policy year in question. The relevant receivable on a Participating Fund's books will be computable and recorded prior to the Fund's next net asset value determination following a Loss Event.

F. Disclosure of the Insurance

1. A brief description of the nature and extent of the insurance coverage will be contained in each Registered Fund's registration statement and, if required by generally accepted accounting principles (''GAAP''), its financial statements. The insurance coverage provided by the Mutual Company will not be used in connection with the marketing of the sale of shares of the Registered Funds, and thus will not be discussed in any marketing or sales literature distributed with respect to any Registered Fund.

Applicants' Legal Analysis

A. Sections 13(a) and 18(f)

1. Section 18(f)(1) of the Act generally prohibits a registered open-end investment company from issuing any senior security. Section 13(a)(2) of the Act requires that a registered investment company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Section 13(a)(3) of the Act provides that no registered investment company will, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote, or deviate from any policy recited in its registration statement pursuant to section 8(b)(3) of the Act. Each Registered Fund has a fundamental investment policy prohibiting the issuance of senior securities except as permitted under the Act. Applicants request relief from sections 13(a) and 18(f) to the extent that the assessable feature of the policy entered into by each Registered Fund and the obligation of each Fund pursuant to the Fund Notes could be deemed the issuance of senior securities by the Registered Funds, and thus be prohibited by section 18(f) and in contravention of a Registered Fund's fundamental policy against issuing senior securities pursuant to section 13(a)(2), and its deviation from that policy in contravention of section 13(a)(3). Relief from section 13(a)(3) would extend only to existing Registered Funds with a fundamental investment restriction prohibiting investments in senior securities and to any other Registered Funds that have such policies at the time the Adviser becomes the Fund's investment adviser.

2. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if the 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. For the reasons provided below, applicants argue that the requested order meets the section 6(c) standards.

3. Applicants state that sections 13(a) and 18(f) resulted from Congress' desire to eliminate certain practices including (a) heavy borrowings by investment companies from the public without adequate assets and reserves, (b) the complexity of capital structures which induced investment companies to invest in risky securities to produce income necessary to cover the high cost of borrowings, (c) the freedom of investment companies to borrow funds for speculation, and (d) the propensity of senior securities to mislead investors by conveying false impression of freedom from risk, and to increase the speculative nature of both the common stock and senior securities of investment companies.

4. Applicants state that the assessable feature of the policy and the obligations created by the Fund Notes will not give rise to the abuses at which sections 13(a) and 18(f) are directed. Applicants submit that neither the assessable feature nor the Fund Notes will involve speculative trading or leverage in the typical sense because a Registered Fund will not be buying portfolio securities with borrowed money. Applicants believe that the proposed insurance coverage will not create an unduly complicated capital structure. Applicants contend that, because of the limited coverage and the deductible, the insurance coverage will not induce a Registered Fund to invest in risky securities.

5. Applicants further state that neither the special assessment feature nor the Fund Notes will change the risk/reward characteristics of any Registered Fund. Applicants submit that payment of monies by a Registered Fund pursuant to the Fund Notes will have no effect on the Fund's net asset value because the Fund will record a receivable on its books and will receive interest at market rates on those monies. Further, applicants believe that, even assuming that all the Fund Notes are drawn upon and the Funds are subject to the maximum special assessment, it is projected that the maximum amount payable by the Participating Fund will be *de minimis* in relation to their total net assets.

B. Sections 17(a) (1) and (2)

1. Sections 17(a) (1) and (2) of the Act generally prohibit sales or purchases of securities to or from a registered investment company by any affiliated person of the company or any affiliated person of an affiliated person. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and anyone under common control with the investment company. Under section 2(a)(3), FMR, as investment adviser of each of the Funds, is an affiliated person of each Fund. Further, because the Funds either share a common investment adviser or have an investment adviser that is under common control with those of the other Funds, and most Registered Funds also share a common board of trustees or

other governing body, each Fund may be deemed to be under common control with all other Funds and, therefore, may be deemed to be an affiliated person of those Funds.

2. Each Participating Fund will have voting rights in the Mutual Company. To the extent that the Mutual Company could be deemed to be controlled by, or under common control with, the Participating Funds or the Adviser and thus an affiliated person of the Registered Funds, applicants believe that the insurance coverage could be deemed to be controlled by, or under common control with, the Participating Funds or the Adviser and thus an affiliated person of the Registered Funds, applicants believe that the insurance coverage could be deemed ''property'' subject to the prohibition of section 17(a)(1) against an affiliate of a Registered Fund selling property to the Fund. In addition, applicants state that FMR's commitment to the Mutual Company could be viewed as a sale of property to the Registered Funds (as the indirect beneficiaries of the commitment and payers of the fee) by an affiliated person of the Registered Funds under section 17(a)(1). Further, applicants state that FMR's contribution of cash to the Mutual company in exchange for the FMR Note could be considered the sale of a security for property by the Mutual Company, a company controlled by the Registered Funds, to FMR under section 17(a)(2). Applicants request exemptions from the provisions of sections 17(a) (1) and (2) to permit these transactions.

3. Section 17(b) of the Act permits the SEC to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned. For the reasons stated below, applicants believe that the terms of the transactions meet the standards of sections 6(c) and 17(b).

4. Applicants state that the insurance coverage will provide the Participating Funds and their shareholders with a means of reducing their risk of loss from defaulting Insurable Assets and repo- and preference-related Loss Events and, in some cases, protection against their net asset value per share dropping below $1.00. Applicants believe that the proposed transactions do not involve overarching because the coverage could not be obtained from an unaffiliated third-party issuer at a comparable price. In addition, applicants state that the proposed arrangement is consistent with the policies of each Participating Fund.

C. Sections 17(a)(3) and 21(b)

1. Section 17(a)(3) of the Act generally prohibits an affiliated person or an affiliated person of an affiliated person of a registered investment company from borrowing money or other property from the company or from any company controlled by the registered company except in certain circumstances not relevant here. Section 21(b) makes it unlawful for any registered investment company to lend money or property to any person, directly or indirectly, if the person controls or is under common control with the registered company.

2. Applicants seek relief from section 17(a)(3) and from section 21(b) to the extent that the Fund Notes, if drawn upon by the Mutual Company, could be deemed the borrowing of money or property from the Registered Funds by an affiliated person. Applicants state that sections 17(a)(3) and 21(b) were intended to prevent a party with strong potential adverse interests and influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that are detrimental to the best interests of the investment company and its shareholders. Applicants believe that the Fund Notes do not raise these concerns because: (a) The amount of each Fund's Fund Note will be determined on a *pro rata* basis in the same proportion as the Fund's then current *pro rata* share of its regular premium payment, (b) all Fund Notes will have the same terms, which will be fair and reasonable to each Fund, and (c) any interest received by the Funds on the Fund Notes will be determined according to a market rate.

D. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of an affiliated person, acting as principal, from participating in any joint arrangement in which the investment company participates unless the arrangement has been approved by the SEC. Applicants believe that the involvement of FMR and the Participating Funds in the Mutual Company could be deemed to constitute participation in a joint arrangement because of: (a) The payment of premiums by the Funds to the Mutual Company for insurance coverage and the rights of the Funds to certain payments from the Mutual Company in connection with a Loss Event, (b) the assessable feature of the Policies, (c) the receipt by FMR from the Mutual Company of interest on the FMR Note and an annual fee for its commitment, and (d) FMR's contribution of cash to the Mutual Company in exchange for the FMR Note.

2. Rule 17d–1(b) provides that, in determining whether to approve a transaction, the SEC 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 companies is on a basis different from or less advantageous than that of the other participants. For the reasons stated below, applicants believe that the requested relief meets these standards.

3. Applicants state that the Registered Funds will not participate in the arrangement on a basis that is different from or less advantageous than other Participating Funds because each Fund's premium will be allocated in accordance with the risk characteristics of the different types of Insurable Assets in which the Funds invest based upon actuarial standards. Applicants state that each Participating Fund's assessable portion will be on a *pro rata* basis according to its share of the regular premium payments. Applicants also state that, in the case of multiple loss events in a single year, the Mutual Company will make payments chronologically based on the date on which a Loss Event occurs up to the annual Policy limit. Applicants note that, while a Registered Fund may not recover on a loss in a particular year, all Registered Funds will be treated in the same manner.

4. Applicants state that the Mutual Company is intended to provide substantial benefits to the Participating Funds, including protection against losses incurred from defaulting Insurable Assets and from repo- and preference-related Loss Events. Further, applicants note that the interest received by FMR on the FMR note and the fee it will receive for its commitment to cover losses of the Mutual Company will be determined according to a market rate. Applicants state that the fees will compensate FMR for assuming significant economic risks and that FMR will receive no other direct benefits from its involvement with the Mutual Company.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. The Trustees, including a majority of the Trustees who are not ''interested persons'' of any Registered or Unregistered Fund, as defined in section

2(a)(19) of the Act (''Disinterested Trustees''), will initially and at least annually thereafter, in each year a Registered Fund participates in the insurance arrangement, determine (a) that the Policy is in the best interests of the Registered Fund and its shareholders, (b) that any amounts paid or potentially payable to the Mutual Company by the Registered Fund including, without limitation, the premiums, the special assessable premium, and the Fund Notes, are fair and reasonable to the Registered Fund, (c) after reviewing all claims paid or denied by the Mutual Company, that the settlement of all claims has been reasonable and fair to the Registered Fund, and (d) that any procedures adopted pursuant to condition 3 have been complied with.

2. Any conflicts that may arise concerning the Participating Funds relating to the operation or policies of the Mutual Company will be resolved on an equitable basis by a committee of the Disinterested Trustees of the Registered Funds.

3. The Trustees of each Registered Fund, including a majority of the Disinterested Trustees, will adopt procedures that are reasonably designed to provide that the conditions in the application have been complied with. The procedures will include, without limitation, the guidelines set forth in the Statement of Policy Regarding Coverage, attached as Exhibit D to the application, as it may be amended from time to time.

4. Participation by a Registered Fund in the Mutual Company will be consistent with the policy of the Fund, as recited in its registration statement and reports filed under the Act.

5. The nature and extent of the insurance coverage will be briefly described in each Registered Fund's current registration statement and, if required by GAAP, in each Registered Fund's financial statements. Other than this disclosure, the insurance coverage provided by the Mutual Company will not be used in connection with the marketing of the sales of shares of the Registered Funds.

6. Each Registered Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (3) and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any Fund participated in the Mutual Company, the first two years in an easily accessible place, a written record relating to the premiums paid and any claims made by the Fund and any action taken by the Mutual Company with respect to the claim, and the information or materials upon which the determinations described in condition (1) were made. The Mutual Company will make its records available to the Trustees and the staff of the SEC upon request.

7. The Mutual Company will pay FMR for its commitment to cover losses at a rate not to exceed the lowest rate FMR would then be paying a bank for a letter of credit in a comparable amount.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1854 Filed 1–26–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39556; File No. SR–CBOE–97–65]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Placing of Orders Over the Outside Telephone Lines at the Equity Trading Posts

January 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Inc. (''CBOE or the ''Exchange'') proposes to amend its policy [1] governing the use of member-owned or Exchange-owned telephones located at the equity trading post on the floor of the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] The two regulatory circulars that govern the use of telephones at the equity trading posts were approved by the Commission on October 28, 1996 [(*see* SR–CBOE–96–15, Securities Exchange Act Release No. 37876 (October 28, 1996), 61 FR 56728 (November 4, 1996)] and on March 2, 1994 [*See* SR–CBOE–93–24, Securities Exchange Act Release No. 33701 (March 2, 1994)].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

The purpose of the proposed rule change is to amend the policy currently governing the use of telephones at equity option trading posts. The proposed amendment would permit floor brokers at these posts to receive orders, over telephones located at the equity option posts, when (i) those calls are patched through a booth on the floor as further described below and (ii) the order is from U.S. registered broker-dealers. The revised policy will be issued in a regulatory circular. In addition, the Exchange has filed as Exhibit B to the filing a proposed form of application and agreement to be used by members seeking approval to use the telephones at the equity option posts.

Orders Entered by Broker-Dealers

The proposed change is the latest in a continual expansion of direct telephone access of orders to the equity option trading posts since a telephone policy was first filed with the Commission in 1993, *see* SR–CBOE–93–24. The regulatory circular that was the subject of that original filing prohibited any orders from being transmitted over the outside telephone lines at the equity option posts. (At that time and today, orders could and can be transmitted over the intra-floor lines from one point on the Exchange floor to another.) In 1996, the Exchange liberalized its telephone policy in the equity crowds to allow market-makers to place orders over the outside telephone lines directly with floor brokers at the equity option posts.[2] This change allowed market-makers who need to be off the floor to transmit their orders more efficiently.

The current proposed change would expand the ability to transmit orders entered by broker-dealers over

[2] *See* SR–CBOE–96–15, approved in Securities Exchange Act Release No. 37876 (October 28, 1996), 61 FR 56728 (November 4, 1996).

telephones located at the equity option posts[3] where an order is transmitted over the telephones on a three way call involving the following persons at the following locations: (1) a representative of a member broker-dealer or its correspondent firm from a location from off of the Exchange trading floor, (2) a CBOE broker or an associated person of such broker including a Designated Primary Market-Maker (''DPM'') acting in his capacity as a floor broker, at a booth on the floor of the Exchange, and (3) CBOE floor broker (including a DPM) or other person authorized to receive an order at an equity trading post on the floor of the Exchange.

In determining to limit the transmittal of orders in this proposal to orders from member broker-dealers and their correspondent firms, the Exchange has adopted the Equity Floor Procedure Committee's recommendation.[4] It is the judgment of this Committee which oversees trading at the equity option posts that it would be best to continue to expand telephone access to the equity option posts on an incremental basis. Because of concerns with the potential for error (and thus liability) in accepting orders from a wide range of customers, the Equity Floor Procedure Committee determined to limit access to this class of broker-dealers only. The requirement that the call must involve a person at a booth on the floor of the Exchange will help to ensure that there is a further record of the order in the event that a dispute arises later in connection with the order. The Equity Floor Procedure Committee and the Exchange will monitor the policy and determine whether a future expansion in line with the OEX model is appropriate. As with the use of telephones at the OEX trading post, the Exchange intends to police compliance with the conditions applicable to the use of telephones at the equity trading posts by means of customary floor surveillance procedures, including reliance on surveillance by Floor Officials and Exchange employees. Floor brokers accepting orders in this manner would not be required to be qualified pursuant to Exchange Rule 9.1 as with brokers accepting orders of public customers over OEX post telephones because the qualification requirements do not apply to the acceptance of orders from registered broker-dealers. However, the Department of Compliance will be required to review and approve all applications to ensure that the applicant is not intending to transact business which the applicant is not authorized to transact.

Application and Agreement

In order to implement the change in the policy, the Exchange is also seeking approval of a proposed form of application and agreement that members will be required to submit to be approved to use the telephones at the equity option posts pursuant to the revised policy. This application and agreement is nearly identical to the application and agreement used for OEX post telephones which was approved by the Commission, except to the extent that the agreement sets forth terms of the equity telephone policy that are different from the terms of the OEX telephone policy. The Exchange has determined to file the application and agreement for approval because it contains some provisions that have not otherwise been approved specifically for use of telephones at the equity option posts. Among the provisions in the application and agreement are paragraph G and H which deal with liability issues. Paragraph G states that the Exchange shall not be liable to members of their customers for losses resulting from the installation, operation, relocation, use of, or inability to use telephones or telephone lines at an equity option post. Paragraph H requires the member to indemnify the Exchange against any liabilities arising out of equity post telephones or lines.

The application and agreement will require an applicant to receive approval of the Department of Compliance as well as the Equity Floor Procedure Committee, as indicated on the form, before the Telecommunications Department may authorize a line or telephone to be installed. Before approving a telephone request, the Department of Compliance will review the application and contact the applicant if any questions are raised about the intended use of the telephone line.

Upon approval of the proposed rule changes, the Exchange will issue a regulatory circular substantially the same as Exhibit A to the submitted filing. The Exchange will implement these changes within sixty days of the approval of the changes.

The proposed rules are consistent with and further the objectives of Section 6(b)(5) of the Securities Exchange Act of 1934 in that they are designed to improve communications to and from the Exchange's trading floor in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, and maintains fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

[3] Equity option posts includes trading stations of both market-makers and Designated Primary Market-Makers where equity options are traded and any other trading stations over which the Equity Floor Procedure Committee has jurisdiction. Persons transacting business in broad-based index options traded at the same posts as equity options will not be subjected to the restrictions of this policy as long as the telephone lines are not used in contravention of this policy in conducting business related to equity options. The EFPC will determine whether a particular narrow-based index option is subject to this policy.

[4] It should be noted that the Exchange filed (*see* SR–CBOE–95–49) and the Commission approved (Securities Exchange Act Release No. 37487 (July 26, 1996)) a more liberal policy concerning the transmittal or orders over outside telephone lines at the trading post for Standard & Poor's 100 Stock Index options (''OEX''). That policy permits orders to be transmitted from any source provided the broker accepting the order is properly qualified under Exchange rules to accept the order and provided the broker has received approval from the Exchange to accept such orders over the telephone. The Exchange generally has deferred to the judgment of the various Floor Procedure Committees in determining to what extent they want to allow telephone access directly into the trading posts over which they have purview. The Equity Floor Procedure Committee recommended taking a more limited approach than the OEX Floor Procedure Committee but, after gaining experience with this expansion, they may decide to offer access to the same extent as the OEX Floor Procedure Committee.

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number in the caption above and should be submitted by February 17, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1855 Filed 1–26–98; 8:45 am]

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[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39557; File No. SR–CHX–97–33]

Self-Regulatory Organizations; Chicago Stock Exchange; Notice of Filing of and Immediate Effectiveness of Proposed Rule Change Regarding Regulatory Cooperation

January 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of The Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article VIII, Rule 11 of its Rules to clarify the existing Rule and to require regulatory cooperation by members, member organizations, and others over whom the Exchange has jurisdiction in connection with certain investigations and proceedings that are initiated by other exchanges or self-regulatory organizations.

II. Self-Regulatory Organization's Statement of The Purpose of, and Statutory Basis For, The Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Article VIII, Rule 11 requires members (and certain others) to submit books and papers, furnish information, and appear and provide testimony to the Exchange's Board and other committees or officers of the Exchange, among other things. While the Exchange believes that the current rule provides adequate authority to require members (and others specified in the rule) to provide information to other regulatory organizations, the Exchange believes that clarifying this provision to expressly provide for such information is desirable, especially because other self-regulatory organizations have recently amended their rules to clarify their information-sharing authority.

The proposed rule change would expressly provide that no member, member organization, or partner, officer, director or other person associated with a member or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding, or refuse to furnish documentary materials or other information, or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange with other exchanges or self-regulatory organizations with whom the Exchange has entered into agreements for the sharing of information and other forms of mutual assistance, including but not limited to members and affiliate members of the Intermarket Surveillance Group.[1] The proposed rule change would explicitly provide that the Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and regulatory purposes. The requirements of the proposed rule would apply regardless of whether the Exchange had itself initiated a formal investigation or disciplinary proceeding.

The proposed rule change would also provide that any person or entity required to furnish information or testimony pursuant to the new rule must be afforded the same rights and procedural protections as that person or entity would have if the Exchange had initiated the request for information or testimony.

While the Exchange believes that the current rule provides adequate authority to require members and specified others to provide testimony, documentary materials or other information to the Exchange's Board or to the Exchange (or any committee, subcommittee or officer thereof) and refrain from impeding or delaying any examination, inquiry, or investigation (whether formal or informal) the Exchange believes that changes are desirable to conform this text to the new provisions added above. Specifically, the proposed rule change would provide that no member, member organization, or partner, officer, director or other person associated with a member or other person or entity subject to the jurisdiction of the Exchange shall impede or delay an Exchange examination, inquiry or investigation (whether formal or informal) with respect to possible violations within the disciplinary jurisdiction of the Exchange or with respect to possible limitations on access to Exchange services or otherwise with respect to the discharge of its duties nor refuse to furnish testimony, documentary materials or other information requested by the Board of Governors or by the Exchange (or by any committee, subcommittee, or officer thereof) during

[1] The Intermarket Surveillance Group (''ISG'') is an organization of securities industry self-regulatory organizations formed in 1983 to coordinate and develop intermarket surveillance programs designed to identify and combat fraudulent and manipulative acts and practices. In order to promote its purposes, members agree to exchange such information as is necessary for ISG members to perform their self-regulatory and market surveillance functions.

the course of such examination, inquiry or investigation or otherwise in furtherance of the discharge of its or his duties. Failure to furnish such testimony, documentary materials or other information requested pursuant to the proposed rule on the date or within the time period requested would be considered obstruction of an Exchange inquiry or investigation and would not be subject to formal disciplinary action.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from December 11, 1997, the date of which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of this Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–97–33 and should be submitted by February 17, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1856 Filed 1–26–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39561; File No. SR–DTC–97–17]

Self-Regulatory Organizations; the Depository Trust Company; Notice of a Proposed Rule Change Relating to a Modification of the Coupon Collection Service

January 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 7, 1997. The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on December 22, 1997, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will expand DTC's coupon collection service (''CCS'') to include the collection of interest relating to coupons from corporate bearer bonds.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CCS currently provides DTC participants with a method for the collection of interest relating to coupons from municipal bearer bonds.[3] Participants using CCS are required to deposit coupons in a standard sealed envelop or ''shell,'' each of which may contain no more than 200 coupons for the same CUSIP number, series, and payable date. DTC submits the contents of the shells to the appropriate issuer or paying agent and then credits the interest to the participant's account.

Under the proposed rule change, CCS will be modified to process corporate bearer bonds in addition to municipal bearer bonds. With certain exceptions, DTC will handle shells containing corporate bearer bonds in the same manner in which it currently handles municipal bearer bonds.

First, DTC will contact the corporate paying agent before submitting the coupons for payment to determine whether the coupon proceeds are payable in U.S. dollars. To be eligible for CCS, corporate bearer bonds must be payable in either U.S. dollars or Canadian funds. Where the corporate bearer bonds are payable in Canadian funds, DTC will request the paying agent to convert the funds to U.S. dollars in accordance with the

[2] The commission has modified the text of the summaries prepared by DTC.

[3] For a complete description of CCS, refer to Securities Exchange Act Release No. 35750 (January 22, 1996), 61 FR 2852 [File No. SR–DTC–95–18] (order approving proposed rule change).

prevailing exchange rate. DTC will not process corporate bearer bonds through CCS unless the paying agent is able to convert the funds to U.S. dollars.

Second, DTC will suppress for corporate bearer coupons the automatic payment function that it applies to municipal bearer coupons. Under the current operation of CCS, DTC credits participants' accounts on the payable date of the municipal bearer coupons regardless of whether it has received the money. With corporate bearer bonds, DTC will need to receive the interest payment before paying the participant in order to avoid having to adjust participants' accounts due to fluctuations in exchange rates. DTC has informed the Commission that due to the additional processing and tracking of corporate bearer coupon deposits, a surcharge will be added in the future for the handling of these deposits.

DTC will require that each shell contain the following information on its face:

1. CUSIP number;
2. description of issue including purpose, series, date of issue, and maturity date;
3. payable date;
4. quantity of coupons enclosed;
5. dollar value of individual coupons;
6. total shell value unless payable in Canadian dollars;
7. participant number; and
8. contact number and telephone number of the depositing participant.

The shells will need to be accompanied by one completed deposit ticket for up to twenty-five shells which provides the following information:

1. participant number;
2. shell quantity;
3. total dollar value;
4. CUSIP number per shell;
5. coupon quantity per shell;
6. dollar value per shell unless payable in Canadian dollars; and
7. whether the coupons are future-due or past-due.

DTC will verify the number of shells listed on the deposit ticket and give the participant a time-stamped copy of the ticket. If the number of shells listed on the deposit ticket does not agree with the physical number of shells, the entire deposit will be rejected and sent back to the participant.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions.

[4] 15 U.S.C. 78q–1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, in the public interest, and for the protection of investors.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants and others have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–97–17 and should be submitted by February 17, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1857 Filed 1–26–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39562; File No. SR–NASD–97–78]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Amended Interpretation of IM–8310–2 Concerning the Release of Additional Disciplinary Information

January 20, 1998.

I. Introduction

On October 17, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''SEC'' or ''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 which amended the Interpretation on the Release of Disciplinary Information, IM–8310–2 of Rule 8310 of the Procedural Rules of the NASD (''Interpretation'' or ''IM–8310–2''). A notice of the proposed rule change was published in the **Federal Register** on November 21, 1997.[3] The Commission has received no comment letters on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

In its notice, filed on October 17, 1997, the NASD Regulation, Inc. (''NASDR'') proposed to amend IM–8310–2 to include the phrase ''electronic inquiry'' in the rule language so that it could respond to electronic inquiries, as well as written or telephonic inquiries. In the notice, the NASDR also proposed to amend the rule language to include the additional information required to be reported on the amended Forms U–4, U–5, and BD.

In November 1997, the NASDR requested that the Commission approve, on an accelerated basis, that portion of the amended rule language that would allow it to respond to electronic

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Rel. No. 39322 (Nov. 13, 1997), 62 FR 62391.

inquiries.[4] Hence, the Commission partially approved, on an accelerated basis, that portion of the NASDR's request which gives the NASD the option of responding to the electronic inquiries of persons or entities requesting employment and disciplinary history of its members and their associated persons.[5] This order approves the amended rule language that addresses the release of additional disciplinary history required to be disclosed pursuant to amended Forms U–4, U–5, and BD.

II. Description of Proposal

Under the NASD's Public Disclosure Program (''PDP''),[6] the NASD, in response to a written inquiry, electronic inquiry,[7] or telephonic inquiry via a toll-free telephone listing, releases certain information contained in the Central Registration Depository (''CRD'') regarding the employment and disciplinary history of its members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or Form U–4; all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities transactions and are required to be reported on Form BD or Form U–4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U–4. The Association also releases information concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers.

On November 25, 1996, as part of its PDP, the NASD filed a proposed rule change, SR–NASD–96–38, designed to permit the NASD to release additional information regarding the disciplinary history of its members and persons associated with a member.[8] In January 1997, NASDR's senior management determined that the CRD redesign should be reassessed in light of changing business needs and rapidly advancing computer technology. After negotiations and discussions among the Commission, the NASD, and the North American Securities Administrators Association, Inc. (''NASAA'') concerning CRD development and implementation, SR–NASD–96–38 was withdrawn and replaced by this filing, SR–NASD–97–78.

This filing proposes the same substantive disclosure as SR–NASD–96–38. Specifically, the proposed rule change allows the NASD to release all information on any question on page 3 (Question 22) of the amended Form U–4 and Question 11 of the amended Form BD, as approved by the Commission in July 1996.[9] The additional information that the NASD proposes to disclose includes:

1. All pending arbitrations and civil proceedings that relate to securities or commodities transactions;
2. Pending written customer complaints alleging sales practice violations and compensatory damages of $5,000 or more;
3. Settlement's of $10,000 or more of arbitrations, civil suits, and customer complaints involving securities or commodities transactions:
4. Current investigations involving criminal or regulatory matters;
5. Terminations of employment after allegations involving violation of investment-related statutes or rules, fraud, theft, or failure to supervise investment-related activities;
6. Bankruptcies less than 10 years old and outstanding liens or judgments;
7. Bonding company denials, pay outs, or revocations; and
8. Any suspension or revocation to act as an attorney, accountant, or federal contractor.

To accomplish the release of this additional information, however, the NASD has reformatted the questions set forth on page 3 of amended Form U–4; questions 13 through 16 on amended Form U–5; and the Disclosure Reporting Pages (''DRPs'') for both forms in a manner that is compatible with its current CRD technology protocol. The reformatted, interim forms and DRPs contain no substantive changes to any of the questions.

The NASD proposes to make the interim forms and the disclosure of the additional information set forth in this rule filing effective on February 17, 1998.[10] This effective date will permit members and the NASD to complete annual registration renewals and permit the NASD to train members on the use of the interim forms before they are implemented. The information that would be released from January 1[11] to February 17, 1998, would include only that information that currently is required to be reported on the Forms U–4 and U–5.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[12] and the rules and regulations promulgated thereunder applicable to the NASD. Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) provides in relevant part that the rules of the Association be designed to foster cooperation and coordination with persons engaged in regulating and processing information with respect to securities and not to permit unfair discrimination among customers, issuers, brokers or dealers.

Pursuant to Section 15A(b)(6), the proposed rule change benefits the public because, by releasing this additional disciplinary information, the

[4] Telephone conversation with Alden S. Adkins, General Counsel and Mary M. Dunbar, Assistant General Counsel, NASDR, and Belinda Blaine, Associate Director, Katherine A. England, Assistant Director, and Mignon McLemore, Staff Attorney, Division of Market Regulation, November 26, 1997.

[5] *See* Securities Exchange Act Rel. No. 39442 (December 11, 1997), 62 FR 66706 (December 19, 1997).

[6] *See* Securities Exchange Act Rel. No. 30629 (April 23, 1992), 57 FR 18535 (April 30, 1992); and Securities Exchange Act Rel. No. 32568 (July 1, 1993), 58 FR 36723 (July 8, 1993).

[7] *See supra* note 5.

[8] The NASD proposal to release additional disciplinary history of its members and associated persons was initially filed with the Commission on November 26, 1996. *See* Securities Exchange Act Rel. No. 37994 (November 27, 1996), 61 FR 64549 (December 5, 1996) (SR–NASD–96–38).

[9] *See* Securities Exchange Act Rel. No. 37407 (July 5, 1996), 61 FR 36595 (July 11, 1996); and Securities Exchange Act Rel. No. 37431 (July 12, 1996), 61 FR 37357 (July 18, 1996); *See also* Securities Exchange Act Rel. No. 37632 (September 4, 1996), 61 FR 47412 (September 9, 1996).

[10] *See supra* note 3, at p. 62391. *See also* letter from Joan Conley, Secretary, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 13, 1997, (correcting Amendment No. 2 to reflect this effective date).

[11] Upon approval of the electronic inquiry portion of its proposal, the NASD had planned to begin responding to electronic inquiries for PDP information, via the Internet, on or about January 1, 1998. *See supra* note 3 at p. 62391. However, hardware problems and system capacity have hampered implementation. Telephone conversation between Alden S. Adkins, General Counsel, NASDR. and Katherine A. England, Assistant Director, Division of Market Regulation, SEC, December 29, 1997.

[12] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The release of additional disciplinary history of the NASD's members and associated persons should result in competition for brokerage business among those broker-dealers with impeccable disciplinary histories. Efficiency should improve in the marketplace as members and their associated persons become more conscious of compliance and the potential ramifications of this increased disclosure. 15 U.S.C. 78c(f).

NASD is providing investors with a resource to aid them in choosing a broker-dealer for their investment needs. Moreover, increasing disclosure of members' and their associated persons' relevant disciplinary history could help investors determine whether to conduct or continue to conduct business with a particular broker-dealer or associated person. The Commission notes that disclosure of this additional information may serve as a deterrent to fraudulent activity as well.

According to the NASD, the Forms U–4 and U–5 had to be redesigned to facilitate compliance with this disclosure requirement at this time. Thus, the forms were redesigned to be compatible with the current CRD protocol (*i.e.*, the answers on the interim forms now match the location of questions in the CRD system). Upon completion of the CRD redesign, the forms as originally designed will be implemented. The Commission, therefore, approves the use of these interim forms, recognizing their necessity in disseminating this additional disciplinary history to the public.

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular, with Section 15A(b)(6).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the remaining portion of proposed rule change, SR–NASD–97–78, concerning the release of additional disciplinary information be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–1853 Filed 1–26–98; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held February 19, 1998, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Consider and Approve: a. Proposed Final Draft, Minimum Aviation System Performance Standards for Automatic Dependent Surveillance Broadcast (ADS–B), RTCA Paper No. 007–98/TMC–308, Prepared by Special Committee (SC)–186; b. Proposed Final Draft, Guidance for Initial Implementation of Cockpit Display of Traffic Information, RTCA Paper No. 384–97/TMC–305, Prepared by SC–186; c. Proposed Change 2 to DO–229, Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Airborne Equipment, RTCA Paper No. 381–97/SC159–773, Prepared by SC–159; (4) Discuss/Take Position on: a. Proposed Revision to the Terms of Reference for SC–190, RTCA Paper No. 279–97/SC190–021; b. Discussion on the Work Plan for SC–191, Collaborative Decisionmaking; c. Committee Chairman's Progress Report for SC–182, Avionics Computer Resource; d. Committee Milestones, RTCA Paper No. 006–98/TMC–307; e. Status of SC–169, Data Link; f. Proposal for Terrain Data Base Special Committee; g. Proposal for SC–181, Navigation Standards, to Develop a MOPS for Navigation Data Information on a Moving Map; h. Proposed Revision to the Terms of Reference for SC–147; (5) Other Business; (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www/rtca/org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 16, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–1924 Filed 1–26–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33539]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Southern Pacific Transportation Company

Southern Pacific Transportation Company (SPT) has agreed to grant overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over SPT's line between Caldwell, TX, in the vicinity of SPT's Ennis Subdivision milepost 30.8, and Placedo, TX, in the vicinity of SPT's Victoria Subdivision milepost 14.2, a distance of approximately 152.7 miles.[1]

The transaction was scheduled to be consummated on January 19, 1998. The purpose of the trackage rights is improve the operating efficiencies of SPT and BNSF.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33539, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, Esq., The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Decided: January 20, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1910 Filed 1–26–98; 8:45 am]

BILLING CODE 4915–00–P

[1] The trackage rights are limited to southbound movements and are provided solely to facilitate directional operations between Houston, TX, and Placedo. In addition, the trackage rights will continue only so long as SPT continues to operate directionally between Houston and Placedo.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33537]

GRC Holdings Corporation—Acquisition Exemption—Union Pacific Railroad Company

GRC Holdings Corporation (GRCH), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company (UP) a 244.5-mile line of railroad between Vigus, MO (milepost 19.0), and Pleasant Hill, MO (milepost 263.5). GRCH intends immediately to convey to Missouri Central Railroad Company (MCRR) the assets necessary to conduct railroad operations over the line.

The earliest date possible for consummation of the transaction is March 17, 1998, 60 days after GRCH certified that it posted the required notice at the affected employees' workplace and served notice of the transaction, as required, on the national offices of the labor unions with employees on the affected line.

This transaction is related to STB Finance Docket No. 33508, *Missouri Central Railroad Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company*, wherein MCRR has filed a verified notice of exemption to acquire: (1) the above-noted railroad assets from GRCH, and (2) specified incidental trackage rights directly from UP.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*.[1] A petition to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33537, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Reeves, 1300 I Street, N.W., Suite 500 East, Washington, DC 20005–3314.[2]

Decided: January 20, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1911 Filed 1–26–98; 8:45 am]

BILLING CODE 4915–00–P

[1] A petition to reject the notice has been filed. The Board will address that petition in a subsequent decision.

[2] There currently is a large service list in the related proceeding in STB Finance Docket No. 33508 because over 300 individuals representing themselves have filed letters opposing the transaction. In response to a request by joint petitioners, The Cities of Lee's Summit, MO, and Raytown, MO, and to relieve all parties of unnecessary burdens, the Board will place the individuals who reside in Lee's Summit or Raytown into ''advise of all proceedings'' status rather than ''party of record'' status. It will not be necessary to serve copies of pleadings on these individuals, but the Board will expect the joint petitioners to keep them fully informed so that they can participate in proceedings before the Board should they desire to do so.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33508]

Missouri Central Railroad Company—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company

Missouri Central Railroad Company (MCRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from GRC Holdings Corporation (GRCH) and to operate a 244.5-mile line of railroad currently owned by Union Pacific Railroad Company (UP) between Vigus, MO (milepost 19.0), and Pleasant Hill, MO (milepost 263.5). MCRR also is acquiring directly from UP incidental trackage rights over UP's lines of railroad between Vigus (milepost 19.0) and Rock Island Junction, MO (milepost 10.3), and between Pleasant Hill (milepost 263.5) and Leeds Junction, MO (milepost 288.3), a total distance of 33.5 miles.

The earliest date possible for consummation of the acquisition from GRCH is March 17, 1998, 60 days after GRC certified, in the related proceeding below, that it posted the required notice at the affected employees' workplace and served notice of the transaction, as required, on the national offices of the labor unions with employees on the affected line.

This transaction is related to STB Finance Docket No. 33537, *GRC Holdings Corporation—Acquisition Exemption—Union Pacific Railroad Company*, wherein GRCH has concurrently filed a verified notice of exemption to acquire the above-noted 244.5-mile line from UP.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*.[1] A petition to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33508, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Reeves, 1300 I Street, N.W., Suite 500 East, Washington, DC 20005–3314.[2]

Decided: January 20, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–1912 Filed 1–26–98; 8:45 am]

BILLING CODE 4915–00–P

[1] A petition to reject the notice has been filed. The Board will address that petition in a subsequent decision.

[2] There currently is a large service list in this proceeding because over 300 individuals representing themselves have filed letters opposing the transaction. In response to a request by joint petitioners, The Cities of Lee's Summit, MO, and Raytown, MO, and to relieve all parties of unnecessary burdens, the Board will place the individuals who reside in Lee's Summit or Raytown into ''advise of all proceedings'' status rather than ''party of record'' status. It will not be necessary to serve copies of pleadings on these individuals, but the Board will expect the joint petitioners to keep them fully informed so that they can participate in proceedings before the Board should they desire to do so.

DEPARTMENT OF THE TREASURY

[Treasury Directive 13–03]

Departmental Offices; Delegation of Authority Related to the United States Community Adjustment and Investment Program, and Designation of Representative on the Community Adjustment and Investment Program Finance Committee

January 21, 1998.

1. *Purpose*. This Directive makes certain delegations and a designation to the Assistant Secretary (Financial Markets) relating to the United States Community Adjustment and Investment Program (the CAI Program) in support of the North American Free Trade Agreement (the NAFTA).

2. *Background*. The North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057) (the Act) authorized the CAI Program in support of the NAFTA. Executive Order 12916, dated May 13, 1994 (the Executive Order), delegated to the Secretary of the Treasury certain functions given to the President under the Act relating to the CAI Program. The Executive Order also established an interagency Community Adjustment

and Investment Program Finance Committee (the Finance Committee) to implement the CAI Program. Treasury Order (TO) 100–13, ''Delegation of Authority Related to the United States Community Adjustment and Investment Program in Support of NAFTA and Designation of Representative on the Community Adjustment and Investment Program Finance Committee,'' delegated to the Under Secretary for Domestic Finance, all of the Secretary's authorities under the Executive Order and designated the Under Secretary for Domestic Finance as the Department of the Treasury's representative on the Finance Committee.

3. *Delegation*. a. The duties, powers, rights, and obligations of the Secretary of the Treasury under the Executive Order, which are vested in the Under Secretary for Domestic Finance pursuant to TO 100–13, are hereby redelegated to the Assistant Secretary (Financial Markets).

OPI: U S (Domestic Finance)

b. The Department of the Treasury's representative on the Finance Committee established by the Executive Order, which is designated as the Under Secretary for Domestic Finance pursuant to TO 100–13, is hereby redesignated as the Assistant Secretary (Financial Markets).

4. *Redelegation*. The Assistant Secretary (Financial Markets) may redelegate in writing to an appropriate subordinate official the authorities granted under this Directive, and may redesignate in writing an appropriate subordinate official as the Department of the Treasury's representative on the Finance Committee.

5. *Authority*. TO 100–13, ''Delegation of Authority Related to the United States Community Adjustment and Investment Program in Support of NAFTA and Designation of Representative on the Community Adjustment and Investment Program Finance Committee,'' dated August 17, 1995.

6. *Expiration Date*. This Directive shall expire three years from the date of issuance unless superseded or cancelled prior to that date.

7. *Office of Primary Interest*. Office of the Under Secretary for Domestic Finance.

John D. Hawke, Jr.,

Under Secretary for Domestic Finance.

[FR Doc. 98–1846 Filed 1–26–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 98–8

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 Notice 98–8, ligible Deferred Compensation Plans under Section 457.

DATES: Written comments should be received on or before March 30, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Eligible Deferred Compensation Plans under Section 457.

OMB Number: 1545–1580.

Notice Number: Notice 98–8.

Abstract: The Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997 made changes to rules under Internal Revenue Code section 457 regarding eligible deferred compensation plans offered by state and local governments. Notice 98–8 requires state and local governments to establish a written trust, custodial account, or annuity contract to hold the assets and income in trust for the exclusive benefit of its participants and beneficiaries. Also, new non-bank custodians must submit applications to the IRS to be approved to serve as custodians of section 457 plan assets.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,260.

Estimated Time Per Respondent: 1 hour, 2 minutes.

Estimated Total Annual Burden Hours: 10,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–1814 Filed 1–26–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–27–91]

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 regulation, PS–27–91 (TD 8442), Procedural Rules for Excise Taxes Currently Reportable on Form 720 (§§ 40.6302(c)–3(b)(2)(ii), 40.6302(c)–3(b)(2)(iii), and 40.6302(c)–3(e).

DATES: Written comments should be received on or before March 30, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Procedural Rules for Excise Taxes Currently Reportable on Form 720.

OMB Number: 1545–1296.

Regulation Project Number: PS–27–91.

Abstract: Internal Revenue Code section 6302(c) authorizes the use of Government depositaries for the receipt of taxes imposed under the internal revenue laws. These regulations provide reporting and recordkeeping requirements related to returns, payments, and deposits of tax for excise taxes currently reportable on Form 720.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 4,000.

Estimated Time Per Recordkeeper: 60 hours.

Estimated Total Annual Recordkeeping Hours: 240,000.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondents: 22 minutes.

Estimated Total Annual Reporting Hours: 1,850.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 15, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–1815 Filed 1–26–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–3: OTS Nos. 03257 and H–2193]

Harbor Financial, M.H.C., Fort Pierce, Florida; Approval of Conversion Application

Notice is hereby given that on January 16, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Harbor Financial, M.H.C., Fort Pierce, Florida, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, GA 30309.

Dated: January 22, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–1894 Filed 1–26–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–5: OTS No. 5194]

Heritage Federal Savings and Loan Association, Laurens, South Carolina; Approval of Conversion Application

Notice is hereby given that on January 16, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Heritage Federal Savings and Loan Association, Laurens, South Carolina, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, GA 30309.

Dated: January 22, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–1896 Filed 1–26–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–4: OTS Nos. 02497 and H–2024]

SouthBanc Shares, M.H.C., Anderson, South Carolina; Approval of Conversion Application

Notice is hereby given that on January 16, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of SouthBanc Shares, M.H.C., Anderson, South Carolina, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE, Atlanta, GA 30309.

Dated: January 22, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

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federal register

Tuesday
January 27, 1998

Part II

Environmental Protection Agency

40 CFR Part 90

Phase 2 Emission Standards for New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 90

[FRL–5942–9]

RIN 2060–AE29

Phase 2 Emission Standards for New Nonroad Spark-Ignition Engines At or Below 19 Kilowatts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Today's action proposes a second phase of regulations to control emissions from new nonroad spark-ignition engines at or below 19 kilowatts (25 horsepower). These engines are used principally in lawn and garden equipment, both in nonhandheld applications such as lawnmowers, and also in handheld applications such as trimmers and chainsaws. The proposed standards are expected to result in a 30 percent reduction of emissions of hydrocarbons plus oxides of nitrogen from the current Phase 1 standards. If adopted, the standards would result in important reductions in emissions which contribute to excessively high ozone levels in many areas of the United States.

DATES: Written comments on this NPRM must be submitted on or before March 13, 1998. EPA will hold a public hearing on February 11, 1998 starting at 10:00; requests to present oral testimony must be received on or before February 6, 1998.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: EPA Air and Radiation Docket, Attention Docket No. A–96–55, Room M–1500 (mail code 6102), 401 M Street, SW, Washington, D.C. 20460. Materials relevant to this rulemaking are contained in this docket and may be viewed from 8:00 a.m. until 5:30 p.m. weekdays. The docket may also be reached by telephone at (202) 260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. The public hearing will be held in Ann Arbor, MI at a location to be determined; call (313) 668–4278 for further information.

FOR FURTHER INFORMATION CONTACT: Robert Larson, Office of Mobile Sources, Engine Programs and Compliance Division, (313) 668–4278, larson.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Regulated Entities
II. Legal Authority and Background
III. Overview of Proposed Provisions
A. More Stringent Standards and a Shift to Cleaner Technology
1. Nonhandheld Engine HC+NO_X Emission Standards
2. Handheld Engine HC+NO_X Emission Standards
3. Useful Life Categories
B. Assuring Emission Reductions are Achieved In-use
1. Traditional Compliance Programs for Mobile Sources
2. Compliance Programs for the Small SI Engine Industry
3. The Proposed Phase 2 Compliance Program
4. Alternative Compliance Program Options
IV. Description of Proposed Program
A. Standards and Related Provisions
1. HC+NO_X Emission Standards
2. NMHC+NO_X Emission Standards for Class I and II Natural Gas Fueled Nonhandheld Engines
3. CO Emission Standards
4. Useful Life Categories
5. Certification Averaging, Banking and Trading Program
6. Certification Fuel
B. Test Procedures
1. Test Cycle: Requirement for the Use of a Speed Governor Operation for Testing of Nonhandheld Engines
2. Test Cycle: Adjustments for Weightings for 2-mode Cycle for Handheld Engines
3. Measurement of NMHC Emissions From Natural Gas Fueled Nonhandheld Engines
C. Field/Bench Adjustment Program
1. Background and Principles
2. General Methodology
3. Practical Requirements of the Program
4. Alternative Methodology Considered
D. Compliance Program
1. Certification
2. Production Line Testing
3. In-use Emission Testing
4. Criteria for Evaluating Alternatives to Mandatory Recall
E. Flexibilities
1. Overview of Approach to Providing Compliance Flexibilities
2. Proposed Production Volume Cutoffs
3. General Flexibilities
4. Phase-In Flexibilities
5. Flexibilities for Small Volume Engine Manufacturers and Small Volume Engine Families
6. Flexibilities for Small Volume Equipment Manufacturers and Small Volume Equipment Models
7. Engine Availability
F. Nonregulatory Programs
1. Voluntary ''Green'' Labeling Program
2. Voluntary Fuel Spillage and Evaporative Emission Reduction Program
3. Particulate matter and Hazardous Air Pollutant Testing Program for Handheld Engines
G. General Provisions
1. Model Year Definition and Annual Production Period Flexibilities During the Transition to Phase 2
2. Definition of Handheld Engines
3. Small Displacement Nonhandheld Engine Class
4. Liquefied Petroleum Gas Fueled Indoor Power Equipment
5. Dealer Responsibility
6. Engines Used in Recreational Vehicles
7. Engines Used in Rescue and Emergency Equipment
8. Replacement Engines
V. Environmental Benefit Assessment
A. Roles of HC and NO_X in Ozone Formation
B. Health and Welfare Effects of Tropospheric Ozone
C. Estimated Emissions Impact of Proposed Regulations
D. Health and Welfare Effects of CO Emissions
E. Health and Welfare Effects of Hazardous Air Pollutant Emissions
F. Particulate Matter
VI. Economic Impacts
A. Engine Technologies
B. Engine Costs
1. Nonhandheld Engine Costs
2. Handheld Engine Costs
C. Equipment Costs
1. Nonhandheld Equipment Manufacturers
2. Handheld Equipment Manufacturers
D. Operating Costs
Nonhandheld Engines
Handheld Engines
E. Cost per Engine and Cost-effectiveness
1. Cost per Engine
2. Cost-effectiveness
VII. Public Participation
A. Comments and the Public Docket
B. Public Hearing
C. Obtaining Electronic Copies of Documents
VIII. Administrative Requirements
A. Administrative Designation and Regulatory Analysis
B. Paperwork Reduction Act
C. Unfunded Mandates Reform Act
D. Regulatory Flexibility

I. Regulated Entities

Entities potentially regulated by this action are those that manufacture or introduce into commerce new small spark-ignition nonroad engines or equipment. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers or importers of new nonroad small (at or below 19 kW) spark-ignition engines and equipment.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company is regulated by this action, you

should carefully examine the applicability criteria in § 90.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Legal Authority and Background

Authority for the actions set forth in this rule is granted to EPA by sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

In the summer of 1992, EPA initiated a convening process to determine the feasibility of a negotiated rulemaking for the development of the regulatory program for small nonroad spark-ignited (SI) engines at or below 19 kilowatts (hereafter referred to as ''small SI engines''). An August 1992 report recommended an ''Exploratory Meeting'' which was held November 1992. Following meetings in January and June 1993, the group decided to pursue a regulatory negotiation process for the development of Phase 2 regulations for these engines, while EPA developed a first phase of controls for small SI engines through the traditional rulemaking process.

On July 3, 1995, EPA published the Phase 1 final rule, Emission Standards for New Nonroad Spark-ignition (SI) Engines At or Below 19 Kilowatts, hereafter referred to as the Phase 1 small SI engine regulations.[1] The Phase 1 small SI engine regulations established an effective date of model year 1997. Although the Phase 1 regulations were the first to establish nationwide new engine emission standards for this industry, the federal regulations were developed to harmonize with the Tier I[2] standards established by California's Air Resources Board.[3]

The engines covered by the existing Phase 1 rule include nonhandheld engines (Class I and II) used in applications such as lawnmowers, generator sets and riding mowers, and handheld engines, (Class III, IV and V), used in applications such as trimmers, edgers, brush cutters, leaf blowers, leaf vacuums, chain saws, augers and tillers. The proposed Phase 2 rules contained in today's notice would apply to the same types of engines and applications covered by Phase 1.

On September 30, 1993, the charter for the Small Nonroad Engine Negotiated Rulemaking Advisory Committee was filed with Congress. The purpose of the committee was to help EPA develop Phase 2 small SI engine regulations. The committee consisted of eleven members representing the range of stakeholders.[4] The committee adopted protocols and formed four task groups to examine key issues and bring recommendations to the full committee. The task groups included: Test Procedure; Technology; Certification; and Public Education and Market Incentives.

The committee and the task groups met numerous times between September 1993 and February 1996, with the final committee meeting on February 16, 1996, in Ann Arbor, Michigan. During the course of its work, the committee addressed many issues, including: applicability of the rule; engine/equipment classification; test procedures for engines; standards and standard structure; effective dates and lead time of the program; certification, enforcement and compliance strategies; in-use program; market-based incentive programs; public education programs; technologies; and dealer responsibility.

The committee developed data and draft language to address most of these issues, both through the work of the task groups and the work of the committee as a whole. However, the committee did not reach consensus on an agreement in principle or draft regulatory language during the course of the negotiations. While the committee did not achieve consensus, the regulatory negotiation process produced substantial useful information and provided EPA with input from numerous key stakeholders which has helped EPA develop the Phase 2 small SI engine regulatory program being proposed today.[5] In addition, during the meetings there was much useful discussion which has helped EPA understand the perspectives of the interests represented at the table.[6]

Following the final meeting of the regulatory negotiation committee in February 1996, EPA proceeded to develop the Phase 2 rule. EPA and other interested parties continued working to find areas of agreement on how certain aspects of a Phase 2 program would be addressed in the proposed rule. As these discussions proceeded, the involved parties worked together to develop written documents, Statements of Principles (SOPs), which have partly formed the basis of today's Phase 2 NPRM (see 62 FR 14740, March 27, 1997). A Statement of Principles (SOP) is a joint written statement by the U.S. EPA and supporting parties outlining a comprehensive plan for developing a proposed rulemaking. In this case, the two SOPs lay out the framework for a proposal for Phase 2 regulations covering small handheld and nonhandheld spark-ignited nonroad engines, respectively.

The ''Handheld SOP'', addressing issues affecting engines used in handheld equipment, was signed in May 1996 by EPA, the Auger and Power Equipment Manufacturers Association (APEMA), the North American Equipment Dealers Association (NAEDA), the Portable Power Equipment Manufacturers Association (PPEMA), the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO), and the Wisconsin Department of Natural Resources. The ''Nonhandheld SOP'', addressing issues affecting engines used in nonhandheld equipment, was signed in December 1996 by EPA, Briggs & Stratton Corporation, Kawasaki Motors Corporation, U.S.A., Kohler Company, Kubota, Mitsubishi Engine North America, Inc., Onan Corporation, Suzuki Motor Corporation, Tecumseh Products Company, The Toro Company,

[1] 60 FR 34582, July 3, 1995, codified at 40 CFR part 90. The docket for the Phase 1 small SI engine rulemaking, EPA Air Docket #A–93–25, is incorporated by reference.

[2] The California utility and lawn and garden equipment engine (utility engine) emission regulations are contained in Title 13, California Code of Regulations (CCR), Sections 2400–2407.

[3] Since the July 3, 1995 promulgation of the Phase 1 program, four changes have been made to Phase 1. First, provisions for allowing a streamlined certification process were promulgated May 8, 1996, 61 FR 20738. Second, revisions to the national security exemption provisions were promulgated October 4, 1996, 61 FR 52088. Third, revisions to the carbon monoxide (CO) emission standards for Class I and II engines, and provisions related to crankcase emissions, were promulgated, November 13, 1996, 61 FR 58296. Finally, provisions relating to replacement engines and 2-stroke engines in nonhandheld applications were published August 7, 1997, 62 FR 42637.

[4] The organizations participating in the regulatory negotiations as members of the Committee were: the American Lung Association (ALA); the Auger and Power Equipment Manufacturers Association (APEMA); the Engine Manufacturers Association (EMA); the Manufacturers of Emission Controls Association (MECA); the Natural Resources Defense Counsel (NRDC); the North American Equipment Dealers Association (NAEDA); the Outdoor Power Equipment Institute (OPEI); the Portable Power Equipment Manufacturers Association (PPEMA); the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO); the Wisconsin Department of Natural Resources; and U.S. EPA.

[5] EPA initially established EPA Air Docket A–93–29 for the Phase 2 rulemaking; this docket contains background materials on this Phase 2 rulemaking, as well as materials related to the Small Nonroad Engine Negotiated Rulemaking process. EPA Air Docket A–93–29 is hereby incorporated by reference.

[6] The final report by the facilitators to the regulatory negotiation process can be found in EPA Air Docket A–93–29, Item #II–A–10.

and Wis-Con Total Power Corporation. While the two SOPs set out a framework for EPA's development of the proposed Phase 2 program, the Agency wishes to stress that they do not represent final decisions regarding Phase 2 or bind EPA as to how provisions in the final rule must be promulgated.

EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) in March 1997 (see 62 FR 14740, March 27, 1997) which announced the signing of the two SOPs and requested comments on all aspects of the SOPs for purposes of developing today's proposal. EPA also specifically requested information on small business issues in the ANPRM. Significant comments received on the ANPRM are discussed in the context of the description of the program contained in today's proposal.

III. Overview of Proposed Provisions

EPA is proposing today a second phase of regulations for small SI engines 19 kW and below (hereafter referred to as small SI engines). Two principal goals of the proposed Phase 2 rule are to encourage a shift to cleaner engine technology, and to assure that the air quality benefits anticipated by the rule are achieved in actual use. To achieve these goals, the proposed Phase 2 program builds on the current Phase 1 program in two key ways. First, today's proposal includes more stringent standards for hydrocarbons (HC) plus oxides of nitrogen (NO_X) emissions, with a requirement that engines meet these emission standards through their useful lives.[7] Second, the proposal adds an in-use component to the Phase 1 compliance program to assure that the emission benefits are achieved in actual use.

As is clear from the analysis supporting this proposed rule (see Sections V, VI and VII, and draft Regulatory Support Document), further emission reductions from future model year small SI engines beyond those achieved through the Phase 1 program can be achieved in a cost-effective manner. Uncontrolled, small SI engines contribute approximately 3.4 percent of the national HC emission inventory, 9.3 percent of the mobile source HC emission inventory, and 34.4 percent of the nonroad mobile source HC emission inventory.

The Phase 1 small SI regulations are expected to reduce the HC emissions from these engines by 32 percent. However, even with Phase 1 controls in place, small SI engines continue to contribute significantly to the emission inventory that leads to ozone concentrations in nonattainment areas. After Phase 1, small SI engines contribute approximately 3.1 percent HC nationally, 8.4 percent of mobile source HC, and 31.6 percent of the nonroad mobile source HC inventory (note that these values do not reflect changes in inventories from other sectors).

In addition, further control of HC+NO_X emissions from future model year small SI engines beyond Phase 1 levels, as proposed in today's notice for Phase 2 controls, is achievable through technology that will be available for the engines to which the standards would apply, considering cost, lead time noise, energy and safety factors. For nonhandheld engines, proposed Phase 2 emission levels are expected to be achieved through a combination of modifications to current engine technologies, and conversions to cleaner, more durable technology such as overhead valve engine technology. For handheld engines, proposed Phase 2 emission levels are expected to be achieved through improvements to current 2-stroke engine technologies (see discussion in Section IV.A of this preamble).

If the Phase 2 program is adopted as proposed, many elements of the existing Phase 1 program would remain essentially the same in the Phase 2 program. First, the types of engines covered by the proposed Phase 2 rule would remain essentially the same as those covered in the Phase 1 program (see discussion, Section IV.G). In addition, EPA would retain the five engine class categorization from Phase 1 for regulatory purposes as in Table 1 (see discussion, Section IV.G.3). Third, the Phase 1 criteria for determining whether an engine family would be allowed to certify to less stringent handheld standards would be retained (see Section IV.G.2).

TABLE 1.—SMALL SI ENGINE CLASSES

Nonhandheld		Handheld		
Class I	Class II	Class III	Class IV	Class V
<225 cc	≥225 cc	<20 cc	20 cc≤ and <50 cc	≥50 cc

In addition, other elements of the existing Phase 1 program that would remain essentially unchanged in this proposed Phase 2 program include: (1) Applicability of the rule and definitions (see 40 CFR Part 90, Subpart A), except as discussed in Section IV.G; (2) certification requirements (see 40 CFR Part 90, Subpart B), except for the proposed requirements to determine deterioration factors and to certify that engines meet the standards through their useful lives (see Section IV.D.1), and proposed flexibilities for small volume engine manufacturers (see Section IV.E); (3) provisions regarding test equipment and test procedures (see 40 CFR Part 90, Subparts D and E), except for minor changes addressed in Section IV.B; (4) provisions for selective enforcement audits (SEAs), (see 40 CFR Part 90, Subpart F), except that for the Phase 2 program SEA would exist primarily as a backstop to manufacturer-run production line testing program (see Section IV.D.2; and (5) provisions pertaining to importation of nonconforming engines, emission-related defect reporting requirements, voluntary emission recall program, exclusion and exemption of nonroad engines from regulations, prohibited acts and general enforcement provisions, and emission warranty and maintenance instructions (see 40 CFR Part 90, Subparts G, I, J, K, and L), except for provisions for ordered recall (see proposed § 90.808) and compliance flexibilities for small volume equipment manufacturers (see proposed § 90.1003). EPA solicits comment on the appropriateness of retaining these elements of the Phase 1 program in Phase 2.

Elements new to the regulatory requirements for small SI engines included in today's proposed Phase 2 program include: (1) proposed emission standard levels and useful life categories (see proposed amendments to Subpart B, and Section IV.A); (2) a certification

[7] EPA is proposing a set of values for the useful life of the engines for regulatory purposes. The term ''useful life'' refers to these regulatory useful life categories, which are discussed in more detail in Section IV.A.4 of this preamble.

averaging, banking and trading program for nonhandheld engines (see proposed Subpart C, and Section IV.A.5); (3) procedures for the determination of deterioration factors at the time of certification (see proposed amendments to Subpart B, and Section IV.D.1; (4) a manufacturer-run production line testing program, called CumSum (see proposed Subpart H, and Section IV.D.2); and (5) in-use testing programs for nonhandheld and handheld engines, with an in-use credit program for handheld engines (see proposed Subparts M and N, and Section IV.D.3).

In addition, this proposal contains a number of flexibilities to ease the transition to this more stringent Phase 2 program, some which would apply to all manufacturers, and others which would be targeted to ease the transition specifically for small production volume manufacturers (see discussion, Section IV.E). Finally, today's notice also describes EPA's intent to pursue a voluntary ''green labeling'' program and a voluntary fuel spillage reduction program for nonhandheld and handheld engines, and a particulate matter (PM) and hazardous air pollutant testing program for handheld engines (see Section IV.F).

The programs proposed today for nonhandheld and handheld engines are similar in many respects. They also have some important differences. The intertwining issues of more stringent standards and assurance of emission reductions in use can be addressed in a number of ways. The remainder of this section provides an overview of the Phase 2 program goals of encouraging a shift to cleaner technology and assuring that emission reductions are achieved in-use, and a description of the basic proposed programs for nonhandheld and handheld engines for achieving these goals.

A. More Stringent Standards and a Shift to Cleaner Technology

EPA is proposing today $HC+NO_X$ emission standards for nonhandheld and handheld engines that are expected to achieve important reductions of emissions that contribute to ozone nonattainment. The standards for Classes II–V would be fully phased-in by the 2005 model year, with Class I levels effective in the 2001 model year. Engines would be required to meet these levels throughout their useful lives. For nonhandheld engines, a certification averaging, banking and trading program is proposed as an integral part of feasibility of the proposed $HC+NO_X$ emission standards (see Section IV.A.5). A more complete discussion of the justification of the level of the standards and the technologies expected to meet these levels can be found in Section IV.A. This section contains a brief overview of the proposed nonhandheld engine emission standards, the proposed handheld emission standards, and the proposal for useful life categories for nonhandheld and handheld engines.

1. Nonhandheld Engine $HC+NO_X$ Emission Standards

The emission standards proposed today for nonhandheld engines, indicated in Table 2, represent an approximate 25 percent reduction in $HC+NO_X$ levels from Phase 1 levels. These standards are expected to be achieved in a cost-effective manner by modifications to current engine technologies and, especially in the case of Class II engines, by conversion of current side valve (SV) technology engines to cleaner, more durable technology, such as overhead valve (OHV) technology engines. For Class I, where engine sales are currently dominated by side-valve (SV) technology engines, the proposed levels are expected to result in cleaner and more emissions durable SV technology engines, but are not in themselves expected to result in conversion of SV engines to OHV or comparably clean and durable engine technology. These modifications to SV engines can be accommodated by 2001, the proposed effective date for the Phase 2 standard for Class I engines. For Class II engines, the proposed levels are expected to result in complete conversion to clean OHV or comparable technology. To allow this more significant design change, the proposed Phase II standards are gradually decreased from 2001 through 2005.

TABLE 2.—$HC+NO_X$ EMISSION STANDARDS FOR NONHANDHELD ENGINES IN GRAMS/KILOWATT-HOUR

[g/kW-hr] [1]

Engine class	Model year 2001	Model year 2002	Model year 2003	Model year 2004	Model year 2005
Class I	25.0	25.0	25.0	25.0	25.0
Class II	18.0	16.6	15.0	13.6	[2] 12.1

[1] Optional non-methane hydrocarbon (NMHC) plus NO_X emission standards for natural gas fueled engines only, and carbon monoxide (CO) emission standards, are also proposed in today's notice, and are discussed in Section IV.A.

[2] The 12.1 g/kW-hr Class II standard assumes a phase-in from 50 percent in model year 2001 to 100 percent in model year 2005 of OHV or comparably clean and durable technology.

A key aspect of the proposed Phase 2 program for nonhandheld engines is the belief that low emission standards for nonhandheld engines can be met through engine technology that can be low emitting both when the engine is new, and also when the engine has experienced hour accumulation to the engine's useful life. Therefore, these Phase 2 standards are based on useful life emission performance.

a. OHV and SV Engine Technologies. EPA believes that features inherent to the design of OHV technology engines are superior to those of SV engines and allow for lower new engine emissions as well as lower emission deterioration characteristics. In general, the combustion chamber and cylinder head design of OHV technology engines give these engines the potential to produce lower emissions both when new and also in-use. These engines have potential to exhibit lower emissions when new due to location of the combustion chamber directly over the piston, rather than partly to the side of the piston as in SV technology engines. This location allows a shorter combustion time, shorter flame propagation, better fuel combustion, and better cooling characteristics. In addition, OHV technology engines are designed with lower surface to volume ratios, which enhance fuel combustion. OHV technology engines also have the potential to exhibit improved in-use engine durability characteristics due to the location of the valves in the cylinder head rather than in the block, which affords more uniform exposure of the valves to heat sources and thus lower distortion of valves and valve seats. However, the Agency recognizes that the design of the engine is all-important,

and that it is possible to improve features of both SV and OHV technology engines to enhance new and in-use emission characteristics (e.g., cylinder heads, advanced carburetion, fuel injection). The Agency requests comment on the fundamental supposition of this rule that OHV technology engines have the potential to be superior to SV technology engines for new and in-use emissions characteristics. Further discussion of SV and OHV technology engines is contained in Section IV.A and Chapter 3 of the Draft Regulatory Support Document (RSD).

b. Class I Use of OHV Technology. The nonhandheld small SI engine market has traditionally been dominated by SV technology engines, with SV technology engines accounting for as much as 90 percent of engine sales in Class I and 65 percent of engine sales in Class II. The majority of Class I SV engines are used in low cost, consumer products such as walk-behind mowers. Recently, the market has been moving towards OHV for Class II, in recognition of OHV advantages in engine performance, engine durability, fuel economy, and emissions characteristics. These advantages would be expected to be more important in commercial equipment which tend to make up significant market for Class II engines. For Class I engines, there has not been this same trend to OHV technology.

One barrier to increased penetration of OHV technology engines into the Class I market, which is dominated by residential, low cost equipment, may have been the cost associated with the conversion of product lines from SV technology to OHV technology. These conversion costs to the engine manufacturer are expected to be in the range of $5 to $14 per engine, depending on volume; cost to the consumer would likely be even higher (see Section VI for further discussion of these costs). For residential, low cost equipment, the OHV engine's advantages in performance and durability may not outweigh the associated higher purchase price when compared to equipment using less expensive SV equipment, at least in the near term and in light of the lead time EPA is proposing for the proposed Class I standard. If consumers of residential equipment are particularly price sensitive, they may choose not to purchase new equipment if priced higher due to the use of an OHV engine. Rather, to the extent four stroke SV engines tend to continue providing operable service, consumers may choose to spend money on equipment maintenance, extending both the life of the equipment and the number of hours the existing, non-Phase II SV engines would be used. If this happens, sales of cleaner, Phase II engines could be depressed and the extended use of SV engines toward the end of their useful life would add disproportionately to emission from small engines as the emission performance of these engines tends to continue deteriorating with use. Moreover, promulgation of a more stringent Class I standard, combined with the proposed Class II standard, would raise questions about the need for providing significantly longer lead time before the standards became effective. Additionally lead time might be necessary to allow manufacturers to invest the greater level of engineering and production resources necessary to convert both Class I and Class II engines to OHV technology for their entire product line as could be necessary for a nationwide program. This additional lead time could delay the environmental benefits of the program.

Due to uncertainties as to consumer acceptance of OHV engines in typical Class I equipment applications if required nationwide and how a more stringent Class I standard might effect lead time for the program as a whole and the resulting uncertainty of emissions benefit, the Agency is not at this time proposing Class I standards which would mandate the conversion of Class I engines to OHV technology. However, EPA is requesting comments on the likely impacts of such a standard. Even if it is not appropriate to adopt more stringent Class I standards now, in the future, as uncertainties regarding consumer acceptance of OHV Class I engines and other issues are resolved, EPA will be able to re-evaluate the stringency of the proposed standard and pursue any necessary and appropriate revisions. Additionally, the experience in California will likely provide useful information.

While today's proposed emission standard for Class I engines are not expected to require additional conversion from SV to OHV technology, EPA does desire to encourage the production and sale of OHV engines into the Class I market on a mass volume basis. In order to encourage this, EPA has entered into Memoranda of Understanding (MOUs) with two individual engine manufacturers.[8–10] These two companies currently represent over 80 percent of all Class I engine sales. The two MOUs detail the specifics of Class I OHV engine demonstration programs which are designed as experiments to explore the consumer acceptance and feasibility of developing low cost OHV technology which can be applied to mass production Class I engines. The two programs include a series of reports to EPA on the level of success, impediments encountered, market response, costs, emission rates, and so forth. The two Class I OHV demonstration programs will begin prior to the proposed effective dates for the Phase 2 rule. While the MOUs are outside the scope of the regulatory process, if successful, this voluntary program may generate considerable emission benefits in addition to those anticipated to result from the proposed standards.

In addition, the proposed voluntary ''green labeling'' program is designed to encourage manufacturers to produce engines that are substantially below the standards proposed today. In Class I in particular, manufacturers may decide for market reasons to convert current SV engines to OHV or comparably clean and durable technology engines, in order to qualify for the ''green label'' (see discussion of the program in Section IV.F.1).

EPA requests comment on the general issue of the impact of moving to OHV technology for Class I engines, including the potential impact on sales of new equipment, the extended use of existing SV engines, the impact of a more stringent Class I standard on the ability of manufacturers to meet the proposed Class II standard under the proposed schedule, any options in addition to the voluntary ''green labeling'' program which would encourage the sale of clean OHV technology engines and the implications for emissions impact which would likely result from these actions.

c. Class II Use of OHV Technology. The 12.1 g/kW-hr HC + NO_X emission standard proposed to take effect in the 2005 model year for Class II engines is expected to result in complete conversion to clean OHV or comparably clean and durable engine technology. As is discussed below in Section IV.A, this is an aggressive standard for Class II engines. The transition to OHV technology should be eased by the phase-in of the standard and the certification averaging, banking, and trading provisions proposed today for nonhandheld engines.

2. Handheld Engine HC+NO_X Emission Standards

The standards proposed today for handheld engines represent an approximate 35 percent reduction from Phase 1 levels, to be phased-in on a

[8–10] Copies of these MOUs are in EPA Air Docket A–96–55, Items II–B–03 and II–B–04.

percentage of production basis between the 2002 and 2005 model year, as indicated in Table 3. These standards are expected to be achieved in a cost-effective manner by use of improved 2-stroke technology engines (as discussed in more detail in Section IV.A).

TABLE 3.—HC+NO_X EMISSION STANDARDS FOR HANDHELD ENGINES

[In g/kW-hr]

Engine class	HC+NO_X emission standard (g/kW-hr)	Model year 2002 (percent)	Model year 2003 (percent)	Model year 2004 (percent)	Model year 2005 (percent)
Class III	210				
Class IV	172	20	40	70	100 [1]
Class V	116				

[1] The standards would be phased-in on the basis of percentage of total eligible sales. In this proposed rule, ''eligible sales'' or ''U.S. sales'' is defined as Phase 2 engines sold for purposes of being used in the United States, and includes any engine exported and subsequently imported in a new piece of equipment, but excludes any engine introduced into commerce, by itself or in a piece of equipment, for use in a state that has established its own emission requirements applicable to such engines pursuant to a waiver granted by EPA under section 209(e) of the Clean Air Act.

Two-stroke technology engines have traditionally been the dominant engine design used for handheld equipment applications. These engines have been well suited to meet the weight, multipositional use, and power requirements of these applications. However, 2-stroke technology engines also have very high engine emissions, compared with 4-stroke technologies, due in large part to fuel scavenging losses.

With the advent of emission control requirements federally and in California, research into other technologies to further control emissions from engines used in handheld applications has occurred. Promising technologies include light weight 4-stroke technology engines, and 2-stroke technology engines with aftertreatment. However, little is known about the in-use performance, in-use emissions characteristics and cost of these technologies, or how appropriate it is to consider these technologies across the full range of handheld equipment applications. Because of these uncertainties, today's standards would not require conversion to 4-stroke engine technology or the use of aftertreatment for handheld engines. However, EPA wants to encourage introduction of technologies into today's market which are cleaner than required by the proposed standards. For example, EPA recognizes that some engine manufacturers have recently developed and marketed cleaner, lightweight 4-stroke engines for use in handheld equipment. The Agency believes potentially cleaner 4-stroke engines, 2-stroke engines with aftertreatment and other advanced two-stroke technologies may enter the market to a limited extent on a national level during the time frame of the Phase 2 program. EPA's goal is to encourage development of such technology, and EPA believes that the proposed ''green labeling'' program, (discussed in Section IV.F.1) should provide important incentives to manufacturers to introduce cleaner technologies on a national basis. In addition, the Agency intends to conduct a technology review and a possible Phase 3 rulemaking to address the possibility that technological advances and/or cost reductions may occur after promulgation of the Phase 2 rule that could make greater, but still cost-effective reductions feasible in handheld engine emission levels.

3. Useful Life Categories

Today's proposal would require that engines meet the proposed emission standards throughout their useful lives. EPA is today proposing multiple useful life categories, indicated in Tables 4 and 5, given the numerous applications in which these engines are used, and wide variation in expected engine useful life in these different applications. In addition, the use of these engines in applications which experience primarily commercial rather than primarily consumer or residential usage can also impact the useful life of the engine.

TABLE 4.—USEFUL LIFE CATEGORIES FOR NONHANDHELD ENGINES

[Hours]

	Category C	Category B	Category A
Class I	66	250	500
Class II	250	500	1000

TABLE 5.—USEFUL LIFE CATEGORIES FOR HANDHELD ENGINES

[Hours]

	Residential	Commercial
Class III, IV and V	50	300

EPA is proposing that at the time of certification, engine manufacturers would have the responsibility to select the useful life period which most typically represents the in-use operating periods for the majority of engines in the engine family, based on information about that engine family including design and durability information, as well as information about the equipment in which the engine is expected to be used. Manufacturers would label the engine according to the useful life selection. See Section IV.A.4 for further discussion of the proposed useful life provisions for nonhandheld and handheld engines.

B. Assuring Emission Reductions are Achieved In-use

The goal of the in-use component of the proposed Phase 2 program is to provide assurance that the emission reduction benefits anticipated by the program are achieved in actual use. This section describes how EPA's traditional compliance programs for mobile sources achieve this goal, outlines various challenges in designing a compliance program for the small SI industry, provides an overview of the compliance program proposed today for nonhandheld and handheld engines, and discusses alternative compliance program options.

1. Traditional Compliance Programs for Mobile Sources

EPA has traditionally used three-step compliance programs to implement and enforce mobile source emission standards. For a given engine family, the first of the three steps is certification, where, based on emission data from test engines, which are often prototype engines, EPA issues a license to the engine manufacturer known as a certificate of conformity. This license enables the manufacturer to introduce engines covered under the certificate into commerce in the United States. This step typically includes some means of projecting the emissions characteristics of the engine family over its useful life. If the manufacturer demonstrates according to the regulatory provisions that the engine family meets the emission standards for the useful life of the engines, EPA issues a certificate of conformity.

The second step is production line testing where the engine manufacturer demonstrates that actual production line engines meet emission standards. Production line testing provides an opportunity for EPA and the manufacturer to verify that designs approved based on certification testing are translated into mass production engines that meet standards and to catch production problems before they become in-use problems.

The last step involves the testing of in-use engines to ascertain whether the engines continue to meet standards during their useful lives in the hands of typical customers. EPA has the authority under Section 207(c) of the Clean Air Act to require a mandatory recall of vehicles or engines that have been shown not to comply with standards for their useful life. Such recalls are instigated based on evidence of nonconformities discovered through a variety of means, the most common of which are cases in which nonconformities are found either through production line testing or through in-use testing programs. In EPA's on-highway emission control programs, EPA's recall authority and recall practices have provided clear incentives to manufacturers to produce emissions durable engines and vehicles.

2. Compliance Programs for the Small SI Engine Industry

The Phase 1 emission control program for small SI engines does not follow this typical three-step compliance program. This is because, unlike other programs, the Phase 1 program includes ''new engine'' standards only, that is, standards that the engines must meet when new, without the requirement that they continue to meet those standards in-use throughout their useful lives. As such, while the Phase 1 program contains programs for certification and production line testing (in the form of EPA initiated Selective Enforcement Audits), the program does not contain a requirement for manufacturers to project the emissions characteristics of the engine family over its useful life at the time of certification (e.g., to determine a deterioration factor, or ''df'', for the engine family), nor does it contain mandatory in-use testing provisions. EPA promulgated such a program for Phase 1 for several reasons, including the belief that for a first phase of emission controls, significant emission reductions would occur in this sector even with the ''new engine'' standards. Equally important was the lack of data available to the Agency at the time of the rulemaking on which to base an in-use program (e.g., information supporting appropriate regulatory useful life periods and engine deterioration rates). In addition, EPA made clear its intention to address in-use issues in a second Phase of regulation.

In addition to determining appropriate useful life periods and engine emission deterioration characteristics for this proposed Phase 2 program, the Agency has also faced a key challenge of how to conduct an effective in-use testing program for these engines, and whether or not a recall program modeled on the traditional on-highway recall program could be an effective compliance tool for this sector of the nonroad engine industry. As EPA has begun to regulate a wide range of nonroad engines pursuant to Section 213 of the Clean Air Act, it has become evident that a mandatory recall program, as has been traditionally conducted for the on-highway industry, may not be the most effective program for some sectors of the nonroad engine industry, as compared with other means of assuring compliance in-use. This is especially true for the small SI engine industry, in which many of the engines are installed in consumer products which are not registered and thus would be difficult to track in the event of a recall, and in which the cost of conducting a potential recall could be large relative to the cost of the actual engines being recalled.

For certain nonroad engine industry sectors, such as the spark-ignition marine engine sector and the small SI engine sector, EPA has sought to develop alternative programs designed to provide reasonable means to address emissions exceedances identified through production line testing and in-use testing programs. For example, the spark-ignition marine engine program includes a voluntary in-use credit program that EPA expects will be an effective way to address exceedances identified through in-use testing, and the program also includes provisions for the use of certification credits to address exceedances identified through production line testing (see 40 CFR Part 91).

EPA believes that these alternative programs, designed to provide a means to address emission exceedances, should meet several criteria in order to be considered as effective as EPA's traditional mandatory recall programs. First, they should provide an incentive to manufacturers to build emission-durable engines. Second, they should be practical to implement. Third, they should provide an incentive to perform accurate testing. Fourth, such programs should offset additional emissions that occur as a result of the exceedence of the standards. Finally, such programs should not be unduly burdensome to manufacturers.

The compliance programs proposed today for small SI nonhandheld and handheld engines are intended to meet these criteria. While EPA retains the authority to order a recall if a substantial number of engines are found to be in nonconformity, and while this Phase 2 proposal does include regulatory language governing EPA's action in ordering recalls (see proposed Subparts I and M), EPA anticipates considering programs which would be effective alternatives to ordering a mandatory recall of Phase 2 certified engines. Instead, EPA would expect these alternatives to recall would address the exceedances of the emission standards in ways that meet the five criteria identified above. For nonhandheld engines, in some cases, the use of certification credits would be allowed to offset exceedances of the family emission limit [11, 12] in the event of PLT exceedances. For handheld engines, the use of in-use credits would be allowed as one means of addressing potential exceedances of standards in the event of exceedances determined through production line testing or in-use testing programs. For both nonhandheld and handheld engines, other possible alternatives for addressing exceedances of emissions standards would include voluntary recall and other possible alternative projects (these issues are discussed

[11, 12] For nonhandheld engines participating in the averaging, banking, and trading program described in more detail in Section IV.A.5, compliance would be demonstrated with the family emission limit, or FEL, rather than the standard.

further in Section IV.D of this preamble).

3. The Proposed Phase 2 Compliance Program

Today's program proposes ''in-use'' standards for the first time for this industry.[13] New elements of the Phase 2 compliance program include processes for determining deterioration factors (''dfs'') at the time of certification, a manufacturer-run Production Line Testing program, and in-use testing components.

i. Certification and In-Use Testing. Today's proposal includes three different approaches to certification df determination and in-use testing, based on engine class and engine technology, which are discussed briefly below. These approaches comprise the basic program proposed today. EPA is also proposing additional procedures for some engine classes and engine technologies to increase the flexibility of the rule.[14] All the approaches are discussed in more detail in Section IV.D.

First, for nonhandheld OHV technology engines, manufacturers would be allowed to apply an assigned deterioration factor or ''assigned df'' to new engine test values at the time of certification to determine a useful life certification value. Compared to an alternative of testing an engine over its full useful life to determine deterioration, these engines would be allowed to undergo this lower burden certification effort, in return for participation in an industry-wide OHV field durability and in-use emission performance demonstration program (as described in Sections IV.D.1 and IV.D.3). Second, for nonhandheld side-valve technology engines and engines with aftertreatment, manufacturers would certify their engines based on accumulating hours on the engines to the engines' full useful lives at the time of certification. This relatively heavier burden at the time of certification is balanced by a decreased in-use testing burden. Following full useful life certification, these engines would not be subject to further in-use testing requirements. Third, for all handheld engines, manufacturers would certify their engines to full useful life standards at the time of certification using new engine test values and dfs determined based on ''good engineering judgment.'' Handheld engine manufacturers would then conduct an in-use testing program, by which each manufacturer would age and emissions test engines to ensure compliance in-use. A handheld engine manufacturer would in-use test up to 25 percent of its engine families each year.

Other than the addition of the requirements to demonstrate that engines meet the emission standards throughout their useful lives, and to determine a deterioration factor at the time of certification, the certification procedures proposed today for the Phase 2 program are essentially the same as those for Phase 1. In particular, EPA is proposing to retain a streamlined certification application form and process, with simple procedures for electronic submittal of information, as discussed further in Section IV.D.1.

ii. Production Line Compliance. Today's proposal would add a manufacturer-run Production Line Testing program known as CumSum to replace a Selective Enforcement Audit (SEA) program as the primary method of determining the compliance of new production engines. SEA would remain an optional or backstop program depending upon the class of engine, as described in Section IV.D.2.

iii. Aging Engines To Their Useful Lives. EPA believes that aging engines in field usage in typical representative applications would be the most accurate possible program for verifying in-use emissions. As such, the proposed OHV field durability and in-use emissions performance program (''Field Durability Program'') is designed to produce significant quantities of reliable test data from OHV engines aged in typical field usage, and to verify that the conclusions used in the certification process with respect to the durability of OHV engines are accurate.

While aging engines in typical field usage would be the optimal program for assuring the emission reductions are being achieved in use, EPA recognizes that costs associated with aging engines in the field and administering a field aging program could be higher than, for example, costs of a bench aging program. It is for this reason that EPA is proposing that for full useful life certification for nonhandheld side-valve technology engines or engines with aftertreatment, and for in-use testing for handheld engines, manufacturers may age engines on bench cycles, in lieu of field aging, provided that a field/bench adjustment factor has previously been established, as discussed in Section IV.C. EPA requests comment on the proposal to allow manufacturers in some cases to age engines on bench cycles in lieu of field aging.

In addition, for nonhandheld engine manufacturers, who could be field aging engines for the OHV Field Durability Program and also for the field/bench adjustment program, EPA is proposing a cap on the number of field engine tests required in a given year. EPA requests comments on all aspects of the compliance program proposed today for Phase 2 small SI engine regulation.

4. Alternative Compliance Program Options

The program proposed today for Phase 2 regulation of small SI engines is essentially the same as the program described in the ANPRM for this rulemaking. EPA received comments on the ANPRM relating to the differences between the nonhandheld and handheld sides of the industry, and the merits of applying concepts and programs outlined for one side of the industry to the other. One commenter stressed that the nonhandheld and handheld engine industries are very different in composition, in marketing, in technology, as well as in application. This commenter suggested that the program for nonhandheld engines described in the ANPRM is an integrated whole, with each provision linked to other provisions, and that it would be a mistake to graft parts of the handheld program on to the nonhandheld program. Another commenter suggested that the Agency should take a comprehensive and balanced view of the program for the two sides of the industry, and that elements of the two proposals should be used to create a simpler and more effective regulation.

EPA is concerned that any changes to the programs being proposed today should be considered carefully as to their impact on the program as a whole, given linkages between the various elements of the programs proposed today. For example, the compliance program proposed for nonhandheld OHV technology engines is designed as an integrated whole. The proposal to allow manufacturers to use the assigned dfs for certification is reasonable because it is linked to the proposal for an industry-wide OHV Field Durability Program designed to verify the assumptions with respect to stable and low dfs. In addition, EPA believes this

[13] The fact that the proposed Phase 2 emissions standards are ''in-use'' standards, compared with the Phase 1 standards which are ''new engine'' standards, together with the fact that these engines do experience emissions deterioration over time, is why, when compared numerically with the Phase 1 levels, Phase 2 levels in fact are higher in the case of Class I. Despite this apparent numerical discrepancy, EPA still anticipates important reductions from all engine classes as a result of the proposed Phase 2 standards. Since Phase 2 designs will account for in-use deterioration, in-use emission levels will be lower under the proposed Phase 2 regulations compared to Phase 1 engines.

[14] For example, for nonhandheld OHV technology engines, manufacturers would have an option to use a ''calculated df'' rather than the ''assigned df'' described below.

conversion of engines to OHV or comparably clean and durable technology, together with the OHV Field Durability Program, is one of the strongest elements of today's proposal, an element which links stringent standards forcing clean technology with a field testing program to verify that those emission reductions are being achieved in use.

However, EPA believes that there are multiple ways to design effective programs for reducing emissions from small SI engines, and for ensuring that those reductions are achieved in use. EPA requests comment on alternative compliance options. For example, EPA requests comment on an option which would allow nonhandheld manufacturers to establish certification dfs for SV engines and engines with aftertreatment through good engineering judgment (instead of the proposed program for full useful life aging for certification), linked to a program for field aging SV engines and engines with aftertreatment to verify the dfs established through good engineering judgment. EPA also requests comment on applying the in-use testing program proposed today for handheld engines to the nonhandheld side of the industry. EPA requests comments on these or other ways in which programs for the two sides of the industry could be designed to achieve the goals of providing assurance of environmental benefits in-use, easing the implementation burden for EPA and the industry, and achieving greater commonality in the programs for the two sides of the industry, where appropriate.

IV. Description of Proposed Program

Section IV of today's document contains a description of the programs proposed for nonhandheld and handheld small SI engines for Phase 2 regulations, including discussion of standards and related provisions, test procedures, a field/bench adjustment program, compliance programs, flexibilities, nonregulatory programs, and other general provisions.

A. Standards and Related Provisions

This section provides a detailed discussion of the standards being proposed for the Phase 2 program, as well as related provisions including useful life categories, certification averaging, banking, and trading provisions, and certification fuel.

The Agency is aware of the levels which the California Air Resources Board (CARB) is considering for their Tier 2 standards for their Utility, Lawn, and Garden Engine regulation. The CARB Tier 2 levels are more stringent and occur in a shorter time frame than the levels being proposed by the Agency for a Federal Phase 2 program. Although EPA's approach is not structured identically with CARB regulations, EPA believes there are two valid reasons for the distinction. First, Congress has recognized the need for California to maintain its own mobile source emission control program (*see* section 209 of the CAA) because it faces difficult and distinct air pollution problems and, as a result, may need to adopt measures more stringent than those that apply in the nation as a whole (*see,* e.g., *Motor & Equipment Manufacturers Association* v. *EPA*, 627 F.2d 1095, 1110–11 (D.C. Cir. 1979)). Second, EPA's nonroad emission standards are not allowed to be more stringent than is achievable for this nationwide program after consideration of cost and lead time according to section 213(a)(3) of the CAA. Although California is constrained by similar criteria per the authorization criteria of section 209(e), consideration of such criteria is limited to the State of California. The Agency must consider cost and lead time when nonroad emission regulations affect the nation as a whole. As discussed in the remainder of this section, the Agency believes the standards contained in today's proposal meet the section 213(a)(3) requirements to consider cost and lead time in setting Federal standards.

1. $HC+NO_X$ Emission Standards

The Agency believes the level of the standards contained in today's proposal would achieve the greatest degree of emission reduction achievable through application of technology which will be available and considering lead time under the proposed schedule of compliance, noise, energy, safety, and cost factors associated with applying such technology to a nationwide program. The sections below discuss how EPA addressed and weighed these factors in developing the proposed standards.

EPA is proposing in-use $HC+NO_X$ standards of 25 g/kW-hr effective in model year 2001 for Class I engines, and 12.1 g/kW-hr to be phased-in between model years 2001 and 2005 for Class II engines, as presented in Table 6. EPA expects that the Class II levels would result in a complete shift in engine technology from side-valve (SV) to cleaner overhead valve (OHV) or comparably clean and durable technology by 2005.

TABLE 6. $HC+NO_X$ EMISSION STANDARDS FOR NONHANDHELD ENGINES

[In g/kW-hr]

Engine class	Model year 2001	Model year 2002	Model year 2003	Model year 2004	Model year 2005
Class I	25.0	25.0	25.0	25.0	25.0
Class II	18.0	16.6	15.0	13.6	12.1

EPA is proposing in-use $HC+NO_X$ emissions levels for Class III, IV and V engines to be phased-in between model years 2002 and 2005 based on a percentage of U.S. sales as presented in Table 7.

TABLE 7.—$HC+NO_X$ EMISSION STANDARDS FOR HANDHELD ENGINES

[In g/kW-hr]

Engine class	$HC+NO_X$ emission standard (g/kW-hr)	Model year 2002 (percent)	Model year 2003 (percent)	Model year 2004 (percent)	Model year 2005 (percent)
Class III	210				
Class IV	172	20	40	70	100

TABLE 7.—HC+NO_X EMISSION STANDARDS FOR HANDHELD ENGINES—Continued

[In g/kW-hr]

Engine class	HC+NO_X emission standard (g/kW-hr)	Model year 2002 (percent)	Model year 2003 (percent)	Model year 2004 (percent)	Model year 2005 (percent)
Class V	116				

Unlike the nonhandheld Phase 2 program, for handheld engines, the phase-in process of mandatory percentages would result in Phase 1 and Phase 2 handheld engines being produced in the same model year, i.e., at least 20 percent of the engines produced in model year 2002 would be Phase 2 engines subject to the Phase 2 program, and up to 80 percent of the handheld engines produced in model year 2002 would be Phase 1 engines subject to the Phase 1 program, followed by a 40/60 split in model year 2003, and a 70/30 split between Phase 2/Phase 1 engines in model year 2004.

The remainder of this section describes the analysis and supporting data for the proposed HC+NO_X standards for Class I nonhandheld engines, Class II nonhandheld engines, and Class III, IV, and V handheld engines. Each of these subsections is organized into the following topics: *(i) Historical Sales Trends by Engine Technology*—Historical trends are important to consider when assessing the range of field proven technologies. Historical trends assist in understanding what technologies have been demonstrated in actual use, what manufacturers' current production capabilities are, and the availability of new and in-use emission performance data; *(ii) In-use HC and NO_X Emission Performance of Uncontrolled Engines*—The Agency presents this information to highlight the in-use performance characteristics associated with small engine technologies and the need for careful consideration of the in-use performance of various control technologies. Phase 1 new engine emission performance data is available from Federal certification data. However, in-use emission performance on engines pulled from the field is limited; therefore, a discussion of the in-use performance of uncontrolled engines is warranted; *(iii) New Engine and In-use HC and NO_X Performance of Phase 1 Technology Engines*—A summary of the information available on the new and in-use emission performance of Phase 1 engines is presented. This information is used to assess the current status of the small engine industry, which is critical for the Agency's analysis when trying to predict the impact of technology changes on the industry; *(iv) Technologies Considered for Phase 2 HC+NO_X Standards*—Discussion of the technologies the Agency considered when determining the level of the proposed standards is presented. This includes a discussion of new and in-use emission performance of each technology, and the per engine cost associated with each technology, and; *(v) Proposed Phase 2 HC+NO_X Standard*—A discussion of the Phase 2 standards the Agency is proposing, including information on why the proposed standards are achievable, the proposed lead time, and a discussion and request for comment on more stringent standards (such as the CARB Tier 2 levels).

a. HC+NO_X Emission Standard for Class I Nonhandheld Engines. This section presents information used by the Agency to determine the appropriate level for the proposed HC+NO_X exhaust emission standards for nonhandheld Class I engines. A more detailed explanation of the engine technologies and costs described in this section is contained in the Draft Regulatory Support Document (RSD) for this proposal, a copy of which is available in the public docket for this rule.

i. Class I Historical Sales Trends by Engine Technology

Class I engine (<225 cc nonhandheld engines) sales have historically been dominated by low cost four-stroke side-valve engines. Two-stroke gasoline Class I engines are currently less than 10 percent of annual sales and will continue to decline as a result of the Phase 1 emission standards, which effectively calls for their phase-out by 2003 due to their high HC emissions. Prior to 1986, OHV engines represented less than one percent of annual Class I engine sales. In the past decade OHV engines have begun to penetrate the Class I marketplace, but they have hovered between 10 and 15 percent of total U.S. sales for the past eight years.

ii. In-use HC and NO_X Emission Performance of Uncontrolled Class I Engines

Unregulated Class I engines have demonstrated high new engine emission rates for HC and CO, and low levels of NO_X, as well as poor in-use performance (large deterioration factors) for HC and CO, with little deterioration of new engine NO_X values.[15] HC deterioration has been shown to be greater than two times the new engine value in as little as four years of engine use.

iii. New Engine and In-use HC and NO_X Performance of Phase 1 Class I Technology Engines

Phase 1 engines have improved new engine emission performance over uncontrolled engines, and may have improved in-use performance. The Draft RSD for this proposal contains publicly available information on engine families from all engine classes certified to the Phase 1 program. This information shows both SV and OHV technology can meet the Phase 1 Class I new engine standard.

The Agency has recently examined information presented by several engine manufacturers concerning emissions deterioration from Phase 1 technology Class I side-valve and over-head valve engines.[16] A more detailed discussion of this data is presented in the Draft RSD. This information covers over 50 Class I engines field aged by manufacturers, with usage varying from 20 to 300 hours. Table 8 contains a summary of the HC+NO_X deterioration factors resulting from an analysis of this data.

[15] See ''Emission Tests of In-use Small Utility Engines'' Southwest Research Institute, Sept. 1991, EPA Air Docket A–91–24, Item #II–A–8, and ''Nonroad Engine and Vehicle Emission Study'' U.S. EPA Report #21A–2001, Nov. 1991, EPA Air Docket A–91–24, Item #II–A–10.

[16] See ''Tier 1 Deterioration Factors for Small Nonroad Engines'', Sept. 1996, a report by Air Improvement Resources, available in EPA Air Docket A–96–55, Item #II–D–11.

TABLE 8.—SUMMARY OF IN-USE DETERIORATION OF PHASE 1 TECHNOLOGY CLASS I ENGINES

	Class I OHV	Class I SV
Estimated $HC+NO_X$ df at 66 Hours	1.35	1.87

Analysis of this information indicates Class I SV $HC+NO_X$ deterioration is higher than Class I OHV engines. The lower new engine emission levels of Class I OHV over SVs combined with lower in-use deterioration results in better in-use emission performance for Class I OHV engines compared to Class I SV engines.

iv. Technologies Considered for Phase 2 Class I $HC+NO_X$ Standards

The Agency analyzed the emission performance and cost of several technologies which could be applied to Class I engines, including improvements to existing SV engines, conversion of existing SV engines to OHV technology, and the application of catalytic converters to existing SV and OHV engines. Four-stroke SV technology utilizes an engine configuration in which the intake and exhaust valves are located to one side of the combustion chamber (also called an L-head design), as compared to four-stroke OHV technology in which the intake and exhaust valves are located directly above the combustion chamber. Catalytic converters are add-on after treatment devices which operate by chemically reducing or oxidizing exhaust gases. The Draft RSD for this proposal contains additional information regarding these three technologies.

As discussed previously, the majority of Class I engines utilize SV technology. Table 8 shows that Class I SV technology have $HC+NO_X$ deteriorations on the order of 1.87 times new engine levels at 66 hours of use. Combining this with the Phase 1 certification level of 16.1 g/kW-hr $HC+NO_X$ indicates an in-use level of approximately 30 g/kW-hr $HC+NO_X$. The Agency believes additional reductions can be achieved with improvements to existing Phase 1 SV engines. A more detailed discussion of these improvements is contained in the Draft RSD. A summary of the improvements are: lowering of new engine emission levels achieved through enleanment of intake air-fuel ratio; improvements to valve seat material which will lower in-use distortion, resulting in decreased valve leakage and deposit formation; improvements in cylinder ring design, which will result in better combustion chamber sealing and lower oil consumption and lower combustion chamber deposits; continued structural improvements to cylinder design to lower cylinder distortion inherent in side-valve configurations; and addition of valve stem seals to limit the creepage of oil into the combustion chamber. As presented in the Draft RSD, the Agency estimates the improvements to Class I SV engines would cost the manufacturer as much as $4 to $7 per engine, depending on the engine family volume. The Agency estimates changes would result in improvements to both new and in-use emission performance, combining for a 10 to 20 percent improvement in the in-use $HC+NO_X$ performance beyond Phase 1 designs.

As indicated by Table 8, Phase 1 OHV engines have better in-use performance compared to Phase 1 SV engines. A new engine level equal to the Phase 1 standard of 16.1 g/kW-hr combined with a $HC+NO_X$ df of 1.35 at 66 hours results in an in-use emission rate of 21.7 g/kW-hr. This level is well below the performance of Class I SV engines, therefore the Agency has considered the conversion of existing Class I SV to OHV engines in developing the proposed Phase 2 levels. Based on the Federal Phase 1 new engine certification data analyzed for this proposal, the average Class I OHV engine emits around 10.5 g/kW-hr. Based on the deterioration information presented in Table 8 and design improvements discussed elsewhere, the Agency estimates a well designed nonhandheld OHV engine could have an $HC+NO_X$ deterioration factor of 1.3. Assuming a 10 percent compliance margin, these specific Class I OHV engines could achieve an average in-use emission level of around 15 g/kW-hr. However, it should be noted that only about 10 percent of current Class I engines are OHV designs. The performance of these specific engines may not be representative of what would occur if all Class I engines were converted to OHV technology.

Federal certification data indicates a small number of Class I engines have certified to the Federal Phase 1 standards using catalyst technology. Though it is technologically feasible to apply catalysts to both SV and OHV engines, the Agency has little information regarding in-use durability and emission performance of engines equipped with catalysts. As discussed previously, the in-use emission performance of small engines is a critical component of the analysis EPA has undertaken in the development of the Phase 2 proposal. The Agency's experience with on-highway catalyst technology has shown considerable in-use deterioration of catalysts can occur. In recent years several technical papers have been published regarding catalyst durability on small engines, however, these papers have relied on laboratory durability programs, such as aging catalysts on dynamometers [17]. The Agency is not aware of any actual field-aged in-use catalyst durability information. The Agency requests comment on the relationship between laboratory durability data and in-use field data, any information on typical in-use aged catalyst performance, and all available data on individual catalysts aged under typical in-use conditions experienced by equipment using Class I engines. The Agency requests additional information regarding new engine emission performance, in-use emission performance, and cost of catalyst technology for Class I SV and OHV engines.

v. Proposed Phase 2 Class I $HC+NO_X$ Standard

The Agency is proposing a corporate average exhaust emission level of 25 g/kW-hr $HC+NO_X$ for Class I engines beginning in model year 2001 (for discussion of the averaging, banking, and trading program, see Section IV.A.5). The Agency believes this level is technologically achievable, and, as discussed previously, can be met by improvements to existing Class I SV engines. The Agency has performed an analysis using the existing Phase 1 certification data (which contains confidential sales projections) combined with reasonable assumptions for in-use deterioration. This analysis indicates an averaging standard of 25 g/kW-hr is achievable with improvements to existing SV engines and considering the emission performance of existing Phase 1 OHV engines. A standard of 25 g/kW-hr would not require an increase in the penetration of Class I OHV sales. Manufacturers would need to make improvements to existing SV engine families which would require improvements to several engine components. However, major retooling of engine production lines would not be required. In addition, the use of ABT provides manufacturers with considerable flexibility for determining the most appropriate expenditure of resources when deciding which engine families will need specific improvements to meet the proposed levels. The lead time between the

[17] See Society of Automotive Engineers Technical Papers 930076, 932445, 941807, and 961735 for bench aged catalyst information.

finalization of this rule and model year 2001 would be sufficient for manufacturers to meet the proposed $HC+NO_X$ level.

The Agency has considered emission standard levels more stringent than the proposed 25 g/kW-hr $HC+NO_X$. As discussed above, a level more stringent than 25 g/kW-hr could be met by the conversion of existing SV technology engines to OHV technology. The Agency's analysis of existing Phase 1 certification data combined with confidential sales information indicates an in-use level of around 15 g/kW-hr could be met by current Phase 1 Class I OHV engines with some design improvements to assure in-use emissions durability. However, these Class I OHV engines represent only about 10 percent of Class I sales; it is uncertain what level of emission could be achieved by complete conversion to OHV technology. As discussed previously, the percentage of Class I OHV engine sales has remained fairly constant for the past eight years, despite superior durability, performance, and fuel economy. Several Class I engine manufacturers, including the two largest which represent the majority of the market in terms of sales, have discussed with the Agency their past attempts to sell low cost OHV engines, likely in competition with less expensive SV engines. Manufacturers have indicated they have seen little success in drawing consumers away from the even lower cost Class I SV engines. Engine manufacturers have indicated that the principle reason for the failure of OHVs to penetrate further into the Class I market is the cost difference between the two engine technologies, and consumers' unwillingness to pay this premium. Several engine manufacturers have indicated that low cost Phase 1 Class I SV engines have manufacturing costs on the order of $60 to $70 per engine. Engine manufacturers contend that for these low cost engines, the cost increase to purchase an OHV engine is large enough to prevent a larger market penetration by OHV engine, at least when they would have to compete in the market with SV engines (see 62 FR 14752, ''Class I OHV Demonstration Program''). The Agency estimates the manufacturer's cost for conversion to OHV to be between $5 and $14 per engine. Engine manufacturers have indicated concern over what they perceive to be the potentially dramatic impacts on the Class I engine sales which would result from a standard which requires conversion to OHV technology. As discussed in the Overview Section III.A, above, EPA is also concerned that possible adverse impact on sales and the potential need for additional lead time could result in reduction in at least the near term emission benefits anticipated by this proposal. The Agency requests comment on the market concerns expressed by engine manufacturers, on the potential impact on lead time associated with more stringent Class I standards and on the potential for delay in at least the near term emission reduction benefits available from Class I engines if more stringent standards were adopted.

The Agency is aware of the emission standards being considered by CARB for the CARB Tier 2 Utility, Lawn, and Garden Engine (ULGE) regulation. The Agency's current understanding is that CARB is considering Class I engine in-use standards of 16.1g/kW-hr $NMHC+NO_X$ to be met by model year 2000, followed by a standard of 12.0g/kW-hr in model year 2004. In their comments to the ANPRM, California recommended a nationwide level of control equivalent to that being considered by CARB. Further, CARB suggested these standards could be met with the use of available technology, specifically, total conversion to OHV technology to achieve compliance with a 16.1 g/kW-hr $NMHC+NO_X$ standard and the addition of catalyst control to meet a 12.0 g/kW-hr $NMHC+NO_X$ standard. EPA understands that CARB is still evaluating its Tier 2 ULGE program and may adopt regulations which differ from these specific levels or implementation dates or both. As discussed under Section IV.A of this proposal, section 209 of the CAA allows California to set its own standards, considering criteria as they apply to the State of California. However, as discussed later in this section, the Agency requests comment on whether application of these emission control technologies as being considered by CARB are appropriate for a Federal program at this time, the level of emission control expected from such application of these technologies and what adjustments to the proposed Federal program might be necessary to accommodate standards which would require such widespread application of OHV and catalyst technology.

The Agency has considered the potential impacts associated with the conversion of Class I SVs to OHV technology. Due to uncertainties as to consumer acceptance of OHV engines in typical Class I equipment applications and as to how a more stringent Class I standard might effect lead time for the program as a whole and the resulting uncertainty of emissions benefits, the Agency has chosen not to propose Class I standards which would mandate the conversion of Class I engines to OHV or comparably clean technology. However, the Agency requests comment on such an option. EPA specifically requests additional supporting information regarding this issue to be made available to the Agency through the public comment process on this proposed rule to supplement that which informed EPA's analysis of CARB's proposed Tier 2 levels and EPA's cost estimates of converting Class I engines to OHV. The Agency requests comment on all aspects of the proposed Class I standards.

b. $HC+NO_X$ Emission Standard for Class II Nonhandheld Engines.This section presents information used by the Agency to determine the appropriate level for the proposed $HC+NO_X$ exhaust emission standards for nonhandheld Class II engines. A more detailed explanation of the engine technologies and costs described in this section is contained in the Draft RSD for this proposal, a copy of which is available in the public docket.

i. Class II Historical Sales Trends by Engine Technology

Class II engine sales have been dominated by 4-stroke SV engines in the past. As described in the Draft RSD, Class II engines were predominantly SV technology in the 1970's and early 1980's. Beginning in about 1985, OHV engines have steadily increased their annual sales penetration into the Class II market, averaging about a 3 percent increase per year; by 1995 OHV engine sales represented approximately 35 percent of the Class II market, with the remaining 65 percent being SV engines.

ii. In-use HC and NO_X Emission Performance of Uncontrolled Class II Engines

Information regarding new engine and in-use emission performance of uncontrolled Class II engines is limited. While some new engine data is available, the Agency does not have in-use emission information on uncontrolled Class II engines. The limited new engine information from uncontrolled engines comes from the CARB Technical Support Document for the CARB ULGE program.[18] The Agency used this information to estimate the new engine emission factors for the 1991 Nonroad Engine and Vehicle Emission Report. Those estimates were between 15.2 and 15.4 g/kW-hr for

[18] California Air Resources Board Mail Out #92–06, Technical Support Document for California Exhaust Emission Standards and Test Procedure for 1994 and Subsequent Model Year Utility and Lawn and Garden Equipment Engines, January 1992.

typical new engine Class II HC+NO_X emission factors.

iii. New Engine and In-use HC and NO_X Performance of Phase 1 Class II Technology Engines

Table 9 is a summary of the new engine emission values for gasoline fueled SV and OHV engine families certified to the Federal Phase 1 regulations as of September 1997.

TABLE 9.—SUMMARY OF FEDERAL PHASE 1 CLASS II GASOLINE FUELED ENGINE FAMILIES

Technology	Number of families	Average new HC+NO_X (g/kW-hr)	Minimum new HC+NO_X (g/kW-hr)	Maximum new HC+NO_X (g/kW-hr)
Federal Phase 1 OHV	64	9.0	5.3	12.9
Federal Phase 1 SV	14	11.3	9.4	12.9

The values in Table 9 are an average of the certified new engine rates. EPA has access to manufacturers' confidential sales estimates for model year 1997. Using these projections the sales weighted new engine HC+NO_X emission rate is 11.7g/kW-hr for Class II SV engines, and 8.3g/kW-hr for Class II OHV. This certification data shows that OHV new engine HC+NO_X emissions tend to be lower than SV emissions.

In 1996 the Agency received a report from several engine manufacturers regarding the deterioration of Phase 1 technology Class II SV and OHV engines.[19] A more detailed discussion of this information is contained in the Draft RSD for this proposal. Table 10 contains a summary of this information.

TABLE 10.—SUMMARY OF IN-USE DETERIORATION FACTORS FOR PHASE 1 CLASS II ENGINES

	Class II OHV	Class II SV
Estimated HC+NO_X df 250 hours	1.4	1.6

iv. Technologies Considered for Phase 2 Class II HC+NO_X Standards

The Agency analyzed the emission performance and cost of several technologies which could be applied to Class II engines, including improvements to existing SV engines, conversion of existing SV engines to OHV technology, improvements to existing OHV engines, and the application of catalytic converters to existing SV and OHV engines. The Draft RSD for this proposal contains additional information regarding these technologies.

The Agency considered the costs and emission performance potential which would result from manufacturers making improvements to Phase 1 Class II SV engines. As discussed in the Draft RSD, several areas for improvement potentially exist, including: improvements to carburetors to lower variability and maintain more precise air/fuel control; enhancements to the cylinder structural integrity; improvements to valve stems and valve seats; and changes in piston ring design. These improvements would lower production variability and improve both new engine and in-use emission performance. The Agency estimates these changes would cost the manufacturer as much as $7 to $20 per engine depending on engine family volume and the improvements required. However, the Agency believes the improvement in the in-use emission performance from Phase 1 levels would be small. All spark-ignited engines have a lean performance limit, i.e., an air/fuel ratio beyond which additional enleanment will result in unstable combustion and poor engine performance. The basic design of the SV combustion chamber results in a lean performance limit which is reached relatively soon (compared to OHV technology). Improvements in the in-use performance can be made, but the Agency believes these improvements will also be relatively small. The Agency estimates that the improvements to SV technology considered would result in an overall 10 to 20 percent reduction in the in-use emissions from Phase 1 SV levels. With the Phase 1 Class II new engine standard equal to 13.4 g/kW-hr HC+NO_X, and a Phase 1 Class II SV df of 1.6, the Phase 1 in-use emission rate is 20.1g/kW-hr at 250 hours. A 10 to 20 percent reduction translates to an in-use emission rate between 16.8 and 18.9 g/kW-hr.

As described above in Section IV.A.1.a, the principal difference between SV and OHV engines is the location of the intake and exhaust valves with respect to the combustion chamber; in SV engines the valves are located to one side of the combustion chamber, while in OHV the valves are located at the top of the combustion chamber directly above the piston. The OHV location offers many performance advantages over the SV engine, including lower valve seat distortion, lower combustion chamber surface-to-volume ratio, and the ability to run stably at leaner air-fuel ratios. These differences are described in more detail in the Draft RSD. These differences can result in better new engine and in-use HC+NO_X emission performance for OHV over SV technology. Based on confidential Phase 1 Class II OHV Federally certified engine families sales projections, the Agency believes an average new engine emission rate of 9.3 g/kW-hr, which includes a 10 percent compliance margin, is achievable from OHV technology engines. This would result in an in-use emission level of 12.1 g/kW-hr (1.3 * 9.3 g/kW-hr), which is a 42 percent reduction from Phase 1 SV levels (Phase 1 SV = 13.4 g/kW-hr * 1.6 = 20.1 g/kW-hr). As presented in the Draft RSD, the Agency estimates the conversion of Class II SV to OHV technology would cost the manufacturer between $10 and $17 per engine, depending on the engine family volume. Engine manufacturers have indicated the higher cost associated with conversion of Class II SV to Class II OHV technology is reasonable because the equipment using Class II engines is typically more expensive than the equipment targeted toward the residential market, and the increased cost resulting from conversion to OHV design would not have a significant adverse impact on Class II engine sales. While EPA has no independent information on consumer price sensitivity for equipment using Class I engines, it is understandable that the higher price of this equipment and the typical commercial use of such equipment could allow the performance, fuel efficiency, and durability benefits of Class II OHV engines to outweigh the incremental impact on equipment price.

[19] ''Tier 1 Deterioration Factors for Small Nonroad Engines'' September 1996, a report by Air Improvement Resources, available in EPA Air Docket A–96–55, Item #II–D–11.

The Agency also considered improvements to existing Phase 1 OHV engines in determining the appropriate level of the Class II standard. In many cases, engine manufacturers have already optimized new engine emission performance and have incorporated improvements to engine designs to optimize in-use emission performance. However, as discussed in the Draft RSD, the Agency believes that for some Class II OHV engine families internal engine improvements can still be made which would result in lower new engine and/or better in-use performance. These changes include leaner carburetor calibrations to lower new engine $HC+NO_X$, optimization of combustion chamber design, and improvements to oil control. As discussed previously, the sales weighted new engine Phase 1 Class II OHV $HC+NO_X$ level is 8.3g/kW-hr, and as shown in Table 10, the Class II $HC+NO_X$ df is estimated to be 1.4 at 250 hours. The Agency believes changes to existing Class II OHV engines will primarily improve in-use emission performance. As presented in the Draft RSD, the Agency estimates these changes would cost the manufacturer as much as $3 to $8 per engine, depending on the engine family production volume and the improvements required. However, the Agency believes many engine families have already incorporated these design improvements. Based on existing Federal certification data and the deterioration information contained in Table 10, the Agency estimates these improvements will result in an in-use $HC+NO_X$ deterioration rate of 1.3 at 250 hours, and average new engine emission rates (including a ten percent compliance margin) of 9.3 g/kW-hr, for an average in-use emission rate of 12.1 g/kW-hr.

Federal certification data indicates a small number of Class II SV and OHV engines families have certified to the Federal Phase 1 standards using catalyst technology. However, the majority of these engines are intended for indoor use on applications such as generators or floor buffers, where lowering CO emissions appears to be the primary focus. The majority of these catalyst equipped Class II engine families operate on propane fuel. No catalyst equipped Class II engine families have certified to the Phase 1 rule for use in lawn and garden equipment. Though it is technologically feasible to apply catalysts to both SV and OHV engines, the Agency has little information regarding in-use emission performance of engines equipped with catalysts. The Agency's experience with on-highway catalyst technology has shown that considerable in-use deterioration can occur. As previously discussed in the Class I standard section, information on laboratory aged small engine catalysts has appeared in recent years in the technical journals. The Agency requests comment on the relationship between laboratory and field aged catalyst durability data, any information on typical in-use aged catalyst performance and all available data on individual catalysts aged under typical in-use conditions experienced by equipment using Class II engines. The Agency requests additional information regarding the new engine emission performance, in-use emission performance, and cost of catalyst technology for Class II engines, particularly Class II engines designed for lawn and garden type applications.

v. Proposed Phase 2 Class II $HC+NO_X$ Standard

The Agency is proposing a corporate average $HC+NO_X$ emission standard of 12.1 g/kW-hr which will be phased in over five years, beginning in model year 2001. Based on the information presented in this section, the Agency believes an in-use level of 12.1g/kW-hr can be met by the conversion of Phase 1 SV engines to OHV technology, and by internal improvements to some existing Phase 1 OHV engines.

The proposed standards would require significant production line changes for many Class II engine manufacturers to convert existing SV models to OHV designs, as well as modifications to some Phase 1 OHV models which may need internal improvements to meet the 12.1 g/kW-hr level. To accommodate a smooth transition of existing SV engine family production lines to the new OHV technology or other comparably clean technology, the Agency is proposing a five year phase-in period, starting with a level of 18 g/kW-hr in 2001 and ramping down to the final year level of 12.1 in model year 2005. The Agency expects the proposed standards for Class II engines would result in increased penetration of and virtual total conversion to clean OHV technology by 2005. However, the proposal does not preclude other technologies from meeting the proposed standard.

The Agency recognizes that there are large differences in technology mixes currently being produced by Class II engine manufacturers. Some Class II engine manufacturers have already made significant investments in OHV technology prior to and during the Phase 1 program. For some of these manufacturers the standards in the early years of the Phase 2 phase-in (i.e., the 2001 standard of 18g/kW-hr and the 2002 standard is 16.6 g/kW-hr) may not require additional reductions in Class II engine emissions. At the same time, the Phase 1 standards do not require a shift to clean, durable OHV technology or comparably clean technology, and several Class II engine manufacturers currently produce a significant number of SV engines. For manufacturers who are relying on SV technology the proposed phase-in period will allow them to shift their production to new, cleaner technology which is capable of meeting the 2005 standard of 12.1g/kW-hr. The Agency believes the phase-in standards will address the inequities among manufacturers' current technology mixes but will also require manufacturers to produce the clean, durable 12.1g/kW-hr engines in 2005. Manufacturers have indicated the early banking provision will pull ahead clean technology and ease the transition to the 12.1 standard. However, due to the wide discrepancy between manufacturers' current technology mixes, some manufacturers may generate significant credits during the phase-in period. The Agency has recently performed an analysis, based on Federal Phase 1 certification data, which indicates under some conditions, early banking would result in significant credits being generated during the phase-in period which may in fact undermine the Agency's assumptions that the 12.1 standard in model year 2005 would require a virtual 100 percent shift to OHV or comparably clear technology for Class II engines. To insure the EPA's goals are met, the Agency is proposing a declining set of caps on how high the sales-weighed average level of $HC+NO_X$ family emission limits (FELs) could be for Class II engine families beginning in 2005. A discussion of this proposal is contained in Section IV.A.5.

Engine manufacturers have commented that, while 12.1 g/kW-hr $HC+NO_X$ can be met with engines designed for a typical 250-hour useful life, engines designed for the longer proposed useful life categories of 500 and 1000 hours need a higher standard due to their higher expected df as measured over these longer hour periods.[20] Specifically, they recommend a 500-hour engine standard of 13.0 g/kW-hr and a 1000-hour standard of 14.0 g/kW-hr $HC+NO_X$. In arriving at these recommendations, the manufacturers

[20] See the discussion in the March 27, 1997, ANPRM, 62 FR 14740, and the Memo to the Docket regarding the October 3, 1997 meeting between U.S. EPA and the Engine manufacturers Association, EPA Air Docket A–96–55, Item #II–E–11.

assumed the new engine emission levels would be the same regardless of useful life category; this is also assumed by the Agency in developing its proposal. However, while the manufacturers also predict improvements in in-use emission durability, they do not expect these improvements would allow a constant deterioration factor (full useful life emission level divided by new engine emission level) regardless of useful life category. Rather, the manufacturers expect improved durability would allow typical deterioration factors of around 1.4 for 500-hour engines and 1.5 for 1000-hour engines. In making these recommendations, the manufacturers acknowledge that they have not provided any data or analyses to validate their recommendations, but also argue that the Agency has no full useful life data for these higher hour categories which substantiate the feasibility of the Agency's proposed standards. EPA requests any additional data and other pertinent information which would help the Agency reassess the appropriate level of standards for the 500-hour and 1000-hour engines.

Based on the May, 1997 CARB Workshop on their Tier 2 standards, the Agency believes CARB may propose a Tier 2 in-use standard of 12.0 g/kW-hr NMHC+NO_X in model year 2000, followed by a level of 9.4 g/kW-hr NMHC+NO_X in model year 2004. CARB's 12.0 level may be achievable with OHV technology and is very similar to the Agency's proposed Phase 2 level. CARB's 9.4 g/kW-hr level is more stringent than the Agency's 12.1 g/kW-hr proposal. CARB suggests an in-use 9.4g/kW-hr standard would require technology beyond conversion to OHV, such as an OHV engine equipped with a catalyst. The Agency believes the costs and lead time which could be necessary to achieve a 9.4 g/kW-hr level for a national program would be considerably greater than the program contained in today's proposal. However, as discussed under Section IV.A of this proposal, section 209 of the CAA allows California to set their own standards, considering criteria as they apply to the State of California. However, as discussed below, the Agency requests comment on whether the application of the technology anticipated by the standards being considered by CARB would be appropriate for a Federal program at this time.

The Agency requests comment on all aspects of the proposed Class II standards, and especially requests data, analyses and other information on the expected emission performance capability of Class II engines designed for in-use operating lives of 500 hours and 1000 hours.

c. HC+NO_X Emission Standards for Class III, IV and V Handheld Engines. This section presents information used by the Agency to determine the appropriate level for the proposed HC+NO_X exhaust emission standards for handheld engines (engine Class III, IV and V). A more detailed explanation of the engine technologies and costs described in this section is contained in the Draft RSD for this proposal, a copy of which is available in the public docket for this rule.

i. Class III, IV and V Historical Sales Trends by Engine Technology

Handheld engine sales have historically been dominated by crankcase charge scavenged two-stroke engines (''traditional 2-strokes''). Historical sales data indicate that until the recent introduction by one manufacturer, Ryobi, of a 4-stroke trimmer, 100 percent of gasoline engine powered handheld equipment used traditional 2-stroke engines.

ii. In-use HC and NO_X Emission Performance of Uncontrolled Class III, IV and V Engines

Information on uncontrolled 2-stroke engines is limited. However, what information is available indicates 2-stroke technology has the potential to experience high rates of in-use deterioration of HC, on the order of two times the new engine value.[21]

This same information indicated that little in-use deterioration of NO_X emissions occur from traditional 2-stroke engines.

iii. New Engine and In-use HC and NO_X Performance of Class III, IV and V Phase 1 Technology Engines

Federal Phase 1 certification data shows that over 150 two-stroke engine families have been certified for the 1997 and 1998 model years. A summary of the emission performance of these Phase 1 technology engine families is shown in Table 11.

TABLE 11.—SUMMARY OF FEDERAL PHASE 1 HANDHELD 2-STROKE ENGINE FAMILIES

Engine class	Number of families	Average new HC+NO_X (g/kW-hr)	Minimum New HC+NO_X (g/kW-hr)	Maximum New HC+NO_X (g/kW-hr)
Class III	4	216	177	258
Class IV	131	189	97	236
Class V	19	136	90	161

The average emission rates for the Phase 1 Class III, IV and V traditional 2-stroke engines are 28 percent, 23 percent and 18 percent below the combined Phase 1 HC and NO_X standards. Federal certification data also show three Class IV four-stroke technology engine families and three Class IV two-stroke with catalysts engine families have been certified to the Federal rule. The average HC+NO_X certification levels for these engine families are 27 and 165 g/kW-hr respectively.

Information on in-use emission performance of Phase 1 technology 2-strokes is also limited. In preparation for the Phase 1 regulation, several members of the Portable Power Equipment Manufacturers Association (PPEMA) ran a test program which included manufacturer controlled field testing of seven Phase 1 technology 2-stroke engines, six aged to 50 hours, and one to 225 hours.[22] This data shows relatively low deterioration in HC+NO_X emissions, with dfs ranging from slightly less than 1.0 to approximately 1.2 at 50 hours, and slightly less than 1.0 for the 225 hour engine.

[21] See ''Emission Tests of In-use Small Utility Engines'' Southwest Research Institute, September 1991, EPA Air Docket A–91–24, Item #II–A–8, ''Nonroad Engine and Vehicle Emission Study'' U.S. EPA Report #21A–2001, November 1991, EPA Air Docket A–91–24, Item #II–A–10, ''Emission Testing of In-use Handheld Engines'' Southwest Research Institute, March 1994, EPA Air Docket A–93–25, Item #II–A–06, and ''Regulatory Impact Analysis and Regulatory Support Document, Control of Air Pollution, Emission Standards for New Nonroad Spark-Ignition Engines at or Below 19 kilowatts'' U.S. EPA, May 1995, EPA Air Docket A–93–25, Item #V–B–01.

[22] See Appendix C of ''Regulatory Support Document, Control of Air Pollution, Emission Standards for New Nonroad Spark-Ignition Engines at or Below 19 kilowatts'' U.S. EPA, May 1995, EPA Air Docket A–93–25, Item #V–B–01.

The Agency has little information on the in-use performance of 4-stroke handheld technology or on handheld catalyst technology.

iv. Technologies Considered for Phase 2 Class III, IV and V $HC+NO_X$ Standards

The Agency analyzed the emission performance and cost of several technologies which could be applied to handheld engines. These include improvements to existing 2-stroke engines, conversion of existing 2-stroke engines to 4-stroke technology, and the application of catalytic converters to existing 2-stroke engines. The Draft RSD for this proposal contains additional information regarding these technologies.

For Phase 1 2-stroke technology engines, fuel lost during the scavenging process represents the largest fraction of exhaust HC emissions, and HC emissions represent greater than 95 percent of the exhaust $HC+NO_X$ emissions. The Agency believes several types of improvements can be made to Phase 1 technology 2-stroke engines. The following is a summary of potential areas for lowering $HC+NO_X$ emissions: (1) improvements in carburetors to reduce production variability and tighter air/fuel ratio control; (2) redesign of the combustion chamber to promote more complete combustion; (3) optimizing port shapes and timing to reduce scavenging losses; (4) leaner carburetor calibrations to reduce HC emissions; and (5) tighter manufacturing tolerances for engine components to reduce component variation. These improvements are discussed in more detail in the Draft RSD. As described in the Draft RSD, the Agency estimates the cost of these improvements would cost the manufacturer as much as $2 to $6 per engine, depending on the production volume of the engine family and the improvements required. The Agency would expect these changes to lower the new and in-use emission rates of Phase 1 two-stroke technology engines. PPEMA members have indicated they believe a well designed, properly maintained 2-stroke engine is capable of performing with no in-use deterioration of $HC+NO_X$ emissions. Based on the small amount of in-use data from Phase 1 technology engines, the Agency estimates the in-use performance of an improved Phase 1 technology 2-stroke engine would deteriorate approximately 10 percent during its useful life. The Agency estimates that for the majority of handheld engines, improvements to Phase 1 2-stroke designs would result in a 30 percent reduction in the in-use emission rates from Phase 1 designs.

The Agency also analyzed the benefits and associated costs which would occur from the conversion of existing 2-stroke handheld engines to 4-stroke designs. Two engine manufacturers, Ryobi and Honda, have successfully demonstrated that 4-stroke designs are viable in at least some handheld equipment applications, notably a string trimmer application. However, the Agency is uncertain that 4-stroke technology would be viable in all handheld applications, particularly those applications which require high power and low weight, such as large, commercial chainsaw applications, where the lower power-to-weight ratio of 4-stroke engines may impede equipment performance. Four-stroke technology does not have the scavenging loss problem associated with traditional 2-strokes. Therefore 4-stroke exhaust HC emissions are substantially below those of a 2-stroke design. Federal Phase 1 certification data for Class IV engines indicates a 4-stroke string trimmer produces new engine $HC+NO_X$ emission rates of about 27 g/kW-hr, which is approximately 80 percent below the Phase 1 standard. Deterioration information on small displacement 4-stroke engines is limited, and the Agency has no deterioration information on handheld 4-stroke engines. The Agency has heard from one small engine manufacturer that the smaller 4-stroke engines would likely have higher deterioration than Class I OHV 4-stroke engines, which is on the order of 1.4 at 66 hours.[23] The Agency requests comment and additional information on the deterioration of smaller 4-stroke engines. As described in the Draft RSD, the Agency estimates the cost of converting an existing handheld 2-stroke to a 4-stroke engine would cost the manufacturer between $7 and $10 per engine, depending on the production volume of the engine family.

The Agency also considered the application of catalytic convertors to Phase 1 2-stroke technology. One handheld engine manufacturer, Husquvarna, has certified three engine families to the Phase 1 rule which utilize a 2-stroke engine with catalyst. This engine has been designed for lower scavenging losses to reduce engine out emissions, has improved fuel metering, and also uses a catalyst to further reduce exhaust emissions. EPA's testing of this engine showed new engine emission results for $HC+NO_X$ at the nominal carburetor setting on the order of 90 g/kW-hr, which is 63 percent below the combined Phase 1 Class IV $HC+NO_X$ new engine standard. The Agency does not have information regarding the actual in-use performance of this or other catalyst equipped 2-stroke engines. The Agency estimates the cost of adding a catalytic convertor to an improved 2-stroke handheld engine would cost the manufacturer between $6 and $12 per engine, depending on the production volume of the family. This cost estimate does not include any of the additional improvements to the Phase 1 technology 2-stroke mentioned previously, such as combustion chamber improvements or scavenging design improvements. As previously discussed, such improvements to existing 2-stroke designs would cost the manufacturer an additional $2 to $6 per engine. Therefore, the Agency estimates an improved 2-stroke design with a catalytic convertor would cost the manufacturer from $8 to $18 per engine. Comments are requested on these cost estimates.

v. Class III, IV and V Proposed Phase 2 $HC+NO_X$ Standard

The Agency is proposing an in-use $HC+NO_X$ standard of 210, 172 and 116 g/kW-hr for Class III, IV and V engines, respectively. As presented in Table 7, the proposed standards would begin in model year 2002, with a requirement that 20 percent of a manufacturer's U.S. sales meet the standards, followed by an increased percentage each year until model year 2005, when 100 percent of a manufacturer's U.S. sales would be required to meet the proposed standards.

The Agency expects the proposed in-use standards can be met primarily through improvements to existing Phase 1 technology 2-stroke engines. As presented previously, the Agency believes improvements to Phase 1 technology 2-stroke engines should result in approximately a 30 percent reduction in the in-use emissions of Phase 1 engines, which would be required to meet the proposed standards.

PPEMA members have indicated the proposed standards would require significant research and development time as well as a large capital investment to change existing production capabilities. The proposed phase-in period plus the lead time anticipated after this rule is finalized will allow manufacturers at least 6 years to make the necessary changes to existing product lines in order to meet the proposed standards, which should accommodate the manufacturers' concerns regarding lead time.

[23] See Item # II–E–08 in EPA Air Docket A–96–55 referencing a meeting between EPA and Honda.

The Agency has not proposed a handheld standard which would require catalyst or 4-stroke technology. The Agency's experience with on-highway technology indicates catalysts and engine technology evolved together to prevent significant in-use deterioration. As previously discussed in the section on the Class I engine standard, publicly available information on bench aged catalysts used on 4-stroke engines has become available in recent years. The Agency requests comment on the relationship between bench aged and typical in-use aged catalyst performance, and all available data on individual catalysts aged under typical in-use conditions experienced by handheld equipment. The Agency requests additional information on the new and in-use emission performance of catalyst-equipped handheld engines. Two engine manufacturers have introduced 4-stroke engines into string trimmer applications. There are likely some applications, such as high power chainsaws, where 4-stroke technology may not be feasible as a power unit because of weight concerns. As previously discussed, the Agency estimates that conversion to 4-stroke designs would cost the manufacturer between $7 and $10 per engine. PPEMA has reported that in 1993 and 1994 the average retail price of a 2-stroke gasoline powered string trimmer or leaf blower was approximately $100, and the average retail price of a chainsaw was approximately $200. PPEMA members, who do not currently manufacture 4-stroke handheld products, have expressed concern regarding what they perceive to be the potential negative impacts on sales which would result from a large increase in engine costs, such as the cost of conversion to 4-stroke technology for handheld engines. While EPA has no independent information on consumer price sensitivity, it is concerned that the higher cost of equipment which would likely result if catalyst or 4-stroke technology were necessitated by a more stringent standard could result in significant financial burden if the industry were to absorb the cost impact or adverse impact on sales if the increase in cost were passed along to the consumer. EPA is also concerned that mandating near term conversion to 4-stroke technology could significantly increase the lead time necessary before implementing the standards and delay the emission benefits of the standards. The Agency requests comment on the market concerns expressed by these engine manufacturers as well as the potential impact on lead time of a more stringent standard and information on the cost to the consumer and in-use emissions performance if 2-stroke engines were required to be equipped with a catalyst.

The Agency believes that during the next several years additional information regarding the in-use performance of new technologies, such as handheld 4-strokes, or traditional 2-strokes equipped with catalysts, may become available, perhaps in response to the CARB Tier 2 program. In addition, EPA recognizes that technological advances and/or cost reductions may occur after promulgation of the Phase 2 rule that could make greater, but still cost-effective reductions feasible in handheld emission levels. The Agency proposes to conduct a technology review to address this possibility. In this review, EPA expects to examine issues including the potential for further reductions from existing 2-stroke engines, stratified charge 2-stroke technology, direct injection 2-stroke injection, the use of catalysts on handheld engines, and the conversion to 4-stroke technology. Following a technical review, the Agency intends to publish a Notice of Proposed Rulemaking in 2001 announcing any possible amendments to the standard levels or other program elements, or EPA's intention to maintain the existing handheld standards or program. The Agency expects that the final rulemaking would be completed by 2002 and, if adopted, Phase 3 standards would be phased in on a percentage basis and over of a period of time similar to Phase 2, beginning no earlier than model year 2007. This schedule is intended to provide a minimum five year period before the implementation of any Phase 3 standards in order to allow manufacturers to recoup their investments in Phase 2 technology and ensure the cost-effectiveness of the Phase 2 program.

The Agency is aware that CARB is considering a Tier 2 standard for all handheld engines of 72 g/kW-hr $HC+NO_X$, which is more stringent than the levels being proposed for the Federal program. CARB has stated this level could be met by the complete conversion of existing 2-stroke technology to 4-stroke technology. The Agency believes the costs and lead time which would be necessary to achieve a 72 g/kW-hr level for a national program could be considerably higher than the program contained in today's proposal. However, as discussed under Section IV.A of this proposal, section 209 of the CAA allows California to set its own standards, considering criteria as they apply to the State of California. However, as discussed below, the Agency requests comment on whether 4-stroke technology for all handheld applications would be appropriate for a Federal program at this time. The Agency requests comment on all aspects of the proposed handheld standards, and on what adjustments to the proposed Federal program might be necessary to accommodate such standards.

d. Proposed California Standards. As mentioned previously, the State of California has proposed standards for both handheld and nonhandheld small SI engines which are considerably more stringent than the standards which the Agency is proposing today. In this proposal, the Agency has noted several reasons why the level of control being considered by California is not being proposed today, including uncertainties regarding cost, the possible impact of potential price increases on consumer sales, and the lead time necessary for the industry should they be required to adopt the required changes in technology nationwide. However, EPA requests comment on the feasibility in the Federal program of requiring such technology as anticipated by the standards being considered by California, the level of emission control which would result, the costs of such technology for a nationwide program, and any impact on lead time necessary to allow the adoption of such levels of control nationwide.

2. $NMHC+NO_X$ Emission Standards for Class I and II Natural Gas Fueled Nonhandheld Engines

EPA is proposing optional separate standards for Class I and Class II natural gas fueled engines only, due to the fact that for these engines methane has very low ozone forming potential, i.e., low reactivity. The total hydrocarbon (THC or HC) emissions from Phase 1 technology 4-stroke gasoline engines is between 5 and 10 percent methane by mass. For natural gas engines, methane is on the order of 70 percent of total HC mass emissions. For natural gas fueled nonhandheld engines, the Agency is proposing an optional $NMHC+NO_X$ standard, as presented in Table 12.

TABLE 12.—NMHC + NO_X EMISSION STANDARDS FOR NATURAL GAS FUELED NONHANDHELD ENGINES

[g/kW-hr]

Engine class	Model year 2001	Model year 2002	Model year 2003	Model year 2004	Model year 2005
Class I	23.0	23.0	23.0	23.0	23.0
Class II	16.7	15.3	14.0	12.7	11.3

These proposed NMHC+NO_X standards have been adjusted so that these standards are of equivalent stringency to the HC+NO_X standards for gasoline fueled engines, i.e., 11.3 g/kW-hr NMHC+NO_X is a deteriorated new engine NMHC+NO_X level, assuming a new engine THC+NO_X level of 9.3 g/kW-hr, a NMHC+NO_X deterioration factor of 1.3, and a new engine split of 54 percent NMHC, 6 percent methane and 40 percent NO_X.

The Agency is proposing that for natural gas fueled engines, the standard be based on the level of NMHC+NO_X reduction which a Phase 2 technology gasoline fueled nonhandheld engine could be expected to meet, not on the performance of a Phase 2 technology natural gas fueled engine. Natural gas fueled engines represent less than 1 percent of annual small engine sales and EPA recognizes that this is a technology that as a matter of environmental policy it may be desirable to encourage. The Agency believes very little environmental benefit would occur from basing this optional NMHC+NO_X standard on the performance of Phase 2 technology natural gas engines. In consideration of the energy and safety factors associated with using natural gas technology rather than gasoline technology, EPA is proposing the NMHC+NO_X standard at a level that gives manufacturers a greater incentive, as a result of the ABT program, to use natural gas technology. The Agency requests comment on this approach, and on whether it poses a meaningful risk of allowing over generation of positive credits in the ABT program.

The NMHC+NO_X standard would require an additional testing burden for natural gas engine manufacturers, because these manufacturers would need an additional emission analyzer to measure the methane content of the exhaust gas. However, because natural gas engine manufacturers have requested this optional NMHC standard, and the Agency does not see any adverse effects for the formation of ozone, the Agency believes it is appropriate for this proposal. EPA is not proposing NMHC + NO_X standards for handheld engines. EPA is not aware of any natural gas fueled handheld applications. Therefore, no NMHC+NO_X standard is needed.

The Agency is aware that CARB may use a NMHC+NO_X standard for all handheld and nonhandheld engine manufacturers. At this time, EPA does not believe an emissions benefit would occur by replicating this action for the Federal program. The Agency would need to adjust all standards downward to maintain equivalent stringency and require all manufacturers to begin testing for methane. If manufacturers of small SI engines were able to selectively target reductions in NMHC as compared to THC, an NMHC standard may be of some value to manufacturers. However, the Agency is not aware of small engine technologies which have this potential, other than natural gas fueled engines, which represent less than 1 percent of annual sales. Therefore, because a national NMHC standard would result in increased testing cost for little or no benefit, the Agency is not proposing NMHC standards for all small engines at this time.

3. CO Emission Standards

In addition to HC and NO_X standards, the Phase 1 final rulemaking (60 FR 34582) put in place a cap on the level of CO emissions from small SI engines. That cap was subsequently modified for Class I and II engines (61 FR 58296). In today's action EPA is proposing that the Phase 1 CO standards be adjusted to reflect in-use standards and to maintain the same level of stringency as afforded by the Phase 1 standards. Specifically, EPA proposes to take the Phase 1 standards and multiply them by the projected CO dfs over the useful lives of the engines to arrive at the Phase 2 in-use CO standards. For Class I and II engines, available data indicates that the df ranges considerably between less than 1.0 and something in excess of 2.0 depending on the engine. For Class III, IV and V engines, available data indicates that the df for CO ranges more narrowly and typically falls between 1.0 and 1.1. Consequently, EPA proposes that the following in-use CO standards in Table 13 apply for the Phase 2 program:

TABLE 13.—IN-USE CO EMISSION STANDARDS FOR SMALL SI ENGINES

[In g/kW-hr]

	Engine Class				
	I	II	III	IV	V
CO Standard (g/kW-hr)	610	610	805	805	603

These CO standards would not be subject to the averaging, banking, and trading provisions of the rule available for nonhandheld engines. Rather, these standards would serve as caps on the CO emissions allowed from all engine families.

EPA is proposing that for Class I and Class II engines, the proposed CO levels would be effective in the 2001 model year for a manufacturer's entire product line. For Class III, IV and V engines, those engine families complying with Phase 2 HC+NO_X levels under the proposed phase-in for HC+NO_X standards for handheld engines would be required to also comply with CO levels on the same phase-in schedule. This seemingly disparate treatment for handheld and nonhandheld is consistent with the other provisions of the program (e.g., phase-in from Phase 1 to Phase 2 for handheld but not for nonhandheld engines) and protects manufacturers from having to have engine families comply with Phase 2 CO requirements prior to those same engine

families being subject to the other Phase 2 requirements.

EPA believes it is appropriate not to go beyond the Phase 1 stringency for CO emissions for two main reasons. First, in most parts of the country CO is primarily a wintertime problem (November through February), while the vast majority of engines covered by this rulemaking are used almost exclusively during the summer months. As a result, most additional CO emission reductions resulting from any increase in the stringency of the standard would not occur at a time when they would provide nonattainment areas with measurable benefit toward meeting the National Ambient Air Quality Standard (NAAQS) for CO.

Second, CO is a diminishing ambient air quality problem.[24] There has been approximately an 80 percent reduction in the number of nationwide exceedances of the NAAQS for CO since the Clean Air Act Amendments of 1990, and this trend is expected to continue without further tightening of CO requirements for small SI engines. Many of the CO nonattainment areas in 1990 have already been redesignated as being in attainment, many more are in the process of requesting redesignation, and many of those not currently requesting redesignation are expected to before the time the Phase 2 standards would go into effect.

Taken together, these two reasons indicate that it does not make sense to pursue more stringent CO standards at the national level for small SI engines at this time. Should this situation change, EPA can take appropriate action at that time.

While EPA does not believe it is appropriate at this point in time to pursue more stringent CO standards for small engines, we nevertheless do believe it is important to maintain the current level of stringency for CO. As discussed in the Phase 1 rulemaking, uncontrolled small SI engines do contribute approximately 1 percent of the emissions toward the national winter CO inventory.[25] As a result, while emissions from small SI engines represent a small piece of the inventory, they are significant. Furthermore, many small SI engines are used outside in close proximity to the equipment users, raising possible concerns over user health effects. A recent National Institute of Occupational Safety and Health Alert[26] raised serious health concerns regarding the operation of gasoline powered engines inside buildings or other partially enclosed spaces due to potential CO poisoning. The NIOSH Alert contains a list of suggested practices for the proper use of equipment powered by small gasoline engines which should be followed. The NIOSH alert does not recommend a more stringent CO standard for gasoline powered small SI engines.

Even without a more stringent CO standard for Phase 2, CO emissions from small engines will likely continue to decrease as manufacturers improve production quality (reduce tolerances and variability) and improve durability to meet the more stringent $HC+NO_X$ standards proposed for Phase 2. To the extent that this does occur, and Phase 2 engines are shown to clearly achieve the Phase 2 CO emission standards, the proposal would allow EPA the flexibility to waive the reporting of CO emissions in the future, thereby decreasing the compliance costs associated with the program as it transitions to one more focussed on $HC+NO_X$ emissions. EPA requests comment on this aspect of the proposed rule. To the extent that engines do exceed the Phase 2 CO emission standard, EPA could also consider in the future setting a more stringent CO standard, taking into account cost, lead time, energy and safety factors as required by the Clean Air Act.

4. Useful Life Categories.

Section 213(a)(3) of the Clean Air Act provides that regulations promulgated for nonroad engines shall apply to the useful lives of the engines. EPA is proposing that engine families meet the proposed Phase 2 emission standards throughout their useful lives, a requirement new to this Phase 2 program for small SI engines. Small SI engines can experience a wide range of useful lives, depending upon the applications and usage patterns, even within a single engine class. EPA believes that the three useful life categories each for Class I and Class II engines, and the two useful life categories each for Class III, IV and V engines proposed today would provide a means of sorting engines for regulatory purposes to reflect expected usage, without establishing an overly complex system of useful life categories. So that consumers have the best information available as to the emission durability of the engine being purchased, EPA is proposing that an indication of the useful life hours be included on the engine's certification label. Finally, in order to ensure that the air quality benefits anticipated by the proposed rule will in fact accrue, EPA is proposing that manufacturers select the useful life category most appropriate for the engine family. This section discusses the useful life categories proposed today for nonhandheld and handheld engines, proposed provisions for inclusion of the useful life hours on the engines' label, and proposed provisions relating to manufacturer selection of the appropriate useful life category.

a. Useful Life Hours. EPA is proposing three useful life categories each for Class I and Class II nonhandheld engines, and two useful life categories each for Class III, IV and V handheld engines, as shown in Tables 14 and 15. These categories are based on information of the ranges of useful lives experienced by the engines in these Classes.

TABLE 14.—NONHANDHELD ENGINE USEFUL LIFE CATEGORIES

[Hours]

	Category C	Category B	Category A
Class I ...	66	250	500
Class II ..	250	500	1000

TABLE 15.—HANDHELD ENGINE USEFUL LIFE CATEGORIES

[Hours]

	"Residential"	"Commercial"
Class III	50	300
Class IV ...	50	300
Class V	50	300

EPA is aware that the small SI engine and equipment industry is comprised of a wide variety of equipment with a wide range of usage patterns. Handheld and nonhandheld engines are designed for many different types of applications, with each application having specific design criteria, resulting in different expected lifetimes. The most obvious example of these differences is the distinction between commercial (or professional) operators and residential (or home) operators. In general, commercial operators, such as commercial lawn-care companies or rental companies, expect to accumulate high numbers of hours on equipment on

[24] See "National Air Pollution Emission Trends, 1900–1995," EPA–454/R–96–007, October 1997.

[25] Nonroad Engine and Vehicle Emission Study—Report, U.S. EPA, November 1991, EPA Air Docket A–91–24, Item #II–A–10.

[26] "Preventing Carbon Monoxide Poisoning from Small Gasoline-Powered Engines and Tools," Department of Health and Human Services Publication #96–118. Information on how to obtain this publication is contained in EPA Air Docket A–96–55, Item #II–B–1.

an annual basis, while a residential operator, such as a residential chain saw owner, expects to accumulate a relatively low number of hours on an annual basis. Several organizations have investigated the issues related to average life and annual use of equipment powered by small SI engines, including industry organizations, the California Air Resources Board, and EPA (see Chapter 3 of the Draft RSD for a summary of several of these reports).

On the nonhandheld engine side, a 1992 phone survey of over 6,000 households collected information on usage rates for consumer-owned walk-behind and ride-on mowers, showing that on average consumers accumulated 100 hours of use on walk-behind mowers (typical of Class I ''residential'' engines) over a five year period of time, and 207 hours of use on ride-on mowers over a six year (five and six years being the estimates of when one-half of the mowers are no longer in service, or ''B–50'' life,[27] for walk-behind and ride-on mowers, respectively).[28] On the handheld side, a 1990 study demonstrated the large disparity between consumer and professional use, with consumer equipment expected life time estimates ranging from 53 to 80 hours, and professional equipment expected life time estimates ranging from 225 to 536 hours.[29] A 1990 study of both nonhandheld and handheld equipment in residential and commercial applications showed a large disparity in average lifespan between equipment used by residential and commercial applications, with residential equipment implied average lifespan estimates ranging from 35 to 394 hours, and commercial equipment implied average lifespan estimates ranging from 274 to 3024 hours.[30]

Based on these sources of information, EPA is proposing for regulatory purposes three useful life categories for nonhandheld engines, and two useful life categories for handheld engines. The determination of which useful life category is appropriate for a specific engine is largely dependent on its intended application. For example, Class II engines going into a consumer ride-on mower application may most appropriately have a regulatory useful life of ''250 hours.'' The longer useful life categories would be appropriate for engines placed into ''commercial'' types of usage. For example, a Class II engine going into a ''commercial'' generator set application, may most appropriately have a regulatory useful life of 1000 hours. EPA believes that a number of features of engine and/or equipment design are reflective of the intended or expected usage of the engines. As discussed below, manufacturers would be expected to have information on the intended application of their engines which support their useful life category selections.

EPA received comments on the ANPRM arguing that the Class I shortest useful life (66 hours) is too short, and that the minimum lifetime compliance period for Class I engines should be set at 120 or 125 hours to reflect an average six year life with an average use of 20 hours a year for mower engines. While the Agency agrees that 120 or 125 hours may be more representative of the ''B–50'' life of residential Class I engines, EPA selected 66 hours as sufficient to determine the emission durability performance characteristic of engines in this Class I design category. EPA did so under the assumptions that certifying Class I engines to 66 hours rather than 120 or 125 hours would still provide adequate assurance of in-use emission performance over the life of the engines without the added burden which would be incurred with testing to the higher hours. If this proves not to be the case, EPA would likely have to adjust the useful life, deterioration factors and standards accordingly to provide such assurance. EPA requests comment on the tradeoff between compliance demonstration and in-use compliance assurance associated with the 66 hour useful life proposal.

For handheld engines, the 50 hours category reflects ''residential'' usage, and the 300 hour category reflects ''commercial'' usage. For example, a trimmer in residential use may most appropriately be certified to a regulatory useful life of 50 hours, while a chainsaw in commercial use may more appropriately be certified to a useful life of 300 hours. Again, EPA believes that a number of features of engine and/or equipment design are reflective of the intended or expected usage of the engines. As discussed below, manufacturers would be expected to have information in support of their useful life category selections for handheld engines.

EPA received comments on the ANPRM arguing that an intermediate useful life category for some handheld products might be appropriate, for example, in the case of products with intended useful lives of 150 hours. EPA believes that the 50 and 300 hour useful life hour categories are sufficient to distinguish residential and commercial usage, respectively. EPA has not received additional data in support of an intermediate useful life, and believes that it is desirable to avoid a proliferation of useful life categories. Thus, EPA is not proposing an intermediate useful life category for handheld engines. However, EPA requests comment and data on the issue of whether an intermediate category is appropriate, what would be the appropriate hours for an intermediate category, and what features of an engine with an intermediate useful life might distinguish it from engines more appropriately certified to a 50 or a 300 hour useful life.

EPA also received comments on the ANPRM regarding the use of ''residential'' and ''commercial'' to indicate the useful life for handheld engines. Several commenters suggested that the terms ''residential'' and ''commercial'' are potentially misleading to consumers of handheld engines. One commenter was concerned that dealers would have the responsibility to ''qualify'' a buyer of equipment, and in the event of injury, the dealer would be at risk for having sold the wrong buyer the wrong equipment. This commenter suggested instead that EPA categorize engines in terms of power, size, weight, or other factors that clearly would not risk making dealers think they have a responsibility to classify the expertise of the buyer. A second commenter suggested EPA could base the useful life on technical properties of engines such as ''half crank'' and ''full crank'' rather than ''commercial'' and ''residential.'' A third industry commenter suggested that it is unnecessary and unwise for manufacturers to differentiate handheld engine families by the terms ''residential'' and ''commercial,'' since these terms are not airtight, and in fact have substantial overlap for some models. This commenter suggested using useful life categories ''A'' and ''B'' instead, where a Category A engine (or

[27] The ''B–50'' is the point at which one-half of the equipment are no longer in service. For regulatory purposes, EPA anticipates that engines would be certified to a ''useful life'' which most accurately reflects this ''B–50'' value. Thus, for a Class II engine family certified to the 250 hour useful life category, half of those engines would be expected to no longer be in service after 250 hours.

[28] ''Useful Life, Annual Usage, and In-Use Emissions of Consumer Utility Engines,'' memo from the OPEI CAAC In-Use Working Group to Ms. Gay MacGregor, U.S. EPA, EPA Air Docket A–96–55, Item # II–D–13.

[29] ''A 1989 California Baseline Emissions Inventory for Total Hydrocarbon and Carbon Monoxide Emissions from Portable Two-Stroke Power Equipment,'' prepared by Heiden Associates, Inc., for the Portable Power Equipment Manufacturers Association, July 24, 1990, available in EPA Air Docket A–96–55, Item #II–D–14.

[30] ''Utility Engine Emission report,'' prepared by Booz, Allen and Hamilton Inc., for the California Air Resources Board, November 20, 1990, available in EPA Air Docket A–93–25, Item #II–I–02. These implied average lifespan estimates were calculated from average annual use and estimated ''B–50'' values.

engine family) would be ''a handheld engine model or family designated by the manufacturer, at the time of certification, as an engine intended primarily for commercial use. Such an engine or family would be subject to testing requirements and warranty obligations for its regulatory useful life. The regulatory useful life of a Category A engine shall be 300 hours.'' A Category B engine (or engine family) would be ''an engine model or family designated by the manufacturer, at the time of certification, as an engine intended primarily for residential use. Such an engine or engine family would be subject to testing requirements and warranty obligations for its regulatory useful life. The regulatory useful life of a Category B engine shall be 50 hours.''

EPA agrees that commercial and residential are not airtight terms. However, EPA is proposing the following definitions for these terms and requests comments on these definitions. A ''residential engine'' would mean a handheld engine for which the engine manufacturer makes the statement to EPA that such engine and the equipment it is installed in by the engine manufacturer, where applicable, is not produced, advertised, marketed or intended for commercial or professional usage. A ''commercial engine'' would mean a handheld engine that is not a residential engine.

In response to the commenter's concerns about dealer responsibilities, EPA believes that inclusion of the terms ''residential'' and ''commercial'' should not pose a risk to dealers, and that the proposed duty of engine manufacturers to certify and label their engines for purposes of emissions durability would not transfer into a duty on the dealer's part to restrict sale of ''commercial'' products to ''residential'' purchasers. EPA requests comment on all aspects of the proposal for handheld useful life categories and the proposed definitions of ''commercial'' and ''residential'', or other alternative designations for the 50 and 300 hour useful life categories. In particular, EPA requests comment on eliminating the use of residential and commercial as regulatory terms, and simply retaining the ''50'' and ''300'' hour useful life categories.

In summary, the Agency's analysis indicates there is a large disparity in the useful life of engines within all five engine classes. The Agency is interested in striking a compromise between the need for representative useful lives, and the reality that different engines within a single class are designed for vastly different usage patterns. For this reason the Agency believes it is appropriate to have multiple useful life categories, but the Agency believes there should be a limit on the number of categories, to prevent an overly complex categorization system. Based on the information presented in this section, the Agency believes the proposed useful life categories presented in Tables 14 and 15 are appropriate. The Agency requests comment on these proposed useful life categories.

b. Useful Life on the Engine's Label. EPA is proposing that manufacturers would indicate their selection of useful life category by adding information concerning the engine's ''emissions compliance period'' to the engine's label. This information would be an important tool for consumers and purchasers of engines. EPA anticipates that manufacturers will use the useful life hours of the engine as a marketing tool. For example, a manufacturer might advertise that an engine family is emissions durable to 1000 hours, or is certified by EPA as a ''commercial'' engine. Thus, the requirement that manufacturers indicate the emissions compliance period on the engine's label would also have potential as a marketplace mechanism to help encourage manufacturers to select longer useful life categories.

For nonhandheld engines, EPA is proposing that the manufacturer would add to the compliance statement on the engine's label, ''EMISSIONS COMPLIANCE PERIOD: [useful life] HOURS.'' In addition, consistent with the ANPRM, EPA is proposing as an option for nonhandheld manufacturers, rather than indicating the useful life in hours, the manufacturer may add to the compliance statement on the engine's label ''EMISSIONS COMPLIANCE PERIOD: CATEGORY [A, B, OR C]. REFER TO OWNER'S MANUAL FOR FURTHER INFORMATION.'' In this case, the owner's manual would be required to contain the statement: ''This engine has been shown to meet emission standards for a period of [useful life] hours.'' EPA is proposing this option in light of concerns voiced by manufacturers that putting the useful life of the engine, in hours, on the engines' label, could be misleading to consumers in that the emissions compliance period may or may not represent the expected lifetime of the engine. Nevertheless, EPA believes that putting the engine's useful life in hours on the engine's label could serve as an important mechanism to educate and inform consumers as to the emissions durability of the product they are considering. EPA requests comment on whether the option to allow a manufacturer to instead designate the useful life by using Category [A, B or C] on the engine's label, with information on the emissions compliance period in hours in the owners manual, is an effective substitute to achieve this goal of educating consumers.

In the case of handheld engines, the manufacturer would add to the compliance statement on the engine's label, for residential engines, ''EMISSIONS COMPLIANCE PERIOD: 50 HOURS,'' and for commercial engines, ''EMISSIONS COMPLIANCE PERIOD: 300 HOURS.'' Again, EPA believes that including the useful life, in hours, on the engine's label, is an important mechanism for educating consumers as to the emissions durability of the engine. EPA requests comment on whether requiring the designation ''EMISSIONS COMPLIANCE PERIOD: 50 RESIDENTIAL HOURS,'' or ''EMISSIONS COMPLIANCE PERIOD: 300 COMMERCIAL HOURS'' would be more effective as the proposed requirement to only include the emissions compliance period, by hours, on the label. Similar to the option for nonhandheld engines, EPA is requesting comment on an option which would allow handheld engine manufacturers to use label statements which include a useful life category code (such as A, B, or C) and referencing the owner's manual to determine what the code means.

c. Manufacturer selection of useful life category. One of EPA's goals in the proposed Phase 2 program is to assure that engines are emissions durable for their useful lives, so that the air quality benefits anticipated for the rule are in fact achieved. EPA believes that the selection of the appropriate useful life category for an engine family is essential to achieving this goal. An appropriate useful life selection is important from an emissions compliance durability perspective, in terms of assuring that engines meet the appropriate emissions standards for the period of time that they are expected to be in service. However, EPA is concerned that since the useful life of engines, in hours, would be included in certification credit calculations for nonhandheld engines, and in-use credit calculations for handheld engines, and since these credits have real value, a manufacturer may have an important incentive to choose a useful life category for a particular family to maximize the manufacturer's credit balance, rather than to reflect the most accurate useful life selection for that family.

For example, in the case of a nonhandheld engine family whose FEL is significantly below the standard and is therefore generating substantial

credits, a manufacturer could generate four times as many certification credits if that family were certified to 1000 hours rather than 250 hours. Similarly, for a handheld engine family whose in-use test results are well below the standard, that family could generate six times as many in-use credits if certified to 300 hours rather than 50 hours. However, in cases where the credit generating engine is not expected to be used for 1000 hours (or 300 hours, in the handheld example), those clean air benefits may never be realized if the typical engine for that family is scrapped substantially before reaching 1000 hours of use. The ''surplus'' credits might be used to make up for higher emissions of other engine families even though the credits were generated based on an overestimation of the useful life. On the other hand, for engines which are emitting above the standard, the manufacturer might have an incentive to certify to the shortest useful life period, to minimize the credits needed to offset that engine's higher emissions. This could become an even greater concern if that engine is in fact expected to be placed into an application which experiences longer hours of use than indicated by the selected useful life category.

From an air quality perspective, a consumer education perspective, as well as from a marketing or competitive perspective, EPA believes that selection of an appropriate useful life is important, and certifying an engine to an inappropriate or inaccurate useful life presents serious problems. However, no one technical feature of an engine model would necessarily dictate that it be placed in one or another useful life category, and the distinctions between the useful life categories proposed today are not based on objective technical differences between engines (e.g., half crank, full crank).

EPA also recognizes that historically engine manufacturers have not always tracked the sale of engines, and may not have been able to ascertain the type of application in which an engine is used. On the other hand, EPA is also aware that in many cases manufacturers are able to determine the end application for a particular engine, and that in many cases an engine is designed for a specific end use.

Manufacturers, stressing that the nonhandheld SOP, as reflected in the March 1997 ANPRM, discussed useful life selection as being solely at the manufacturer's discretion, have maintained that marketing and competitive concerns would ensure that manufacturers select the most accurate and appropriate useful life category, and that additional requirements that manufacturers support their useful life selections are not needed. EPA understands that manufacturers have strong views regarding the nonhandheld SOP's discussion of useful life selection. However, the SOP indicates that it would be appropriate to certify engines to longer useful life categories when they are intended for longer hours of operations in-use. The signatories of the SOP further recognized that the greater use of an engine during the ozone season directly relates to its impact on air quality. In addition, since the signing of the SOP, EPA has become concerned that a number of various incentives are at play for the manufacturer when it comes to selection of a useful life category for an engine, including the requirement to demonstrate the engines' emissions durability, testing requirements and warranty obligations, generation or use of emissions credits, consumer education, and marketing and competitive issues. EPA is concerned that a manufacturer might inappropriately select useful life categories for certification so as to put itself in a position of competitive advantage compared to other manufacturers that fairly and accurately select useful life categories, and that the risk of this could cause other manufacturers to follow suit in order to remain competitive.

Therefore, to assure that no individual manufacturer is unfairly biasing its useful life selections in order to take advantage of the credits programs, EPA is proposing that all manufacturers would declare the applicable useful life category for each engine family at the time of certification, and would be required to retain at their facilities data appropriate to support their selections of useful life categories, to be furnished to the Administrator upon request. The manufacturer would be required to select the category which most closely approximates the actual useful lives of the equipment into which the engines are expected to be installed. The rule would also require manufacturers to have data supporting their selections sufficient to show that the majority of engines or a sales weighted average of engines of that family are used in applications having a useful life best represented by the chosen category. EPA would not expect to request such data unless there is evidence of problems with a manufacturer's useful life selections. Such problems might be indicated, for example, if all or the major portion of a manufacturer's credit-generating engine families were certified to the longest useful life categories, or if all or the major portion of a manufacturer's credit-using engine families were certified to the shortest useful life categories.

EPA is proposing that data in support of a useful life category selection could include: surveys of the life spans of the equipment in which the engines are installed; engineering evaluations of field aged engines to ascertain when engine performance deteriorates to the point where usefulness and/or reliability is impacted to a degree sufficient to necessitate overhaul or replacement; warranty statements and warranty periods; marketing materials regarding engine life; failure reports from engine customers; and engineering evaluations of the durability, in hours, of specific engine technologies, engine materials, or engine designs. EPA expects that retaining these types of data at their facilities would not be unduly burdensome to manufacturers, and that in most cases these types of data would be information that the manufacturer already has on hand. EPA requests comment on these types of data and their usefulness in helping to distinguish the most accurate and appropriate useful life category for a particular engine family.

Finally, EPA proposes that in the event that EPA reviewed data provided by the manufacturer in support of the useful life selection, and upon review of that and such other information available and discussion with the manufacturer EPA believed that a different useful life category would be more appropriate, the Agency would work with that manufacturer to determine a more appropriate selection of useful life categories. EPA requests comment on all aspects of this proposal.

5. Certification Averaging, Banking and Trading Program

With today's notice, EPA is proposing a certification averaging, banking and trading (ABT) program for nonhandheld small SI engines. The proposed program would be the first ABT program for nonhandheld small SI engines. The Phase 1 rule did not include an ABT program due to uncertainties regarding the in-use emission levels of engines certified to the Phase 1 standards. (The Phase 1 standards apply to ''new'' engines and do not require any determination of in-use deterioration as the proposed Phase 2 standards do.)

The Agency is not proposing a certification ABT program for handheld engines at this time. Based on the levels of the proposed standards and discussion with engine manufacturers, EPA does not believe a certification ABT program is warranted or desired for

handheld engines. The Agency specifically requests comment on this issue. As discussed later, EPA is proposing an in-use credit program for handheld small SI engines that would be used to address potential in-use emission exceedances. The reader is directed to Section IV.D.3 of today's notice for further details of the proposed in-use credit program for handheld engines.

The nonhandheld small SI engine ABT program proposed today is a market-based incentive program designed to provide an incentive for early introduction of clean technologies, and provides engine manufacturers with additional flexibility for meeting the proposed $HC+NO_X$ standards, while protecting the environmental benefits of the program. Implementation of the program should also reduce the cost of controlling $HC+NO_X$ emissions from nonhandheld engines.

EPA believes that the proposed ABT program is consistent with the statutory requirements of section 213 of the Clean Air Act. Although the language of section 213 is silent on the issue of averaging, it allows EPA considerable discretion in determining what regulations are most appropriate for implementing section 213. The statute does not specify that a specific standard or technology must be implemented, and it requires EPA to consider costs, lead time, and other factors in making its determination of ''the greatest degree of emissions reduction achievable through the application of technology which the Administrator determines will be available.'' As noted in the proposal for Tier I nonroad compression-ignition engine standards, which also contained a certification ABT program, section 213(a)(3) also indicates that EPA's regulations may apply to nonroad engine classes in the aggregate, and need not apply to each nonroad engine individually (see 58 FR 28809, May 17, 1993).

At the same time, EPA believes that any ABT program must be consistent with the statutory requirement that standards reflect the greatest degree of emission reduction achievable through the application of available technology. EPA believes the proposed ABT program is fully consistent with such a requirement. The proposed $HC+NO_X$ emission standard of 25.0 g/kW-hr for Class I engines and the series of declining $HC+NO_X$ standards for Class II engines were developed under the assumption that an ABT program would take effect at the same time as proposed standards, once adopted. In fact, as discussed earlier in Section IV.A.1, the conclusion that the proposed standards for Class I and Class II engines are feasible for all affected nonhandheld engines within the time available to manufacturers, is based in part on the availability of the proposed ABT program. In addition, the flexibilities provided to engine manufacturers via an ABT program should allow compliance with the proposed standard at a lower cost than may otherwise be the case. It is also possible that ABT allows the standard to be implemented sooner since, for example, not every family may need to be redesigned to meet the lower standard. If each engine family had to comply with the standards, the standards might be higher and/or the standards might need to be implemented later.

As noted above, the three aspects of the proposed ABT program are averaging, banking, and trading. Averaging means the exchange of emission credits among engine families within a given engine manufacturer's product line. Averaging allows a manufacturer to certify one or more engine families at levels above the applicable emission standard. However, the increased emissions would have to be offset by one or more engine families within that manufacturer's product line certified below the same emission standard, such that the average emissions in a given model year from all the manufacturer's families (weighted for engine power, useful life, load factor, and sales) are at or below the level of the emission standard. Averaging results would be calculated for each specific model year and, as proposed today, would be calculated for each engine class. The mechanism by which this is accomplished would be certification of the engine family to a ''family emission limit'' (FEL) set by the manufacturer, which may be above or below the standard. An FEL that is established above the standard could not exceed an upper limit specified in the ABT regulations. Once an engine family is certified to an FEL, that FEL would become the enforceable emissions limit used for compliance purposes and each engine in the engine family would be subject to compliance with the FEL.

Banking means the retention of emission credits by the engine manufacturer generating the credits for use in future model year averaging or trading. EPA believes that banking, including today's proposed provision which would allow early banking under certain conditions during the two years prior to implementation of the standards, would improve the feasibility of meeting standards by encouraging the development and early introduction of advanced emission control technology, allowing certain engine families to act as trailblazers for new technology. This can help provide valuable information to manufacturers on the technology prior to manufacturers needing to apply the technology throughout their product lines. An incentive for early introduction arises because the banked credits could subsequently be used by the manufacturer to ease the compliance burden of new, more stringent standards.

Trading means the exchange of emission credits between engine manufacturers which then can be used for averaging purposes, banked for future use, or traded to another engine manufacturer. Trading can be advantageous to smaller manufacturers who might have limited opportunity to optimize their costs through the use of averaging. Trading can also be advantageous to larger manufacturers because extending the effective averaging set through trading can allow for overall optimization of costs across manufacturers.

EPA is proposing that participation in the proposed ABT program for Phase 2 nonhandheld small SI engines would be voluntary. For those manufacturers who choose to utilize the program, compliance of individual engine families with their FELs would be determined and enforced in the same manner as compliance with the emission standards in the absence of an ABT program. In addition, except where specifically permitted in the case of production line testing failure (see section IV.D.2. of today's notice), the final number of credits available to the manufacturer in each engine class at the end of a model year after considering the manufacturer's use of credits from ABT would have to be greater than or equal to zero. Specific elements of the proposed ABT program for nonhandheld small SI engines are discussed below.

a. Calculation of Credits. Credits would be calculated as a function of the difference between the applicable Phase 2 emission standard and the FEL, the power, the useful life, the load factor, and the number of eligible engines sold of the engine family participating in the program. (Since the standards are expressed in terms of grams/kW-hour, the ''power'' and ''load factor'' variables are included to allow averaging across engines designed to different power.) EPA would expect manufacturers to follow the regulations for establishing its engine families and not disaggregate their families into multiple families or combine their existing families into fewer families to maximize credit generation or minimize credit usage.

EPA is proposing the following equation for calculating the emission credits from a given engine family, whether generating positive or negative credits.

Credits=(Standard − FEL)×(Power)×
(Useful Life)×(Load Factor)× (Sales)

''Standard'' represents the applicable Phase 2 emission standard as proposed by EPA. ''FEL'' is the family emission limit for the engine family as established by the manufacturer. ''Power'' represents the engine's maximum modal power produced during the certification test cycle. For those engine families that contain more than one configuration with different power ratings, EPA is proposing that the ''Power'' term be the sales-weighted maximum modal power determined across all configurations within the engine family. EPA assumes manufacturers know the general power characteristics of each of their engine configurations they are producing, and therefore, determining the power information necessary for the ABT calculations will not place any additional testing burden on manufacturers. EPA requests comment on this assumption.

''Useful Life'' is the useful life category to which the engine family is certified, and represents the period of time for which the manufacturer is responsible for compliance with the emissions standards. ''Load Factor'' refers to the fraction of rated power at which the engine operates in use, on average. For the two main certification test cycles, referred to as cycle ''A'' and cycle ''B'', which EPA believes represent typical in-use operation, a load factor of 0.47 is proposed. For alternative test cycles, as approved by EPA, the load factor would need to be calculated based on the characteristics of the test procedure as described in the proposed regulations.

''Sales'' represents the eligible number of Phase 2 engines sold in the United States in the applicable model year, excluding those engines subject to California regulations. Manufacturers would be allowed to use sales projections for initial certification. However, actual sales based on the location of the point of first retail sale (for example, retail customer or dealer) would have to be submitted at the end of the model year to verify end-of-year compliance. The Agency is proposing that manufacturers exclude engines subject to California's emission standards from the estimates of eligible engine sales because California will likely require all engines sold in California to meet its own tighter $HC+NO_X$ standards. If California engines were included, then the credits generated by California sales would allow more engines with higher emission rates to be sold in states outside of California. This would detract from the goals of the Phase 2 program, and possibly undermine the emissions reductions expected to be achieved by the program throughout the country. Engines sold outside of the United States, including Canada and Mexico, would also be excluded from the manufacturer's estimates of sales unless those engines are subsequently imported back into the United States in a new piece of nonhandheld equipment.

Because only those engines sold in the United States, excluding engines subject to California's standards, would be included in the ABT program, manufacturers would need to determine the number of such engines sold each year to yield accurate estimates of credit generation and usage. Due to the difficulty in tracking point of first retail sales in the nonhandheld market compared to other markets (e.g., the on-highway segment where a more direct engine and vehicle distribution system exists), EPA is requesting comments on alternative methods manufacturers could use to determine their eligible sales for credit calculations. One possible option would be to allow engine manufacturers to query their customers, on an annual basis, to ascertain the percentage of Phase 2 engines of each family that constitute eligible sales. Based on the results of the query, the Agency could allow manufacturers to extrapolate those results, assuming they received responses sufficient to cover some high percentage of their sales, say 90 percent or more, to its total sales of engines in the United States. The Agency is open to considering other alternative methods for tracking engines for credit calculation purposes that provide high levels of confidence that eligible sales are accurately counted. EPA specifically requests comments on such alternatives and other information that would further address the Agency's concerns that eligible sales estimates be as accurate as possible. In addition, the Agency requests comments on appropriate methods for estimating the export of engines and the sales of engines subject to California's standards, since one method for estimating eligible sales for ABT purposes could be to deduct these two groups from total sales.

As discussed in Section IV.E of today's notice, EPA is proposing several compliance flexibility provisions for engine manufacturers and equipment manufacturers that would allow the limited use of Phase 1 engines in the Phase 2 time frame. To avoid penalizing manufacturers that produce engines to be used under the proposed flexibility provisions, EPA is proposing that manufacturers exclude such engines from the ABT program calculations. In other words, engine manufacturers would not be required to use credits to certify these Phase 1 engines used for the proposed flexibility provisions even though they would likely exceed the proposed Phase 2 standards.

Another proposed flexibility provision described in Section IV.E of today's notice would allow engine manufacturers to certify beyond the 2005 model year Class II side-valve engine families with annual sales of less than 1,000 units to an $HC+NO_X$ cap of 24.0 g/kW-hr. For such engine families, EPA is proposing that manufacturers do not need to include such families in the ABT program calculations for 2005 and later model years. For the interim years, 2001 through 2004, a manufacturer could also exclude Class II side-valve engine families with annual sales of less than 1,000 units from the ABT program calculations as long as the deteriorated $HC+NO_X$ emission level of the engine is less than 24.0 g/kW-hr. Class II side-valve engine families with annual sales of less than 1,000 units that are certified above the 24.0 g/kW-hr $HC+NO_X$ level must be included in the manufacturers' ABT calculations during the interim years.

EPA is proposing an upper limit on the level of emissions allowed from those engine families a manufacturer wishes to include in the ABT program. Under the proposal, manufacturers would not be allowed to certify engines that have FELs above the upper limits described below. Typically, when EPA adopts an ABT program, the upper limit is set at the level of the previous standard. However, because the Phase 1 standards did not require manufacturers to take into account deterioration over the useful life of the engine as the proposed Phase 2 standards do, EPA believes it is appropriate to use the Phase 1 standards as the basis for calculating the upper limits and apply a deterioration factor to determine the equivalent deteriorated level of the Phase 1 emission standards. Based on the predominant side-valve engine technology certified under the Phase 1 program, EPA estimates that a typical Phase 1 engine would have emissions at the end of the useful life period about twice its new engine emission level.[31]

[31] See ''Summary of EPA Analysis Regarding Upper Limits for Phase 2 Averaging, Banking &

Continued

Therefore a deterioration factor of 2.0 is appropriate for estimating the equivalent useful life level of engines designed to meet the Phase 1 standards. Based on the Phase 1 $HC+NO_X$ standards and a deterioration factor of 2.0, EPA is proposing $HC+NO_X$ upper limits of 32.2 g/kW-hr for Class I engines and 26.8 g/kW-hr for Class II engines. Therefore, a manufacturer would be allowed to certify an engine family only if the $HC+NO_X$ FEL were at or below these proposed levels (and only if they had the appropriate number of credits to offset the family's credit needs). For families not participating in the ABT program, each family must comply with the standard which in effect is an analogous upper limit. EPA requests comment on the appropriateness of the proposed upper limits for engine families included in the ABT program.

Due to concerns over the amount of credits manufacturers could accumulate, as described below, EPA is proposing a declining set of caps on how high the sales-weighted average level of $HC+NO_X$ FELs could be for Class II engine families beginning in 2005. Based on the certification information of Phase 1 nonhandheld engines submitted by manufacturers to EPA and assumptions about typical deterioration factors and compliance margins, it appears that some engine manufacturers have the potential to earn significant credits from their Class II engines prior to the 2005 model year. (Because the proposed emission standard for Class I engines assumes side-valve technology and because most Class I engines are expected to remain side-valve technology, it does not appear that there would be the same potential for significant credit generation by Class I engine manufacturers.) Manufacturers who adopt OHV technology earlier than anticipated by the proposed Class II phase-in standards appear best positioned to accumulate significant credits. The ability to generate credits during the transition years would occur primarily because the typically lower-emitting OHV engines could earn credits up to the proposed applicable model year standards (which, as noted earlier, would decline for each model year between 2001 and 2005 and assume an industry changeover to the cleaner OHV engines from the higher-emitting side-valve engines).

The environment benefits when a manufacturer produces engines which, on average, are cleaner than required during the transition years. However, EPA is concerned that some manufacturers, because their current product line is predominantly made up of OHV technology, would be able to accumulate significant credits during the phase-in years without any additional effort to improve emission performance. These credits could be, in turn, used by such manufacturers beginning in 2005 to, in effect, delay the need for that manufacturer to produce engines meeting the proposed 2005 model year standard. This action could put such manufacturers in a competitively advantageous position compared to manufacturers who did not have substantial credits and therefore needed to produce a product line which, on average, met the 2005 model year standard. Such action could similarly undermine the goal of this rule (and the SOP) to have 100 percent OHV technology (or similar technology meeting the 2005 model year standards) in place across the industry for Class II by 2005.

In order to ensure that this transition to cleaner technology occurs by the 2005 model year and to minimize the risk of credit ''build-up'' resulting in a delay of conversion to OHV or OHV-comparable technology, EPA is proposing that a manufacturer's sales-weighted average of Class II $HC+NO_X$ FELs may not exceed 13.6 g/kW-hr in 2005, 13.1 g/kW-hr in 2006, and 12.6 g/kW-hr in 2007 or later. EPA believes this approach would ensure that Class II engines are converted to OHV or OHV-comparable technology by roughly 2005 while still encouraging the early introduction of cleaner, more durable technology and ensuring that manufacturers have the flexibility they need to comply with the proposed standards. EPA requests comment on the proposed caps and alternative approaches that would ensure the introduction of OHV or OHV-comparable technology by approximately 2005 while maintaining the flexibility offered to manufacturers by ABT and the encouragement to pull ahead cleaner, more durable technology.

As described earlier, EPA is proposing separate $NMHC+NO_X$ standards for natural gas-fueled engines which are intended to be as stringent as the proposed $HC+NO_X$ standards for the remaining nonhandheld small SI engines. All credit calculations for natural gas-fueled engines would be calculated against those standards. In addition, because the proposed standards are equivalent in stringency, and the market for nonhandheld natural gas-fueled small SI engines is extremely small (i.e., less than 0.1 percent of current nonhandheld sales), EPA is proposing to allow manufacturers to freely exchange $NMHC+NO_X$ credits from nonhandheld engines fueled by natural gas with $HC+NO_X$ credits from nonhandheld engines fueled by fuels other than natural gas in the ABT program.

b. Life of Credits. For all credits generated by Class I and Class II engines under the certification ABT program, EPA is proposing an unlimited credit life. EPA believes that unlimited life for these credits will promote the feasibility of the proposed Phase 2 Class I and Class II standards because it increases the value of these credits to the manufacturer by providing greater flexibility for the use of the credits. It is consistent with the general emission reduction goal of ABT programs, not only because of the increased manufacturer incentive but also because it reduces the incentive for manufacturers to use their credits as quickly as possible. As a result, unused credits, which are extra emission reductions beyond what the EPA regulations require, may remain off the market longer. It should be noted that EPA would expect to reconsider the appropriate life of Phase 2 emission credits in connection with any post-Phase 2 rulemaking for nonhandheld engines.

c. Early Use of the ABT Program. EPA is proposing that manufacturers be allowed to use the ABT program prior to implementation of the Phase 2 standards to provide an incentive to accelerate introduction of cleaner technologies into the market. The Agency believes that making bankable credits available prior to 2001 would reward those manufacturers who take on the responsibility of complying with the proposed standards sooner than required and would result in early environmental benefits. Under the proposed provisions, manufacturers would be allowed to begin using portions of the ABT program starting two model years before the proposed standards take effect provided the manufacturer certifies and complies with the proposed 2001 model year standards of 25.0 g/kW-hr for Class I engines and 18.0 g/kW-hr for Class II engines for their entire product line in a given nonhandheld engine class. The manufacturer could show it is in compliance with the proposed standards for each individual engine family or on average using the averaging provisions of the proposed ABT program. If a manufacturer meets this condition, the manufacturer could generate early credits to be banked for use in the 2001 or later model years

Trading Program for Nonhandheld Engines'', Item #II–B–05 in EPA Air Docket A–96–55.

from only those engines certified below 16.0 g/kW-hr HC+NO_X for Class I engines and below 12.1 g/kW-hr for Class II engines (or 15.0 g/kW-hr NMHC+NO_X for Class I natural-gas fueled engines and 11.3 g/kW-hr for Class II natural-gas fueled engines). However, all early credits would be calculated against the initial Phase 2 standards of 25.0 g/kW-hr HC+NO_X for Class I engines and 18.0 g/kW-hr HC+NO_X for Class II engines (or the corresponding NMHC+NO_X standards of 23.0 g/kW-hr and 16.7 g/kW-hr, respectively, for natural-gas fueled engines). If the manufacturer certifies its product line to the proposed Phase 2 standards early through the use of averaging, the manufacturer could bank credits for use in 2001 and later, but could only bank credits from those engines which were not needed to show early compliance with the proposed Phase 2 standards. In other words, manufacturers would not be allowed to bank credits from engines whose credits were already used to offset other engines with FELs above the proposed Phase 2 standards. This would prevent manufacturers from ''double counting'' credits needed to show early compliance with the proposed standards. Manufacturers would not be allowed to trade their early credits to other manufacturers until the 2001 model year or later.

In establishing the proposed set of declining standards for Class II engines, EPA assumed a certain phase-in of OHV or comparably clean and durable technology. As described in the March 1997 ANPRM, the proposed series of Class II HC+NO_X standards were based on the assumption that 50 percent of Class II engines would employ OHV or comparably clean and durable technology in 2001 (i.e., could meet a 12.1 g/kW-hr HC+NO_X standard without the use of credits). For the remaining years, the phase-in schedule assumed for ''OHV emission performance'' (''OEP'') technology was 62.5 percent in 2002, 75 percent in 2003, 87.5 percent in 2004, and 100 percent in 2005. EPA believes this phase-in of OHV or comparably clean and durable technology is important due to the inherent emission benefits anticipated from this technology in use. Related to the concerns discussed above regarding credit life for pre-2005 credits, the Agency is concerned that manufacturers of Class II engines could bank early credits and use such credits to continue certifying a line of engine families that do not meet the OEP production phase-in schedule assumed by EPA in establishing the proposed standards. Therefore, EPA is proposing that manufacturers only be allowed to use early banked credits beginning in 2001 or later if they are meeting the OEP production phase-in schedule estimates for that model year. EPA believes prohibiting the use of early banked credits unless manufacturers meet such conditions will encourage the manufacturers to meet the OEP production phase-in schedule assumed in developing the proposed Phase 2 standards.

d. Cross-Class Exchange of Credits for Certification Purposes. Today's proposal contains limitations on the cross-class exchange of credits during certification. The limitations are meant to assure the ABT program fulfills its intended function of encouraging a transition to cleaner, more durable technology for both classes of nonhandheld engines and achieves the expected environmental benefits of the program. The proposed limitations are also intended to assure that the proposed ABT program does not affect competition between engine manufacturers.

With regard to encouraging cleaner, more durable technology, the proposed schedule of standards for Class II engines was established with the assumption that engine manufacturers will phase-in OHV technology over roughly the five year period from 2001 to 2005 based on the schedule noted earlier. In order to encourage manufacturers to follow the assumed OEP production phase-in schedule, EPA is proposing that limited cross-class exchange of credits for certification purposes, as noted below, would be allowed only if a manufacturer's Class II engine production meets or exceeds the assumed OEP production phase-in schedule for Class II engines presented earlier.

With regard to competition in the nonhandheld market, about two-thirds of nonhandheld engine manufacturers currently produce both Class I and Class II engines. The remaining one-third of the nonhandheld engine manufacturers produce only Class II engines. At this time, EPA is not aware of any nonhandheld engine manufacturers that only produce Class I engines. Allowing manufacturers to exchange credits across engine classes could cause a competitive disadvantage for those manufacturers who only produce Class II engines because they would not have the advantage of being able to use positive credits from Class I engines. Therefore, with regard to the cross-class exchange of credits, EPA is proposing that manufacturers would be allowed to exchange credits from credit generating Class II engines to credit using Class I engines for certification purposes. However, due to the competitive concerns noted above, EPA is not proposing to allow the exchange of credits from credit generating Class I engines to credit using Class II engines for certification purposes.

e. Use of Credits to Address Nonconformity Determined After Certification. As noted elsewhere in today's notice, EPA is proposing a number of provisions that address post-certification compliance aspects of the proposed standards. In two specific cases, EPA is proposing to allow manufacturers to use credits from the certification ABT program to address noncompliance determined after the time of certification. As noted in the discussion on compliance, EPA does not believe that the typical type of enforcement action that could be taken when a substantial nonconformity is identified (i.e., an engine family recall order) would generally be workable for nonhandheld small SI engines given the nature of the nonhandheld market. Whereas handheld engine nonconformities after certification would be addressed through the use of in-use credits, EPA is not proposing an in-use credit program for nonhandheld engines, as discussed in Section IV.D.

Instead, EPA is proposing to allow manufacturers to use certification ABT credit to address two different types of nonconformance. First, manufacturers would be allowed to use ABT credits to offset limited emission shortfalls for past production of engines determined through the Production Line Testing (PLT) program as described in Section IV.D.2. of today's notice. Second, manufacturers would be allowed to use ABT credits to offset emission shortfalls from Class II OHV engines that arise as a result of an adjustment to deterioration factors originally determined through good engineering judgement, as described in Section IV.E of today's notice. Under the proposed provisions, manufacturers would be allowed to use all credits available to them to offset such emission shortfalls. EPA does not believe it is necessary to limit the use of cross-class credits for these situations. Allowing manufacturers to exchange credits from one class to another should not raise the same concerns with regard to new engine competition as noted earlier because the manufacturer is addressing a nonconformance problem for engines that have already been sold and used in the field for a significant period of time. EPA requests comment on the proposed provisions for using certification ABT credits to address nonconformance with

the Phase 2 emission standards determined after certification.

EPA is not proposing to allow manufacturers to use ABT credits to remedy a past production nonconformance situation in the Selective Enforcement Audit (SEA) program. As described in today's notice, EPA is planning to primarily rely on the PLT program to monitor the emissions performance of production engines. However, in the case of nonhandheld engines only, manufacturers would in some cases have the option of traditional SEA in lieu of PLT as a production line compliance program. In addition, SEAs could be conducted in cases where EPA has evidence of improper testing procedures or nonconformities not being addressed through PLT. As discussed in section IV.D.3, if EPA determines that an engine family is not complying with the standards as the result of an SEA, EPA plans to work with the manufacturer on a case-by-case basis to determine an appropriate method for dealing with the nonconformity. The option(s) agreed upon by EPA and the engine manufacturer may, or may not, include the use of ABT credits to make up for any ''lost'' emission benefits uncovered by the SEA.

As noted earlier, EPA solicits comments on all aspects of the proposed ABT program, including comments on the benefit of the program to manufacturers in meeting the proposed emission standards and any potential air quality impacts which might be associated with them.

6. Certification Fuel

The program for nonhandheld engines discussed in the March 1997 ANPRM specified that the proposed range for eligible certification fuels for Phase 2 would be the same as under Phase 1. The program for handheld engines in the ANPRM was silent on this issue. EPA received comment on the ANPRM that the continued use of Phase 1 certification fuels for Phase 2 testing is appropriate so long as the same fuel may be used to certify handheld engines under both EPA and CARB regulations.

EPA is proposing today that certification test fuel requirements for the Phase 2 program would remain the same as in the Phase 1 program, as specified at 40 CFR 90.308(b). While California ''Phase 2'' reformulated gasoline is not a proposed certification test fuel, EPA believes that continuation of the Phase 1 program for Phase 2 would continue to provide a means of harmonizing the Federal and California programs. As described in the February 1997 Draft U.S. EPA Small Engine Certification Guidance, Section X ''Certification Fuel'', manufacturers have four options for choice of certification fuel for Phase 1 [32]; EPA is proposing that these options would continue for this rule.

The first option is to use average in-use gasoline specified at 40 CFR Part 90, Subpart D, Appendix A, Table 3. The second option is federal certification fuel (e.g., Indolene), specified at 40 FR 86.1313–94(a), Table N94–1. Third, manufacturers may use other fuels, such as natural gas, propane, methanol, or others, under conditions described at 40 CFR 90.308(b)(2) and (3). Fourth, manufacturers may request EPA approval for certification testing on fuels such as California ''Phase 2'' reformulated gasoline, which do not meet the requirements for ''other fuels'' under 40 CFR 90.308(b)(2) or (3). For this option, manufacturers would request EPA approval of an alternate test procedure (e.g., alternate test fuel) under 40 CFR 90.120(b)(1). Manufacturers may elect to use an alternative test procedure provided it yields results equal to the results from the specified test procedures (e.g., test fuels described at 40 CFR 90.308(b)), its use is approved by EPA, and the basis for equivalent results is fully described in the manufacturer's certification application (see 40 CFR 90.120(b)(1)). EPA would work with manufacturers to assist them in making the required technical demonstrations to show equivalency of the emission results. The continuation of these Phase 1 certification fuel requirements would continue to provide mechanisms for manufacturers to use the same fuel for certification to both EPA and California Air Resources Board regulations, as specified above.

B. Test Procedures

Test procedures are contained in today's proposal which would be used by engine manufacturers for the purpose of measuring emissions and determining emission rates for regulated emissions for certified engines. The test procedures being proposed today are in most respects identical to the procedures required for the certification of Phase 1 engines. Test procedures were discussed during the Regulatory Negotiation process, with the key issue being the appropriateness of the Phase 1 test cycles for Phase 2 engines. The draft Regulatory Support Document for this proposal contains a summary of the test procedure issues addressed during the Regulatory Negotiation process.

In general, the Agency believes the Phase 1 test procedures are appropriate for measuring engine emissions from Phase 2 engines.[33] In today's action, EPA is proposing the Phase 1 test procedures with the following minor changes. First, nonhandheld engines sold with an engine rotational speed governor would have to use the governor for speed control while running the appropriate test cycle. Second, the mode weightings for the handheld test cycle, Cycle C, would be adjusted to 0.85 for Mode 1 and 0.15 for Mode 2. Finally, appropriate changes to the test procedure and emission calculations have been proposed for the measurement of methane from natural gas fueled engines in order to determine non-methane hydrocarbon emissions for natural gas fueled nonhandheld engines. These proposed changes are discussed below. EPA requests comment on these issues.

1. Test Cycle: Requirement for the Use of a Speed Governor Operation for Testing of Nonhandheld Engines

Many small engines manufactured today make use of a speed control governor (''governor'') to regulate engine rotational speed. In general, the governor is a mechanically or electronically controlled device that attempts to maintain engine rotational speed in a particular range as the engine experiences different loads. A typical example is the walk-behind mower, where the governor is designed to control engine throttle position in response to various loads to maintain the engine's rotational speed, and thus, mower blade rotating speed, to provide an adequate grass cut. For the Phase 1 test procedure, manufacturers are allowed to over-ride or disconnect the speed governing device and use an external piece of equipment, i.e., a throttle controller, for the purpose of replicating the speed and load conditions required by the test cycle (see 40 CFR 90.409(a)(3)). After the finalization of the Phase 1 rule during the regulatory negotiation process, the Test Procedure Task Group formed by the Regulatory Negotiation committee recognized that the use of the engine's designed governor, not an external throttle controller, may be a more accurate prediction of an engine's in-use performance. The Test Procedure Task Group members generally agreed that a

[32] See ''U.S. EPA Small Engine Certification Guidance, Draft, February 19, 1997,'' available in EPA Air Docket A–96–55, Item #II–C–03.

[33] For a discussion on the adequacy of the Phase 1 test procedure, see Chapter 1.1 in ''Regulatory Support Document, Control of Air Pollution, Emission Standards for New Nonroad Spark-Ignition Engines At or Below 19 kilowatts'' U.S. EPA, May 1995, EPA Air Docket A–93–25, Item #V–B–01.

Phase 2 test procedure should require the use of the engine's speed governor for speed control during the Federal Test Procedure (FTP) for those engines which are equipped by the manufacturer with a speed governor. However, there was not general agreement or detailed discussion of the specific requirements of how the speed governor should be used during the FTP. At this time the Agency believes the most appropriate method to operate engines on the speed governor for an emissions test would be to use fixed throttle operation for the 100 percent load mode, and then to use the engine governor for all subsequent power modes (75 percent, 50 percent, 25 percent and 10 percent). For each power mode, the engine speed governor set-point would be adjusted to the nominal test cycle set-point, 85 percent of rated speed for Cycle A, and 100 percent rated speed for Cycle B. This test method allows for a consistent and repeatable method of determining the 100 percent load condition, yet would allow the engine's governor to regulate speed for the remaining load conditions. This method is also straightforward and would be relatively simple to implement in a laboratory. The Agency requests comment on this test method and on other test methods which may be more appropriate.

2. Test Cycle: Adjustments for Weightings for 2-Mode Cycle for Handheld Engines

The Agency is proposing a change in the weighting factors for the handheld test procedure. For the Phase 1 rule, a weighting factor of 90 percent is applied to the 100 percent power mode, and a factor of 10 percent is applied to the idle mode, in order to combine the modal results for the final weighted emission value. The Agency is proposing for Phase 2 that a weighting factor of 85 percent is used for the 100 percent power mode, and 15 percent be used for the idle mode. This proposal is based on a study performed by members of PPEMA during the regulatory negotiation process.[34] PPEMA members collected real-time speed and throttle position data on several types of handheld equipment used during actual in-use operation. This data was analyzed and combined with estimates of annual use, load factors, and annual sales to weight the results of the field testing. EPA's summary of this report is contained in the Draft RSD. The Agency agrees with the report's conclusion that a more appropriate set of weighting factors for handheld engines is 85 percent for the 100 percent power mode and 15 percent for the idle mode. Therefore this change is being proposed for Phase 2.

3. Measurement of NMHC Emissions From Natural Gas Fueled Nonhandheld Engines

In order to accommodate the proposed optional non-methane hydrocarbon (NMHC) standard for natural gas fueled nonhandheld engines, the Agency is proposing to incorporate by reference the appropriate sections from 40 CFR Part 86 which relate to the measurement of methane emissions from spark-ignited engines. These appropriate sections were published as part of a final rulemaking titled ''Standards for Emissions From Natural Gas-Fueled, and Liquefied Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines, and Certification Procedures for Aftermarket Conversions'' see 59 FR 48472, published on September 21, 1994. The specific sections being incorporated can be found in the proposed regulatory language contained in this proposal at § 90.301(d) and § 90.401(d).

C. Field/Bench Adjustment Program

The ANPRM contemplates a so-called ''bench field correlation program'' for both handheld and nonhandheld small spark ignited engines.[35] For handheld engines, it is part of the in-use testing program (ANPRM, Appendix A, Section J(2)); for nonhandheld engines, it is part of the certification program (ANPRM, Appendix B, Sections 4(a) and (b)). In either case, the basic premise for these programs is the same: to allow manufacturers to age engines on the bench to demonstrate expected compliance in-use, it is necessary to demonstrate the ''correlation'' between field aging and bench aging.

The ANPRM sets out slightly different requirements for the proposed handheld and nonhandheld programs. Specifically, the ANPRM stipulates that the handheld correlation program would be conducted under EPA guidance; a portion of the engines would be aged in situations in which the manufacturer does not exercise control over the engines' maintenance, or limit their usage such that the engines are no longer used in a way that is representative of typical in-use engines; the full federal test procedure would be used; all pollutants would be measured; residential engines would be aged to their full regulatory life but commercial engines could be aged to 75 percent of their full regulatory life; samples sizes would be determined in the NPRM process; and there would be periodic spot checks of the correlation (ANPRM, Annex A, Section J(2)).

The ANPRM provisions for the nonhandheld engines are less comprehensive. For this category, the correlation program was specifically discussed for engines using side-valve or aftertreatment technologies. In addition, the ANPRM describes a simple ''correlation'' method (ratio of mean emission rates); would require periodic re-calculation (every other year for the first five years of the program and then every five years thereafter, e.g., 2001, 2003, 2005, 2010, 2015, etc.); and calls for changes in the correlation to apply prospectively only.

In today's NPRM, EPA is proposing a unified program, to be called the ''field/bench adjustment program,''[36] that would apply to both nonhandheld engines that use side-valve or aftertreatment technologies and to handheld engines. EPA believes it is appropriate to design one program to apply to both categories of engines both because it is less complicated for manufacturers that produce both kinds of engines and because it simplifies the compliance program for administrative purposes. EPA seeks comment on the application of the same program and methodology to both categories of engines. The remainder of this section will set out the background for field/bench adjustment and the principles of such a program, a proposed methodology, and various practical requirements for the application of the program. It will end with a brief discussion of an alternative methodology.

1. Background and Principles

There are at least three ways to demonstrate compliance with in-use standards such as those proposed in today's rule. In general, the most representative way is to demonstrate compliance on engines that have been aged to their full regulatory lives by actual end-users. This ensures that the emissions reflect actual in-use conditions, including the presence of dirt and other matter such as clippings, operation at several degrees of orientation, operation in very hot ambient temperatures, etc. At the same time, consumer-based field aging is

[34] See ''Hand Held Composite Duty Cycle Report'', February 1995, prepared by members of the Portable Power Equipment Manufacturers Association, available in EPA Air Docket A–96–55, Item # II–D–18.

[35] The use of the term ''correlation'' was meant to describe an adjustment factor that can be applied to bench-aged engines to approximate field-aged conditions, and not a true statistical correlation.

[36] This nomenclature more accurately reflects the purpose of the program.

difficult, not the least because it is cumbersome to organize a program with a sufficient number of end-users. In addition, it may take some end-use consumers years to put an appropriate number of hours on the engine through normal use.

The second method is to demonstrate compliance on engines that have been aged to their full regulatory lives on the bench. While this method can be more practical for the manufacturer, it also abstracts away many operational or environmental conditions that can affect deterioration.

The third way, and the way being proposed in today's notice, is a consolidation of some elements of the other two methods. Under it, manufacturers could bench age engines and then adjust the emission test results to reflect actual in-use conditions as represented by field aging. This would be accomplished by developing a field/bench adjustment factor that would be applied to emissions from bench-aged emissions to simulate field aging.

Thus, the objective of this field/bench adjustment program is to develop an adjustment factor based on the mathematical relationship between emissions from field-aged and bench-aged engines. For obvious reasons, it is very important to design a field/bench adjustment program that will yield an adjustment factor that is as closely related as possible to the true relationship between field and bench aging. Any deviation will result in an adjustment factor that either under-corrects or over-corrects the bench results, the ultimate result being an impact on the stringency of the emission limits. In addition, this field/bench adjustment program should take advantage of statistical techniques, both to take into account the inherent uncertainty in sampling[37] and to allow EPA to impose some restrictions on the use of this simplified compliance method. In today's notice, EPA is proposing to allow manufacturers to use the simple ratio of the field and bench mean emission results as an adjustment factor if the width of a confidence interval around the bench-aged and field-aged mean emission rates does not exceed a certain percentage of the standard. This restriction would limit the emission results for each sample, permitting a closer fix on the true population relationship.

2. General Methodology

Drawing on the elements of the ''bench field correlation program'' set out in the ANPRM and the criteria discussed above, EPA is proposing the following methodology to calculate the adjustment factor that would be applied to bench-aged emissions to approximate field aging. EPA seeks comments on all aspects of this program.

Two samples of engines would be aged, one in the field and one on the bench. The aging procedures for all engines in the field sample would be the same, and the aging procedures for all engines in the bench sample would be the same. The manufacturer would develop a test plan which would specify the conditions under which the engines would be aged on the bench and in the field. EPA would reserve the right to review any test plan, for handheld or nonhandheld engines, and to require the manufacturer to revise it if it does not reflect appropriate testing conditions. This review would enable EPA to exercise some oversight of the program without requiring the entire program to be performed under EPA guidance, as anticipated in the handheld program described in the ANPRM. With regard to sample size, today's proposed program contains only two constraints: the bench-aged and field-aged samples must initially be of equal size and must contain at least three engines. This minimum number is necessary to perform the statistical tests described below.

Next, each engine would be tested on the full federal test procedure after it has been run for its useful life. Then, for each sample, the mean $HC+NO_X$ emission rate would be calculated and two independent confidence intervals would be constructed, one around the mean of the field-aged engines, and one around the mean of the bench-aged engines, using the student's T distribution and a 90% confidence level.

The formula for the confidence interval would be:

$$\bar{x} \pm t_{(1-\alpha/2;\, n-1)} * S/\sqrt{n}$$

where

$\bar{x}$ is the sample mean,

$t(1-\alpha/2; n-1)$ is the appropriate parameter from Student's t table, depending on the level of confidence chosen by EPA,

s is the sample standard deviation, and

n is the number of engines in the sample.

The width of each confidence interval would then be compared to the ''maximum allowable interval width'' proposed today. EPA is proposing +/−20% of the standard as the maximum allowable interval width. If the confidence intervals around each of the field-aged and bench-aged means each are no wider than the maximum allowable interval width (e.g, +/−20% of the standard), then the adjustment factor that would be applied in the future to bench-aged engines to simulate field aging would be the ratio of the means ($\bar{x}_F/\bar{x}_B$), *provided* this ratio is greater than or equal to one.

EPA is proposing that these constraints be applied to both handheld and nonhandheld engines, but seeks comment as to whether the confidence levels and maximum allowable interval widths should be different among them. EPA chose 90% confidence levels for constructing the confidence intervals for the field-aged and bench-aged engines, and +/−20% of the standard maximum allowable interval widths, based on computer simulations[38, 39]; however, manufacturers or others commenting on this proposal may have information that suggest other levels.

Under the proposed program, if either or both of the confidence intervals do not pass the above-described statistical test, the manufacturer would have the choice of three remedies. First, the manufacturer could increase the size of the failing sample and repeat the statistical tests with the increased number of engines. Often, increasing the size of the sample will lead to a smaller sample variance, although this is not always the case with small samples. A manufacturer could repeat this remedy as many times as desired. Note that it would not be necessary to increase the size of both samples; only the sample that failed the statistical test would need to be increased. Alternatively, if the statistical tests are failed, the manufacturer could adjust the test plan and rerun the program, subject to EPA approval. In the third alternative, the manufacturer could choose to age all engines in the field for the purposes of the compliance program.

3. Practical Requirements of the Program

This section describes several practical elements of this proposed field/bench adjustment program and how it would work if adopted as proposed.

[37] To take full advantage of the field/bench adjustment program, engine manufacturers will presumably prefer to bench and field age only a relatively small number of engines. Thus, the results of the program will heavily depend on the characteristics of the sample (it is generally the case that a different sample would have different emission results and a different adjustment factor).

[38, 39] See ''Simulation to Determine Confidence Level and Maximum Allowable Interval Width for Field/Bench Adjustment Factor Program,'' EPA Air Docket A–93–29, Item #II–B–01.

a. Initial Field/Bench Adjustment Factor Calculation. The ANPRM does not discuss an initial date by which the first correlation would have to be performed, and thus the first adjustment factor calculated. EPA is today proposing that a manufacturer may propose a field/bench adjustment program test plan up to 48 months prior to certification for Phase 2, and if EPA did not reject the proposed test plan within 90 days of submission of a complete test plan, the proposed test plan would automatically be accepted. EPA is also proposing that, at least 90 days before beginning bench aging for certification or in-use testing purposes, the manufacturer would provide a report to EPA for approval describing the aging and testing conducted for the field/bench adjustment program. This timing would ensure that adjustment factors have been established in time for demonstrating compliance with Phase 2 standards. EPA is also proposing that the initial field/bench adjustment program be performed on engines representative of Phase 2 engines.

b. Periodic Rechecks. The ANPRM contemplates that both the handheld and the nonhandheld correlation programs would require the correlation to be periodically rechecked, although only for the nonhandheld engines was a specific recheck schedule provided (every other year for the first five years of the program and every five years thereafter, e.g., 2001, 2003, 2005, 2010, 2015, etc.). In today's notice, EPA is proposing that the recheck period be the same for both handheld and nonhandheld engines. However, EPA suspects that the recheck period described in the ANPRM's nonhandheld program may be more comprehensive than is necessary. Specifically, it may be the case that the field/bench adjustment factor will not need to be checked so often, especially if technologies, production tolerances, and emission results do not change that much from year to year. As a result, EPA is proposing that the field/bench adjustment factor be re-estimated as often as every five years as determined by EPA on a case-by-case basis, except that EPA may require more frequent rechecks in model years prior to the 2006 model year. EPA seeks comment on this proposed recheck schedule. EPA also proposes that any new adjustment factor subsequent to a recheck be applied regardless of how similar it is to the adjustment factor from the previous correlation effort. However, the new adjustment factor would apply only prospectively, beginning with the next model year. EPA seeks comment on whether a longer lead time should be specified, for example, requiring the new adjustment factor to be applied with the engine model being certified at least six months after the new adjustment factor is determined. This would allow more time for engine manufacturers to adjust their designs, if necessary. Finally, EPA is not proposing any restrictions on the direction of modification of the field/bench adjustment factor that may results from future rechecks: it could be revised up or down, but not below 1.0.

c. Hours to Age. EPA is proposing that all bench-aged engines be aged to their full regulatory lives. Field-aged nonhandheld engines and field-aged residential handheld engines would also be aged to their full regulatory lives. However, following the program described in the ANPRM, under the proposed program field-aged commercial handheld engines could be field-aged to a minimum of 75 percent of their full regulatory lives. This flexibility is proposed today to reflect concerns that it may be hard to age these engines in the field due to equipment problems not related to emissions and engine durability which might be experienced at the end of the useful life. At the same time, as described below, field aging need not be done by actual end users but, instead, could be done by the manufacturer using a test plan that mimics as closely as possible actual field use. Under these conditions, the equipment may be less likely to break. Field aging to a minimum of 75 percent of regulatory useful life is being proposed as a cost savings measure for commercial engines which have the longest regulatory useful lives. Furthermore, EPA believes that test results on commercial engines aged to at least 75 percent of their regulatory useful lives can be appropriately extrapolated to the full regulatory useful life of the engine due to the generally more durable design of commercial engines which would tend to result in more predictable emission determination performance. Therefore, EPA seeks comment on the costs and benefits associated with field aging handheld commercial engines to their full regulatory lives. Finally, EPA is proposing that all engines in the same sample (bench or field) be aged to the same number of hours.

d. Test Plan. EPA is proposing that the manufacturer develop a test plan for both field and bench aging. All such test plans would be required to use the federal test procedure. The handheld program described in the ANPRM specified that ''a portion of the field engines will be aged in individual usage or fleets where the manufacturer does not carry out or exercise control over the engines' maintenance, or limit their usage such that engines are no longer used in a way that is representative of typical in-use conditions.'' Manufacturers would have three ways to field-age engines: in individual usage, in an independent fleet, or in a fleet that may be controlled by the manufacturer but over which the manufacturer does not control the maintenance process or inappropriately limit use. EPA proposes to extend this choice to both handheld and nonhandheld engines. However, EPA proposes that, if the manufacturer chooses to field-age the engines in a non-independent fleet, the applicable test plan must explain how the engines will be used to approximate, as closely as possible, actual in-use conditions, and also the kind of maintenance program to be followed, which should approximate expected in-use maintenance by end-users. The key is to ensure that the engines will experience similar load demands and environmental factors. For example, in the case of lawn mowers, the test plan for a non-independent fleet would have to specify how the engine would be exercised in a way to be representative of typical in-use conditions, which likely include cutting both high and low grass, under wet and dry conditions, etc. Alternatively, if the manufacturer chooses to age the engines in an independent fleet, the test plan would have to detail how the use of the engine will be documented and how the user will ensure that it is used in a variety of different conditions. Finally, EPA could review this test plan and could require changes if the plan does not adequately approximate in-use conditions.

e. Technology Subgroups. For both individual-manufacturer and industry-wide programs (see f., below), the analysis could be done on engine technology subgroups which could be expected to have similar emission deterioration characteristics, that is, groups of engine families from one or more manufacturers having similar size, application, useful life and emission control equipment. It would not be appropriate for engines with significant differences in in-use emissions performance characteristics to be included in the same technology subgroup. Manufacturers would be required to provide a justification satisfactory to EPA that the engines families would be expected to have similar emission deterioration characteristics, and would thus be

appropriately grouped in the same technology subgroup.

f. Individual-Manufacturer or Industry-Wide Estimation. EPA is proposing that the above-described field/bench adjustment program and estimation of the field/bench adjustment factor can be performed on either an individual-manufacturer basis or on an industry-wide basis. Any manufacturer who wants to use a field/bench adjustment factor instead of field aging engines would have to either conduct its own program, or participate in an industry-wide program. In other words, the engines that will benefit from the application of an adjustment factor would have to be included in the sample used to estimate that adjustment factor. This requirement would ensure that a manufacturer could not simply apply a field/bench adjustment factor estimated by another manufacturer that may not reflect the performance of the engines to which it is applied.

An industry-wide analysis would be subject to several additional constraints. First, EPA is proposing that all manufacturers participating in the same sample use the same test plan, except that maintenance schedules could vary across manufacturers to reflect differences in manufacturer-specified maintenance guidance to end-users. This is to reflect the fact that although manufacturers may pool their emissions results in the industry-wide program, they may want to test their engines separately. This uniformity is important to avoid biased aggregation of results. Second, the sample of engines used to estimate the field/bench adjustment factor would have to include at least one bench engine and one field engine from the same engine family from each participating manufacturer, but no fewer than three bench-aged engines three field-aged engines per technology subgroup. EPA seeks comment on whether the emissions should be sales weighted, to give a better picture of emissions across the category. EPA requests comment on how such a sales weighting procedure could be accomplished and still protect the confidentiality of sales information that might be covered by the confidential business information provisions of 90 CFR part 2. Third, EPA proposes to limit entries into and exits from the industry-wide program: a manufacturer could enter or drop out only before the adjustment factor goes into use for the first time. This will prevent constant revision of the adjustment factor. If a manufacturer drops out of the industry-wide adjustment program, the field/bench adjustment factor would have to be recalculated, both for that manufacturer and the industry. This is necessary to ensure that the field/bench adjustment factor reflects only the experience of the engines to which it will be applied. Presumably, a manufacturer will drop out only if its individual adjustment factor is more favorable than the industry-wide adjustment factor. Thus, if the industry-wide adjustment factor is not recalculated, then it will understate the experiences of the engines to which it will be applied. EPA seeks comment on whether such restrictions are necessary.

g. Restriction on Using Test Results for Other Purposes. One comment on the ANPRM requested that engine manufacturers be allowed to combine certification, correlation, and in-use testing for a family, such that bench results from the bench aged engines from the field/bench adjustment program can be used to satisfy in-use testing requirements. EPA proposes to allow test results from engines used for the field/bench adjustment program to be considered for purposes of determining handheld deterioration factors based on good engineering judgment. EPA believes this is appropriate because in the handheld certification program compliance is determined by applying a deterioration factor to new engines. Thus, the actual engines that are used for certification are not the field-aged engines. However, the test results from the field/bench adjustment program would not be acceptable to satisfy the in-use testing requirements for handheld engines, since this would create a situation in which engines that were used to estimate a parameter for the compliance program are also used to demonstrate compliance. Similarly, EPA would not allow the test results from the field/bench adjustment program to be used for demonstrating certification for the nonhandheld program. The nonhandheld engine compliance program relies on emission results from engines aged to their full regulatory lives. As in the handheld engine in-use testing example above, if the engines used in the field/bench adjustment program were also allowed to be used to demonstrate compliance, this would create a situation in which engines that were used to estimate a parameter for the compliance program are also used to demonstrate compliance. Finally, EPA proposes to prohibit emission results from engines tested to determine compliance with other parts of today's program from being used for purposes of calculating the field/bench adjustment factor. This restriction is necessary because otherwise manufacturers could choose among all of their test results and submit only the best emission results from a fairly large pool of engines, thus biasing the field/bench adjustment calculation. EPA does not believe this restriction will be burdensome, since manufacturers will be able to estimate a field/bench adjustment factor with as few as two engines (one bench-aged, one field-aged) if they participate in an industry-wide program, or six engines (three bench-aged and three field-aged) if they decide to establish their own adjustment factor.

h. Other Pollutants. The handheld program described in the ANPRM contemplated that all pollutants be measured. EPA is proposing that CO emissions be measured and adjustment factors for CO be determined for both the nonhandheld and handheld programs. However, EPA believes that the data set upon which statistical tests used to establish appropriate adjustment factors for $HC+NO_X$ are determined are sufficient to establish the relationship between CO emissions in the field and on the bench. Therefore, EPA proposes to allow manufacturers to use the same set of data to calculate a CO adjustment factor as would be used to establish the $HC+NO_X$ field/bench adjustment factor. EPA requests comment on this proposal.

4. Alternative Methodology Considered

EPA believes that the methodology described above is most appropriate because it balances the desires of industry for a simple program with the desire of EPA to put reasonable statistical constraints on the program without making it too difficult to perform or apply. However, there are other methods that can be used. Notably, EPA considered a statistical methodology in which a confidence interval would be constructed around the ratio of the means, and the adjustment factor would be the upper bound of that confidence interval.[40]

While both techniques attempt to apply statistical concepts, this alternative methodology could be considered in some ways more statistically sound than the one proposed above. However, it may be practically more difficult to use. Most importantly, the adjustment factor derived from this alternative methodology would be sensitive to the number of engines tested: a larger

[40] See ''Simulation to Determine Confidence Level and Maximum Allowable Interval Width for Field/Bench Adjustment Factor Program,'' EPA Air Docket A–93–29, Item #II–B–01. For a description of this alternative approach, see ''A Procedure for Adjustment of Emissions Results for Bench Aged Small Engines,'' located in EPA Air Docket A–96–55, Item #II–D–40.

number of engines will most often result in a smaller adjustment factor, although this need not always be the case. Thus, manufacturers will be faced with either testing a large number of engines to ensure the smallest adjustment factor (closest to the straight ratio of the sample means) or using a larger adjustment factor with concomitant effects on the adjusted emission rate. EPA is concerned that this dynamic could lead manufacturers to test a large number of both bench-aged and field-aged engines. In addition, the adjustment factor derived from this alternative methodology will always be a conservative estimate of the relationship between bench and field-aged results, because it is the upper bound of the confidence interval, and it will always be greater than the simple ratio of the means. Yet, it is not clear why choosing a conservative adjustment factor is preferable to a simple ratio of the sample means. Nevertheless, EPA seeks comment on the use of this methodology and other alternative approaches as opposed to the proposed methodology.

D. Compliance Program

This section discusses the three step compliance program proposed today for the Phase 2 regulation of small SI engines, consisting of certification, production line testing, and in-use emission testing. As discussed above in Section III, today's proposal contains three basic elements new to the Phase 2 program. First, manufacturers would be required at the time of certification to account for emissions deterioration throughout the useful life of the engines. Second, EPA is today proposing a manufacturer-run production line testing program to replace the existing Selective Enforcement Audit (SEA) program as the primary method of determining the compliance of new production engines. Finally, EPA is proposing in-use emission testing programs for nonhandheld and handheld engines. EPA is also proposing appropriate remedies to address noncompliance with emission standards. Such remedies include mandatory recall but would also consider alternatives to mandatory recall, in the event of nonconformities found through production line testing or in-use testing programs. The basic proposed program for nonhandheld and handheld engine compliance is described in this section; Section IV.E outlines certain compliance flexibilities which may be made available to certain manufacturers depending on a manufacturer's size, the class of engines, or other factors.

1. Certification

The certification process as required in the Act is an annual process. The Act prohibits the sale, importation or introduction into commerce of regulated engines when not covered by a certificate. The certification process proposed in this notice differs from that required in Phase 1 in that it would require the manufacturer to demonstrate that the engines will meet standards throughout their useful lives. To account for emission deterioration over time, manufacturers would be required to either age engines out to their full useful lives to obtain certification, or to adjust their certification test results by assigned or calculated deterioration factors (dfs), as is currently done under other EPA mobile source rules. Where appropriate and with suitable justification, dfs would be allowed to be carried over from one model year to another and from one engine family to another. This section describes nonhandheld and handheld engine certification provisions, provisions for certification to CO standards, and EPA efforts to streamline the certification process.

a. Nonhandheld Certification. This notice proposes that certification for Class I and Class II nonhandheld engines continue as in Phase 1 except for the inclusion of an estimation of in-use deterioration. This deterioration estimate would be used to predict full useful life emission performance which would then be the basis for certification compliance decisions. The method for estimating in-use deterioration for certification purposes would depend on the type of engine technology.

i. Side-Valve Engines and Engines with Aftertreatment. For all side-valve engines and engines with aftertreatment, this notice proposes that one engine from each engine family would either be field aged in a representative application to its full useful life, or bench aged to its full useful life to demonstrate compliance with the standards.[41] If a manufacturer chose the bench aging option, it would be required to use a bench cycle approved in advance by the Administrator, adjusting the results using the field/bench adjustment factor established through the process described above at Section IV.C. In either case, the manufacturer would be required to run the full test procedure described in this rule when the engine is stabilized, accumulate hours on the engine, and then run a full test procedure at full useful life hours to determine a test value for certification.

The final field-aged results or the final adjusted results of the fully bench-aged engines would be compared against the applicable standard to determine compliance at the time of certification. In addition, a df would be calculated from the final test results compared against low hour stabilized test results. While not directly used in the certification program, this df would be used to adjust the results of engines tested in Production Line Testing program described below in Section IV.D.2.

For Class II SV engines and Class II engines with aftertreatment certified to the 250 hour useful life category, the manufacturer would have the option to bench age the engine to less than the full useful life and calculate a df at the engine's full useful life using a method of data extrapolation acceptable to the Administrator, as described below in Section IV.E.

ii. Overhead Valve Engines. As discussed elsewhere in this notice, EPA expects the Phase 2 rule to result in a virtually complete technological shift for Class II nonhandheld engines from SV to OHV or comparably clean and durable technology engines. In addition, EPA believes that OHV technology engines have the potential to show low and stable emissions deterioration characteristics as compared with SV technology engines.

EPA is today proposing that manufacturers of OHV technology engines be allowed to use an industry-wide assigned df for certification purposes. This program should allow manufacturers to focus more of their efforts on transitioning to a cleaner technology, by reducing the certification test burden on the engine manufacturers at the beginning of the Phase 2 program. EPA believes that offering manufacturers the opportunity to use an industry-wide assigned df rather than calculated dfs is reasonable for OHVs. A key element of the proposal for an assigned df is the proposed requirement that all manufacturers of OHV technology engines would participate in an industry-wide OHV Field Durability and In-use Performance Demonstration Program (''Field Durability Program'') described in Section IV.D.3, below. This program would be designed to demonstrate the validity of the assigned df by producing significant amounts of data from real field-aged engines. If the OHV Field Durability Program data indicate that the assigned df is inappropriate, EPA would conduct a

[41] For nonhandheld engines participating in the averaging, banking and trading program described in more detail above in Section IV.A.5, compliance would be demonstrated with the family emission limit (FEL) rather than the standard.

rulemaking to modify these proposed provisions to correct the assigned df program. This section describes the assigned df program for OHV engines, as well as an option for manufacturers to calculate dfs through field testing engines at the time of certification.

Assigned dfs For OHV Nonhandheld Engines

EPA is proposing that manufacturers of OHV technology engines would be allowed to use a multiplicative assigned df of 1.3 for OHV engines in all useful life categories for projecting emissions deterioration for compliance purposes. In the ANPRM, EPA discussed a value of 1.3 as the assigned df value for Class I and Class II OHV technology engines in the shortest useful life categories (i.e., 66 and 250 hours, respectively). In addition, EPA indicated that it would consider during the rulemaking process whether or not to propose an assigned df for all useful life categories, and if so, what the appropriate assigned df values would be. EPA indicated that the assigned df for Class II OHVs in the 500 and 1000 hour useful life categories would likely fall between 1.3 and 1.5. In addition, if an assigned df of 1.5 at 1000 hours, for example, appeared to be the appropriate value, EPA would propose a standard for the 1000 hour category adjusted by ratio to the proposed 12.1 g/kW-hr standard proposed for the 250 hour category.

EPA received comment on the ANPRM that the assigned df should be higher than 1.3 for the higher useful life categories, with a corresponding higher emission standard for the higher useful life categories. This commenter suggested that the application of a 1.3 df to longer useful life periods could reduce product offerings and impose unjustified costs on small equipment manufacturers. EPA received a similar recommendation for higher dfs for the 500 and 1000-hour useful life categories.[42] Specifically, an assigned df of 1.4 and a $HC+NO_X$ compliance standard of 13.0 g/kW–hr were recommended for 500-hour engines and an assigned df of 1.5 and a $HC+NO_X$ compliance standard of 14.0 were recommended for 1000-hour engines. In making these recommendations, the represented manufacturers argued that EPA had no full life emission performance information for these categories of engines. Although acknowledging they were providing no data to substantiate their recommendation, these manufacturers believe these higher dfs and emission standards provide a better assessment of equivalent stringency for these categories of engines compared to 250-hour engines certified with a 1.3 df to a 12.1 g/kW–hr standard.

EPA also received comment that use of assigned dfs should be limited to small volume manufacturers as a cost savings measure, and that the use of experimentally-derived dfs is preferable to the use of assigned dfs. This commenter argues that if the assigned df level is set too high, it could penalize those manufacturers who develop extremely durable engines, but if an assigned df were set too low, the result could be an underestimation of the emissions impact associated with an engine family or even the entire category. A final commenter asserted that assigned dfs are a bad idea; that the program described in the ANPRM results in a program in which future standards are uncertain due to the possibility of another rulemaking to adjust dfs; and that in the interval, engines may exceed the in-use standards because there is little incentive for manufacturers to reduce the deterioration rates of their engines.

EPA believes an industry-wide assigned df combined with the OHV Field Durability Program to validate assumptions as to the durability of OHV technology engines is a sound program. The Agency fully expects the assigned df to accurately reflect the industry-wide average df of OHV engines certified to the proposed standards at least in the near term. As manufacturers gain improved capabilities to produce OHV engines (as would be expected as an increasing proportion of small engines become OHVs), the industry-wide df could shift to a lower value. There is no expectation, however, for a shift to a higher average df. The OHV Field Durability Program is expected to yield significant quantities of in-use data designed to verify the assumptions as to the emissions durability characteristics of OHV technology engines underlying today's proposal. The future standards are not uncertain if the industry average assigned dfs prove to be low and stable, as anticipated by this proposed rule.

EPA is today proposing a 1.3 assigned df for all useful life categories for Class I and Class II engines, based on EPA analysis of available test data on engines aged in the field, provided by engine manufacturers.[43] While the data are limited, the data on Class II engines designed for longer useful life periods do not point to any value other than 1.3 for an assigned df for longer useful life hours. While no data were available on Class I engines designed for longer useful lives, EPA believes that a 1.3 assigned df at longer useful lives is a reasonable value. Longer useful life engines are designed for enhanced durability, and this is reflected in the emissions deterioration of the engines as well, with longer useful life engines experiencing the same emissions deterioration at longer hours as do short useful engines at short hours. Additional information on the derivation of the proposed assigned df of 1.3 is contained in the docket to this rulemaking.[44] Commenters who suggested a value other than 1.3 for assigned dfs at longer useful life hours did not supply data in support of their recommendations. However, EPA recognizes that the data upon which this proposal is based are very limited. EPA requests additional data on which to base the analysis for determining values for assigned dfs for OHV engines at longer useful lives. In particular, EPA requests comment on and any data supporting the assigned df and level of standards recommended by engine manufacturers (that is, 1.4 df and 13.0 g/kW–hr for 500-hour engines, and 1.5 df and 14.0 g/kW–hr for 1000-hr engines).

Finally, EPA is concerned that an industry-wide assigned df could reduce the incentive for a manufacturer to improve the durability of its engines. If manufacturers would be able to rely on an assigned df for certification performance regardless of in-use emission performance, manufacturers could design and produce engines which actually had much higher in-use deterioration than the assigned df. Manufacturers would be motivated to do so if they receive cost or other advantages from such a strategy. This is a real possibility since, in general, less expensive designs such as those with larger production tolerances or no oil control rings would also be expected to have higher emission deterioration. To protect against this, EPA is proposing limits on the use of assigned dfs. Specifically, EPA is proposing that if it determines the manufacturer's actual in-use sales weighted average df for a

[42] See Memo to the Docket regarding the October 3, 1997 meeting between U.S. EPA and the Engine Manufacturers Association, EPA Air Docket A–96–55, Item #II–E–11.

[43] See ''Tier 1 Deterioration Factors for Small Nonroad Engines'', September 1996, a report by Air Improvement Resources, available in EPA Air Docket A–96–55, Item #II–D–11.

[44] See ''Summary of EPA Analysis of Nonhandheld Engine HC and NO_X Exhaust Emission Deterioration Data for 500 Hour Useful Life Class II OHV Engines,'' EPA Memorandum, August 4, 1997, available in EPA Air Docket A–96–55, Item #II–B–02.

useful life category (e.g., all OHV families certified to a 500-hour useful life) exceeds the assigned df by more than 15 percent (i.e., actual in-use df is 1.5 or greater), then EPA may require the manufacturer to generate engine family-specific dfs for one or more engine families in that useful life category. Similarly, if EPA determines that a family has an actual in-use df greater than 1.8, then EPA may require the manufacturer to generate an engine-specific df for that family. In either case, if EPA requires such engine-specific dfs, they would be determined on the basis of data from three field-aged engines per engine family. This level of testing is the same as that for the program being proposed for a manufacturer which opts to not use the assigned dfs for certification (see discussion in the following section, ''Calculated dfs for OHV Nonhandheld Engines''). EPA requests comment on the proposed thresholds for limits on the use of the 1.3 assigned df.

EPA recognizes that a requirement to generate an engine-family specific df for certification could be especially burdensome or perhaps practically impossible without disrupting production if the requirement was placed on the manufacturer close to the anticipated start of production for that family. EPA would take such issues into consideration when making any determination to require an engine-family-specific df to be generated.

EPA requests comment on all aspects of today's proposal for assigned dfs and calculated dfs for OHV technology engines, including the proposals for incentives for improving deterioration characteristics of OHV technology engines, and protections against misuse of the assigned dfs. EPA also requests additional data on which to determine the assigned dfs for OHV engines.

Calculated dfs for OHV Nonhandheld Engines

EPA views assigned dfs for OHV technology engines as the program engine manufacturers would most often select due to lower costs for certification. However, it is desirable to allow manufacturers of engines having improved durability characteristics to demonstrate and take credit for these lower dfs. Therefore, EPA is proposing as an option a procedure whereby a manufacturer could generate its own dfs for all engine families within a useful life category, in lieu of applying the assigned df for those families.

The assigned df is based on industry average data with some actual dfs above 1.3 and others below 1.3. EPA anticipates that manufacturers would choose the option of calculating their own dfs, over the option of selecting the 1.3 assigned df, in cases in which their engines exhibit superior deterioration characteristics. EPA is concerned that, if only these engines with superior deterioration characteristics are removed from the evaluation of the industry-wide assigned df values, then the industry average would be influenced upwards.

Therefore, to partially mitigate this concern, EPA is proposing that if a manufacturer chooses to establish its own df for one engine family in a useful life category, then it would be required to do so for all of its engine families within that useful life category. Thus the manufacturer would determine specific dfs for all of its families in that useful life category. In considering the types of data that would be required for manufacturer-determined dfs, EPA balanced the need for the program to be reasonable and practicable, yet rigorous enough to provide confidence in the dfs.

EPA is today proposing that calculated dfs for the full product line of OHV engines in a particular useful life category could be generated by field aging a minimum of three engines per engine family in a representative application to their regulatory useful lives. Each engine would be emission tested at least twice for all regulated pollutants using the full test procedure described in this rule. The first test point would occur after the engine had been stabilized by bench or field aging. The second test point would occur after the engine had been field aged to its useful life. The df for that engine family would be determined based on test data by dividing the average emissions at the full useful life by the average stabilized emissions for that family. If the manufacturer elects to conduct more than one test at either test point then the average of the data would be used. All test data would have to be at or below the standard (FEL, if applicable). EPA is also proposing that calculated dfs may cover families and model years in addition to the one upon which they were generated if the manufacturer submits a justification acceptable to EPA at the time of certification that the affected engine families can be reasonably expected to have similar emission deterioration characteristics.

The Agency is proposing for manufacturers who choose to develop their own OHV dfs by field aging three engines per engine family that these engines must be actual field-aged engines and not bench-aged even if adjusted by a field/bench adjustment factor. The proposed assigned dfs with df verification through the OHV Field Durability Program is the primary program for Class I and II OHV engines. The Agency believes that any alternative to the primary program for nonhandheld OHV engines must generate emission data of similar accuracy as that on which the assigned df and OHV Field Durability Program is based. Without this requirement, the primary program would be undermined. The Agency has proposed a field/bench adjustment program for handheld engines and for non-OHV technology Class I and II engines. In both of those programs the Agency has proposed a level of confidence which would have to be met before a field/bench adjustment factor would be allowed, and is therefore a compromise between data accuracy and test burden (see Section IV.C). The test burden associated with the assigned df and OHV Field Durability Program has been limited to an appropriate level because it is covered by a maximum number of field aged engines that a manufacturer would be required to test on an annual basis (see Section IV.D.3.c ''Maximum Rates for Field Tested Nonhandheld Engines''). However, the proposed OHV Field Durability Demonstration does not permit a compromise on the accuracy of the field test data which would result from a field/bench adjustment program. Therefore, the Agency believes it is not appropriate that an alternative (i.e., manufacturer calculated dfs) to this primary program should allow such a compromise. The Engine Manufacturers Association [45] has recommended to the Agency that manufacturers be allowed to determine their own OHV dfs by performing a field/bench adjustment program. The Agency requests comment on this suggestion.

In the ANPRM, EPA indicated that it would consider during the rulemaking process the appropriateness of reserving certification credits pending verification of the dfs through in-use testing for families for which the manufacturer generates its own df. EPA believes that today's proposal for field aging three engines per engine family for calculating dfs provides adequate data up front to provide assurance as to the deterioration of these engines, and obviates the need to reserve certification credits pending in-use testing. However, engines for which the manufacturer calculates its own df would be subject to the OHV Field Durability Program. EPA requests comment on the proposal not to reserve certification credits

[45] See Memo to the Docket regarding the October 3, 1997 meeting between U.S. EPA and the Engine Manufacturers Association, EPA Air Docket A–96–55, Item #II–E–11.

pending verification of the dfs through in-use testing.

Finally, to provide flexibility during the phase-in of the 12.1 g/kW–hr Class II standard, EPA is proposing that manufacturers choosing to establish their own dfs for the 500 and 1000 hour useful life categories for Class II OHV engine families may, with the advance approval of the Administrator, base their dfs on good engineering judgement (subject to future verification, as discussed below in Section IV.E).

b. Handheld Certification. This notice proposes that the certification of handheld engines continue as in Phase 1, except that manufacturers would be required to generate and apply a df to their stabilized emission results. EPA is proposing that manufacturers would be allowed to establish a df for each engine family based on technically appropriate analysis of test data on that engine family (or engine families of sufficiently similar design to be expected to have the same emissions durability) to reflect the emission deterioration expected to occur over the useful life of the engine. Manufacturers would be required to retain test data and description of their analysis to support their choice of dfs and to furnish this information to EPA upon request. EPA may reject the manufacturer's choice of df if it has evidence that the actual df is significantly higher or if the test data and analysis do not support the manufacturer's determination of a df. Data in support of the df could include data from the field/bench adjustment factor program as well as data from the in-use testing program.

EPA believes that the proposal to allow manufacturers flexibility in determining the test data necessary to establish dfs for handheld engine families is a reasonable program designed to assure the environmental benefits of the program are met without placing an undue burden on manufacturers at the time of certification. EPA requests comment on all aspects of the proposed provisions for certification of handheld engines and determination of emission deterioration factors for compliance purposes.

c. Certification to CO Emissions Standards. EPA is proposing that provisions for establishing CO emission dfs for use in the certification and production line testing programs would be the same as the provisions for established $HC+NO_X$ (or $NMHC+NO_X$) emission dfs, except in the case of OHV technology engines for which the manufacturer elected to use an assigned df. For these engines, the manufacturer would be allowed to establish a df for CO emissions using good engineering judgment.

d. Streamlining of the Certification Process. Since the promulgation of the Phase 1 rule, EPA has taken great strides to reduce the volume of information that must be submitted to obtain certification. A direct final rule published on May 8, 1996 (61 FR 20738), greatly reduced the reporting requirements necessary to obtain certification under the Phase 1 program. This proposal would continue the reduced reporting requirements, adding only information items related to new provisions required for the Phase 2 program.

EPA has also made strides to facilitate the electronic submittal of certification materials. Certification applications can currently be submitted on a computer disk, and the Agency hopes soon to be able to receive applications through a telephone data link. Further, EPA is working with the California Air Resources Board (CARB) in an effort to develop a common application format that would reduce the certification burden for manufacturers. EPA anticipates that for the Phase 2 program, EPA and CARB would accept the same application format and would have the same application submittal process.

2. Production Line Testing

This section addresses the production line testing program proposed today for nonhandheld and handheld engines. EPA is proposing that manufacturers conduct a manufacturer-run production line testing (PLT) program using the Cumulative Sum (CumSum) procedure, as the primary program for ensuring the emission performance of production engines.[46] The Phase 1 rule relies upon a traditional Selective Enforcement Auditing (SEA) program for production line compliance. SEA is a statistical sampling and testing scheme that must be initiated by EPA and provides a snapshot indication of whether a given engine family complies with applicable standards or FELs at a given point in time.

In the proposed Phase 2 PLT program, manufacturers would conduct continuous production line testing of all engine families and feed the results of that testing back into their design and production processes. CumSum is a statistical sampling and testing procedure which results in random periodic sampling and testing of engines from each engine family. The proposed CumSum procedure is useful both as an assessment tool for EPA and a quality control tool for engine manufacturers. The CumSum procedure assures that all configurations are susceptible to testing proportional to their production, and provides for continuous testing throughout the model year (except in cases in which an engine family shows clear compliance with the standards, in which cases testing can halt early, in as few as two engines). The CumSum procedure also allows manufacturers to monitor their own production and to fit production line testing into their normal production quality control procedures. The procedure is capable of detecting significant changes in the average level of a process, while ignoring minor fluctuations that are simply acceptable variation in the process. In summary, EPA believes that the CumSum procedure provides an effective measure for meeting EPA's goal of assuring that production engines comply with the applicable standards or FEL before they leave the production facility.

As testing of each engine family begins with a new model year, the CumSum process computes an action limit and a test statistic based on the deteriorated test results for each pollutant for each family. As new data are received, both the action limit and the test statistic are updated. The action limit and the test statistic are functions of the standard deviation of the sample. If the test results are clearly below the standard or FEL, and the standard deviation of the test result is appropriately low, the process will declare a halt to testing. With very low emitting engines, this can occur in as few as two tests. If test data are highly variable or the test results are very close to the standard or FEL, testing may proceed to as many as thirty tests per family (the proposed maximum test limit) spread equally throughout the model year. If the test statistic crosses the action limit for two sequential tests, then the process indicates a nonconformity and the manufacturer would be required to take corrective measures.

EPA is proposing a manufacturer-run PLT program for both nonhandheld and handheld engines. However, for nonhandheld engines, while PLT is the preferred option, EPA also is proposing an alternative program under which manufacturers would have the option to elect to be subject to the traditional SEA program (rather than PLT), as described in Section IV.D.2.d, below. In addition,

[46] The CumSum procedure has been promulgated for marine engines in EPA's spark-ignition marine rule at 40 CFR Part 91 (61 FR 52088, October 4, 1996). In this section, ''PLT'' refers to the manufacturer-run CumSum procedure, or other manufacturer-run production line testing procedure approved by EPA. ''PLT'' does not include Selective Enforcement Auditing (SEA), which is addressed separately in Section IV.D.2.d.

EPA is proposing to retain SEA for ''backstop'' purposes when manufacturer-run PLT is being conducted for nonhandheld and handheld engines, as described below. Under the proposal, in some cases, some manufacturers or engine families may have the option not to conduct production line testing requirements, including manufacturers of very clean engine families, or manufacturers or families which qualify for small volume flexibilities, as described in Section IV.E. The following discussions outline the proposed CumSum procedure, reporting of PLT results, procedures in the event of PLT failures, the use of SEA, and other topics related to production line compliance testing.

a. The CumSum Procedure. The proposed CumSum procedure is outlined in this section. At the start of each model year, manufacturers would begin to test each newly-certified engine family at a rate of one percent of production. After conducting two tests, a manufacturer would determine the required sample size for the rest of the model year according to the sample size equation.[47] For carry-over engine families, to reduce testing burden, the manufacturer would determine the necessary sample size by conducting one test, then combining the test result with the last test result from the previous model year, and finally calculating the required sample size for the rest of the model year according the sample size equation. Tests would be required to be distributed evenly throughout the remainder of the model year. After each new test, the sample size would be recalculated with the updated sample mean, sample standard deviation, and 95 percent confidence coefficient.

The manufacturer would be allowed to stop testing at any time throughout the model year if the sample mean for each pollutant is less than or equal to the applicable standard or FEL, and if the number of tests required of the manufacturer, as calculated by the sample size equation, is less than the number of tests conducted. However, if at any time throughout the model year the sample mean for any pollutant is greater than the applicable standard or FEL, and if the manufacturer has not reached a ''fail'' decision, the manufacturer would be required to continue testing that engine family at the appropriate sampling rate.

The maximum required sample rate for an engine family, regardless of the result of the sample size equation, would be the lesser of three tests per month to a maximum of 30 per year, or one percent of projected annual production, distributed evenly throughout the model year. For example, if the sample size equation produces a value of 252 tests for a family with annual production of 20,000 engines, a manufacturer could elect to test only three engines per month to a maximum of 30 per year, instead of either 21 per month (which would be required if 252 tests were distributed evenly throughout the model year), or 17 per month (which would be required if one percent of annual production were distributed evenly throughout the model year).

Although the sample size equation may calculate sample sizes greater than the proposed maximum sample rates, EPA believes that above some sample size, the cost of testing would become unnecessarily burdensome for manufacturers of small SI engines. Further, EPA believes that the proposed maximum sample rates (e.g., 30 engines) are sufficiently large to adequately characterize the emission levels of the engine family for the purpose of making a compliance decision. After determining the appropriate sample size, the manufacturer would construct a CumSum equation for each regulated pollutant for each engine family. Following each emission test, manufacturers would update current CumSum statistics for each pollutant according to the CumSum equation. Manufacturers would continue to update the CumSum statistics throughout the model year.[48]

Manufacturers could elect to test additional engines provided that testing of the additional engines is performed in accordance with the applicable federal testing procedures for small SI engines. Such testing could be used, for example, to bracket a nonconformity determined through the CumSum procedure, and such bracketing could be used to reduce a manufacturer's liability for past production. If a manufacturer elects to perform additional testing, the results would not be included in the CumSum equation. However, the results of additional tests would be included in the quarterly reports to EPA. Manufacturers would be required to randomly select which engines are to be included in the CumSum program prior to any knowledge of the emission levels of CumSum engines or engines used for additional testing.

In cases where the CumSum sample size equation indicates that testing can be halted, the CumSum process indicates that there is 95 percent probability for each pollutant that the mean emission level for the engine family is below the applicable standard (or FEL). In cases where the test statistic exceeds the action limit for two consecutive tests, then EPA is highly confident, based on extensive computer simulations of the CumSum program, that the mean emission level of the engine family for that pollutant exceeds the standard (or FEL), i.e., that the engine family is in noncompliance for that pollutant. The risk that a complying engine family will incorrectly be determined to be noncomplying (manufacturer risk) is set at similar levels as in EPA's historical SEA program. The risk that a noncomplying engine family will incorrectly be determined to be in compliance (consumer risk) is set at improved (lower) levels as in EPA's SEA program. The Agency requests comment on all aspects of the proposed production line testing program and CumSum procedure. For more information on the derivation of the sample size and CumSum equations and some examples of the CumSum procedure, see the document *''Proposed Procedure for Quality Audits of Marine and Small Engines: A Cumulative Sum Approach''* (EPA Air Docket A–92–28, Item # IV–B–03).

b. Reporting of CumSum Results. EPA proposes that production line emission test results, as well as sample size calculations and CumSum calculations, would be reported to EPA on a quarterly basis. The Agency would then review the test data, sample size and CumSum calculations to assess the validity and representativeness of each manufacturer's production line testing program. If the CumSum process determines that an engine family is in noncompliance, the manufacturer would be required to report the emission test results and the appropriate sample size and CumSum equation calculations within two working days of the occurrence of the noncompliance.

EPA received comments on the ANPRM recommending that, in the event of a PLT failure, manufacturers should be required to report such exceedances within thirty days of discovering the failure, suggesting that thirty days provides a reasonable time for manufacturers to evaluate and verify test data and determine the existence of any production line problems. EPA

[47] For more discussion of the sample size equation, see *Proposed Procedure for Quality Audits of Marine and Small Engines: A Cumulative Sum Approach,* Item #IV–B–03 in EPA Air Docket A–92–28.

[48] For more discussion of maximum sample rates and updating CumSum statistics, see *Proposed Procedure for Quality Audits of Marine and Small Engines: A Cumulative Sum Approach,* Item #IV–B–03, in EPA Air Docket A–92–28.

believes that thirty days is too long a period for the Agency to not be made aware of a PLT failure. Such delays would not occur, for example, under a traditional SEA program. In the event of a traditional SEA, EPA is aware immediately of the existence of an SEA failure, and can immediately begin working with the manufacturer to remedy the problem. EPA is proposing that the appropriate PLT test results be reported within a two working days, a time period consistent with that promulgated for the gasoline marine PLT program. A two-day delay in reporting would not unnecessarily delay EPA's ability to begin to work with manufacturers during that time to determine an appropriate response to a PLT failure. As discussed below, the manufacturer would have 30 days after the date of the last test before any suspension or revocation of a certificate for the engine family would occur. The manufacturer could use that time to determine the existence of production line problems.

EPA also received a comment that manufacturers should not be required to report all resultant test data to EPA quarterly (e.g., extensive raw test data in addition to calculated emissions results). This commenter suggests that the submission of a completed CumSum summary data sheet, permitting EPA to confirm that an engine family is in PLT compliance and to see where in the CumSum process compliance was attained, should be sufficient for quarterly reporting, and that manufacturers could maintain raw PLT data for a reasonable period of time and make such data available to EPA upon request.

It is not clear which raw data this commenter would prefer be allowed to be retained at the manufacturer's facility. EPA is proposing that manufacturers would submit to EPA on a quarterly basis pertinent engine information, individual test results, relevant CumSum calculations, and other information at Section 90.709(e) of the proposed regulations. EPA does not believe that this reporting requirement is overly burdensome. EPA expects that manufacturers will keep track of PLT data electronically, and EPA intends to develop a standard CumSum summary data sheet to facilitate electronic submittal of data for the quarterly reports. EPA requests comments on these proposed provisions.

c. Production Line Testing Failures. If an engine family is determined to be in noncompliance, or a manufacturer's submittal to EPA reveals that production line tests were not performed in accordance with applicable federal testing procedures, under the proposal EPA could suspend or revoke the manufacturer's certificate of conformity in whole or in part for that engine family subject to a thirty day waiting period (discussed in more detail below in Section IV.D.2.c.iv). EPA could reinstate a certificate of conformity subsequent to a suspension, or reissue one subsequent to a revocation, after the manufacturer demonstrates that improvements or modifications have brought the engine family into compliance. The proposed regulations include provisions for a hearing in which a manufacturer may challenge EPA's decision to suspend or revoke a certificate of conformity based on the CumSum procedure.

EPA is proposing procedures whereby a manufacturer could remedy the emissions problems from engines produced prior to the PLT failure. In EPA's traditional SEA program, SEA failures have typically been addressed by a recall of the past production engines for the failing family. Future production engines are expected to be brought into compliance by either adjustments to the certification FEL, in cases where the manufacturer is participating in a certification ABT program, or through appropriate engine and emission control system modifications. As discussed in Section III of this preamble, above, EPA is proposing alternative remedies in the event of PLT failures, given the likely difficulties of applying a traditional recall program to the small SI engine industry. For handheld engines, these procedures include the use of in-use credits or other alternative remedies. For nonhandheld engines, these procedures include the use of certification credits through the adjustment of a family's FEL or other alternative remedies. These procedures are discussed below.

i. Handheld Engines

EPA is proposing that when handheld manufacturers experience PLT failures, the excess emissions from engines that have already been introduced into commerce could be addressed by the application of in-use credits or another alternative remedy. In-use credits are discussed in detail in Section IV.D.3, below. The emission performance of future production would be addressed through a running change to the existing configuration or certification of a new configuration such that compliance is demonstrated.

ii. Nonhandheld Engines

Unlike the proposed program for handheld engines, the program proposed today for nonhandheld engines does not include provisions for in-use credit generation. Since in-use credits would not be available, and since recall of small SI engines is not likely to be effective, for nonhandheld engine manufacturers who use averaging, banking and trading to obtain certification, this notice proposes that, in the event of a CumSum failure, the manufacturer would be permitted to adjust its certification FEL to a level for which compliance could be demonstrated. This adjustment would apply to both past and future production of that family.

EPA has held in past programs that manufacturers should be liable for their FELs, and that the past production of that family is subject to recall if the family exceeds its FEL during an SEA. The Agency continues to believe that manufacturers should set FELs appropriately based upon adequate testing and engineering analysis. Thus, while proposing that nonhandheld engine manufacturers would be permitted to adjust FELs for past production of an engine family, EPA expects that the need for manufacturers to change an engine family's FEL retroactively in the event of CumSum failures should be rare or nonexistent. If there are substantial occurrences of the need to adjust FELs retroactively, this would suggest that manufacturers are not correctly setting FELs carefully and accurately for individual families, in which case the Agency should appropriately revisit this provision.

EPA is also proposing that nonhandheld manufacturers who experience CumSum failures could adjust their FELs even if they did not have adequate credits, provided that they could obtain the necessary credits by the end of the model year following the model year in which the production line failure occurs. If sufficient credits were still not obtained, the manufacturer would have two more years to obtain them, but would then be required to use credits on a 1.2 to 1 basis (i.e., such credits would be discounted twenty percent). Unlike in the proposed handheld engine in-use credit program, in which manufacturers would have opportunities to generate additional credits, the nonhandheld certification ABT program would not afford such opportunities. Thus, EPA believes it is reasonable in the program for nonhandheld small SI engines to provide additional time for manufacturers to acquire certification credits necessary to offset PLT exceedances. Requiring future model year credits to be discounted if used to remedy past production on

noncompliance assures that the manufacturer will not benefit economically from delayed compliance with the standards.

Because EPA believes manufacturers should set FELs accurately and carefully, and to encourage manufacturers to set FELs accurately, EPA is proposing that these provisions (e.g., the retroactive use of credits, and the ability to carry a credit ''deficit'') would only apply in the case of a manufacturer who fails no more than one engine family in a given model year, or who fails more than one engine family but the total production of those families is no greater than 10 percent of the manufacturer's U.S. sales. EPA requests comment on all aspects of this retroactive use of certification credits and its likely impact on the accuracy of the FELs determined at certification.

iii. Alternative Programs and Voluntary Recall

In the event of PLT failures, EPA prefers that handheld manufacturers use in-use credits for past production engines and that nonhandheld engines be recertified to a higher FEL which may require the application of certification credits, rather than some other alternative to recall. However, EPA is proposing that in the case of handheld or nonhandheld engines where the manufacturer did not have and could not obtain adequate in-use or certification credits, as appropriate, a manufacturer could conduct a voluntary recall, if it could show that an appropriate response rate was likely. EPA would also consider the appropriateness of alternative projects. These projects are essentially alternatives to recall and would be designed to provide an environmental benefit as well as an economic incentive to the manufacturer to produce complying engines. Guidelines for such projects are discussed in more detail in Section IV.D.4, below. A mandatory recall could be ordered by EPA for past production engines pursuant to proposed § 90.808 in cases where the manufacturer could not obtain appropriate credits and was unwilling to perform an alternative project acceptable to EPA.

iv. Suspensions and Revocations

EPA is proposing for engine families that fail production line compliance testing, that EPA would have the authority to suspend or revoke the certificate for that family. However, no suspension or revocation for a family could occur before thirty days after the date of the last test. During the thirty day period, EPA intends to work diligently with the manufacturer, as it always has in the case of SEA failures, to provide certification of appropriate production line changes. Further, this notice proposes that EPA would approve or disapprove a manufacturer's production line change within fifteen days of receipt, or the change would be considered automatically approved.

EPA believes that these waiting periods are reasonable to afford manufacturers and EPA sufficient time to work together to address problems, without the concern that EPA would hastily suspend or revoke the certificate of a family determined to be in nonconformity by a production line testing program. EPA believes that the proposed time frames are reasonable, and are consistent with longstanding EPA practices in the SEA program of providing a waiting period following an audit failure. In such failures, EPA works closely with the manufacturer to arrive at a solution for the problem engine family. With on-highway engines, such solutions have typically involved a recall of engines that have already been produced along with the recertification of the family to a new FEL, or the certification of a replacement engine configuration. As discussed above, for small SI engines, such solutions could involve the use of certification or in-use credits, voluntary recalls, or other alternative remedies. EPA has never caused an assembly line to shut down because of an audit failure and does not intend to start such a practice where other alternatives can be used.

d. Selective Enforcement Audits (SEA). While EPA is proposing the CumSum manufacturer-run PLT program as the preferred production line testing program for the Phase 2 program, EPA still sees a function for traditional SEA and is therefore not proposing to eliminate traditional SEA altogether. EPA is proposing that for both nonhandheld and handheld manufacturers, SEA would remain as a ''backstop'' for EPA to use in cases where there is evidence of improper testing procedures or nonconformities not being addressed by the CumSum process.

As mentioned earlier, the Agency is also proposing an alternative program under which nonhandheld manufacturers could choose not to conduct manufacturer-run PLT program, in which case all families would continue to be subject to an SEA program as under Phase 1. Although currently not preferred by the Agency, EPA is considering this option since it was included in the ANPRM and received support from the nonhandheld industry. EPA solicits comment on the appropriateness of providing this option, and on whether it would be better to require PLT for all families. Only one approach, either PLT with SEA as a ''backstop'', or manufacturers having the choice to use either PLT or SEA as the primary program, will be adopted as the final rule for nonhandheld manufacturers.

Under this alternative program, EPA is also proposing that nonhandheld engine manufacturers be limited in their ability to switch back and forth between PLT and SEA. Manufacturers involved in PLT would be required to implement that approach for a minimum of three consecutive model years and to provide EPA with notice one complete model year prior to the model year for which they were planning to opt out. In addition, a manufacturer would not be allowed to opt out of PLT while carrying a negative certification credit balance. However, a manufacturer would be allowed to opt in to PLT at any time.

Finally, where small volume engine manufacturers or small volume engine families would be entitled to exemptions from the PLT program under the proposal (see Section IV.E), those families would remain subject to SEA, although EPA would be unlikely to issue test orders without evidence of nonconformity.

In the event of an SEA failure for handheld engine manufacturers, EPA is proposing that the option to use in-use credits or another alternative to recall would be available to remedy past production engines. For future production, the manufacturer would be expected to modify the engine to come into compliance with all applicable standards.

In the event of an SEA failure for nonhandheld engine manufacturers, the manufacturer would have the option to adjust the FEL for future production of the engine family. EPA would address a remedy for the past production in the event of an SEA failure on a case-by-base basis, seeking to both preserve the environmental benefits of the program, maintain incentives to accurately set FELs in advance, and minimize the burden on the industry. Such a remedy might include, for example, a combination of measures such as mandatory PLT for appropriate time periods and portions of production, recertification of all or part of an engine family, and generation of credits to remedy exceedances over an appropriate period of time. However, consistent with past practice, EPA does not anticipate allowing the retroactive use of certification credits to remedy past production failures determined via

SEA, or the carryover of any credit deficits, as would be allowed if the manufacturer chooses to conduct manufacturer-run PLT. Since SEA only evaluates production line performance during a ''snap shot'' in time and not throughout the entire production period, it would be inappropriate to use credits generated on the basis of total annual production to correct the SEA failure. Instead, a manufacturer would likely be expected to recall the noncomplying family or conduct an alternative remedy proposed by the manufacturer and accepted by EPA. EPA requests comments on the proposed provisions related to remedies for SEA failures.

EPA received a comment on the ANPRM that handheld manufacturers should be permitted to elect to be subject to routine SEA testing, as they currently are under Phase 1 emissions regulations, rather than conducting manufacturer-run PLT. This commentor suggested that manufacturers may desire to elect SEA for reasons of cost, confidence in their quality control, or familiarity with SEA, and that such an option could enhance the flexibility and reduce the cost of the PLT process, while at the same time assuring new engine compliance with Phase 2 emissions regulations.

EPA is not proposing routine SEA testing for handheld manufacturers. EPA believes that a manufacturer-run PLT program such as CumSum is a superior method of assuring that both handheld and nonhandheld production line engines meet the standards, that testing occurs continuously throughout the model year, and that each configuration is susceptible to testing. In addition, PLT affords benefits to the manufacturers of identifying problems early and addressing them without the disruption of an EPA-initiated SEA. EPA believes it is most useful and appropriate that manufacturers be responsible for and bear the burden of continuously monitoring their own emissions.

Under the production line compliance program proposed today, EPA expects that nonhandheld manufacturers may in some cases choose SEA as their primary production line compliance program, for cost reasons or fear of the unknown. However, EPA believes that the downsides of the choice of SEA as the primary production line compliance program are potentially great for all involved. EPA believes that in choosing SEA, the manufacturers would be foregoing an effective quality control tool for monitoring their own production, and would risk expensive and disruptive SEAs. In addition, EPA would not get the same coverage of engine families in the testing process. The regulations proposed today reflect the option, consistent with the program outlined in the ANPRM, for nonhandheld manufacturers in some cases to choose either PLT or SEA as the primary production line compliance program. However, EPA is also proposing in the alternative that the nonhandheld production line compliance program would be the same as the handheld program. That is, the manufacturer would not have the option to choose SEA as the primary production line compliance method. Rather, manufacturer-run PLT would be the primary program in all cases, with SEA existing as a backstop. Again, EPA requests comment on the appropriateness of the proposed program which allows nonhandheld manufacturers the option to elect routine SEA testing in lieu of PLT testing. EPA also requests comment on the option that nonhandheld manufacturers would use only PLT as the primary production line compliance program, with SEA existing as a backstop, and the effectiveness of this option in providing assurance of environmental benefits in-use, easing the implementation burden for EPA and the industry, and achieving greater commonality in the compliance programs for the handheld and nonhandheld sides of the small SI engine industry.

e. Annual Limits for SEA. The Phase 1 program contains annual limits on the number of SEAs the Agency may perform each year on a manufacturer, based on their number of engine families and sales. The Phase 1 annual limits serve to restrict the maximum number of audits for most manufacturers to a quantity equal to one fifth of the number of engine families (see 40 CFR 90.503(f)(1)). However, under the Phase 1 program, any test which the family fails or for which testing is not completed does not count against the annual limit (see 40 CFR 90.503(f)(3)). In addition, even if the annual limit is reached, EPA may initiate additional SEA testing to test families for which evidence exists indicating noncompliance (see 40 CFR 90.503(f)(4)).

EPA is not proposing any changes to the Phase 1 SEA annual limit provisions for Phase 2 except for the additional proposed provision that EPA may initiate additional SEA testing beyond the annual limit for families or configurations which the Administrator has reason to believe are not being appropriately represented or tested in production line testing (see proposed § 90.503(f)(4)).

EPA also requests comment on an option, not proposed, to raise the annual limit by one or two families for each failing audit in a given model year in cases where manufacturers choose SEA as the primary production line compliance program, should the regulations allow SEA as the primary production line compliance program. While this option is not included in the proposed regulatory text, EPA requests comment on the potential benefits or costs of this option for a higher number of potential routine SEAs for manufacturers who experience SEA failures. EPA requests comment on all aspects of the proposal for annual limits for SEAs under the proposed Phase 2 program.

f. Alternate Statistical Procedures for Production Line Testing. Consistent with the program outlined in the March 1997 ANPRM, EPA is proposing that manufacturers conducting manufacturer-run PLT could propose test schemes for EPA approval on a case-by-case basis other than the CumSum procedures described in this section and proposed in today's notice. EPA believes that this is reasonable because there may be situations where a single test scheme is not appropriate for a specific engine family or company. However, EPA also believes that it is desirable to avoid a multiplicity of testing schemes, and is concerned about the burden this could place on the Agency if multiple testing schemes are analyzed and developed with individual manufacturers. This notice proposes that EPA would have the right to review any alternate procedure to determine the ability of the procedure to (1) produce substantially the same levels of ''producer risk'' and ''consumer risk'' as the CumSum Procedure, i.e., the risk to a manufacturer that a complying family would fail in PLT testing, or the risk to the public that a failing family would pass in PLT testing; (2) to provide for continuous rather than point-in-time sampling; and (3) to include an appropriate decision mechanism for determining noncompliance upon which the Administrator can suspend or revoke the certificate of conformity. Further, it would be the requesting manufacturer's responsibility to provide an analysis and documentation that demonstrated the alternative satisfied these criteria. EPA would expect to reject any alternate statical procedure that did not fully satisfy these proposed criteria.

g. Test Procedures for PLT. EPA believes that the best way to determine whether new engines meet certification

standards is to test them under the test used at certification. Therefore, EPA is proposing that the manufacturer-run PLT program proposed in this notice would require testing based on the full federal test procedure as used for certification and described in Subpart E of the attached regulations. EPA recognizes the potential need to permit minor adjustments to the test procedure to accommodate production line testing. Consistent with other compliance test programs for mobile sources, the proposed regulations allow the Administrator to approve such test procedure adjustments.

h. Harmonization of Production Line Testing with CARB. EPA is interested in finding ways to harmonize the production line testing requirements proposed today for Phase 2 with any production line testing requirements manufacturers must meet for the California small engine regulatory program. In particular, EPA would expect that data from production line testing of a 50-state family conducted for a California Quality Audit program could be acceptable for the CumSum process, if the subject engines are sold nationwide and test engines are appropriately selected and tested. EPA will also continue to work with the California Air Resources Board to harmonize reporting formats, and similar information needs.

3. In-use Emission Testing

EPA believes that a critical element in the success of its small SI engine program is ensuring that manufacturers build engines that continue to meet emission standards beyond certification and production stages and comply with standards for their full regulatory useful lives. Section 213(d) of the CAA specifically subjects nonroad engines to the in-use compliance provision of section 207.[49] EPA has authority to subject manufacturers to in-use testing (conducted by the Agency or by the manufacturer under section 208 of the Act) and to remedy any noncompliance (for example, by recall and repair of engines) for the full regulatory useful life of an engine. In-use compliance enforcement has proven to be an effective incentive for manufacturers to build emission durable motor vehicles.

However, as discussed above in Section III, in the case of small SI engines, EPA does not believe that a mandatory in-use compliance program which relies on recall, for example, is likely to be as effective and practical as it has proven to be in EPA's on-highway programs. Small SI engines differ from motor vehicles in that they are not registered and are therefore difficult to track so that their owners can be notified. Many are not easily transported to a servicing dealer for repair. The in-use programs described below are therefore designed to provide data on in-use performance and to provide incentives to manufacturers to produce emission-durable engines without relying on the use of recall. While the Production Line Testing programs described previously are very similar, the in-use programs proposed in this notice differ significantly for the two sides of the industry. Again, EPA requests comment on alternative in-use testing programs, such as applying the in-use testing program proposed for handheld engines to the nonhandheld side of the industry, as well as applying the field durability program proposed for OHV engines to side-valve engines, engines with aftertreatment, and/or handheld engines.

a. Nonhandheld Side-Valve Engines and Engines with Aftertreatment. For nonhandheld side-valve engines and engines with aftertreatment, the in-use program would consist of a certification program in which the engines would be aged to their full useful lives during the certification process and no certificates would be issued unless the engine family can first be shown to meet standards (or FELs) for its useful life, as described above in Section IV.C and Section IV.D.1. EPA believes that a program which does not rely on in-use testing after certification especially makes sense for Class II SV technology engines which are expected to be phased out by 2005. In addition, EPA would have data on SV technologies aged in the field for the field/bench adjustment factor program; if EPA suspected serious problems with regard to whether the emissions reductions anticipated by this rule were in fact being achieved, EPA would address these concerns through appropriate programmatic changes. EPA requests comment on the appropriateness of this full useful life certification to predict the in-use emissions durability of SV engines and engines with aftertreatment.

b. Nonhandheld OHV Field Durability and In-use Performance Demonstration Program. For overhead valve nonhandheld engines, the proposed in-use program would be one whose primary function is to verify that the industry-wide deterioration factors predicted for the OHV engines are indeed correct. The proposed OHV field durability and in-use performance demonstration program (''Field Durability Program'') would generate significant quantities of emission data from engines aged in real field usage in representative pieces of equipment. If EPA's belief that the dfs of these engines are stable and predictable proves to be incorrect after receiving these data, or the assigned dfs specified in this rulemaking are significantly different than those that occur in real field usage of Phase 2 engines, then EPA would initiate appropriate programmatic changes through the regulatory process.

The proposed Field Durability Program is designed to provide data on the deterioration of OHV engines in actual field usage. EPA is proposing that engines for the program would be selected from or placed into service with residential or professional users. This program would be designed to provide a representative picture of actual in-use emissions, including representative age, maintenance, and sales mix of engines in the field. To the extent practical, engines would be selected from residential customers or professional users, in order to most accurately reflect actual usage patterns such as number of cold starts, typical maintenance patterns, and overwintering. However, EPA would also allow engines to be selected from manufacturers' fleets, provided the engines and their operation and maintenance are typical of in-use engines. Each engine in the program would be baseline tested at a number of hours equal to the break-in hours used in certification. The engine would then be field aged in an appropriate piece of equipment to full useful life, at which time the engine would be removed and retested. The df would be determined mathematically from the two test points from each engine.

Data from the OHV Field Durability and In-Use Emissions Performance Demonstration Program would not be designed to provide a basis for EPA to make in-use compliance determinations as to whether a particular engine family complies with its standard or FEL at the end of its useful life. Rather, the program is primarily designed to determine whether, in the aggregate, the industry-average assigned dfs for OHV engines are valid. Given the number of manufacturers expected to produce OHV engines and participate in this program, the program would generate meaningful volumes of real in-use data which would yield results indicating whether assigned dfs are realistic.

[49] Section 207(c) of the Act authorizes EPA to enforce compliance by vehicles and engines to applicable standards in actual use. Manufacturers are subject to recall ''[i]f the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations * * * when in actual use * * *''.

This notice proposes that the OHV Field Demonstration Program testing could be spread over multiple years. EPA proposes that manufacturers provide a schedule to EPA each year of the engine families and approximate quantities of engines they intend to produce for U.S. sales over the coming four year period, as well as estimates of the number of field aged engines that would be tested each year for the field/bench adjustment program (see Section IV.C) and for calculating dfs for OHV engines at the time of certification (see Section IV.D.1). In addition, manufacturers may wish to recommend a proposed testing plan for the Field Durability Program that, for example, best fits testing into their marketing, production, test facility and budgetary constraints. EPA would consider such information in determining the engine families to be field tested over that time period as part of the OHV Field Durability Program.

Manufacturers have indicated their desire to perform industry-wide OHV Field Durability Program testing to try to reduce the number of engines that must be field aged. EPA is proposing that it would consider requests by manufacturers to work together when it reviews a manufacturer's plan for engine families to be field aged. EPA will review proposals for joint testing to evaluate how thoroughly they cover a portion of overhead valve engine sales, whether they will provide statistically useful quantities of data, and other factors to help EPA ascertain whether OHV dfs from certification are accurate and appropriate.

c. Maximum Rates for Field Tested Nonhandheld Engines. EPA believes that emission data from real field-aged engines would serve a crucial role in validating the use of assigned dfs, calculated dfs, and the aging cycles used for bench-aged certification of side-valve engines. While recognizing the importance of and need for these data, EPA is also sensitive to the cost and testing burden associated with directing large numbers of engines to be field aged and tested in a given year.

In today's action, EPA is proposing that in any one year the Agency would not require field testing for the OHV Field Durability Program such that, when added to the field testing a manufacturer performs for the optional certification df generation or for the field/bench adjustment program, it would require the manufacturer to emission test more than 24 total engines that were field aged to their full useful life. EPA believes that this number will provide important quantities of data without placing an undue burden on manufacturers. EPA is proposing that it would have the right to require field testing to the maximum amount, and expects that the maximum testing may be required in the initial years of the program. Manufacturers would have the option to field test more engines than required by EPA. EPA anticipates it would reduce the testing burden as appropriate, especially for smaller manufacturers, in subsequent years should, for example, EPA determine that the data being developed is quite stable from year to year.

The discussion of the Field Durability Program in the March 1997 ANPRM indicated EPA would provide ''appropriate delays or waivers from the requirement of the bench correlation program in years when a manufacturer also runs the field durability program'' (see 62 FR 14754). In the development of this proposal, EPA considered the need to propose procedures to provide for EPA granting delays or waivers from the requirements of the field/bench adjustment program in years when a manufacturer also runs the OHV Field Durability Program. In today's action, EPA is proposing no formal process by which manufacturers would request a waiver from the requirements of the field/bench adjustment program. EPA believes that the need for delays or waivers is obviated by the cap on the number of fully field aged engines EPA would be able to require to be tested in any one year.

The discussion of the Field Durability Program outlined in the March 1997 ANPRM also suggested that EPA would propose an appropriate scaling of the field engine test burden for smaller volume manufacturers (see 62 FR 14754). For this proposal, EPA considered proposing a cap on the number of field tested engines of fewer than 24 engines per year for smaller nonhandheld manufacturers by sales volume. However, EPA believes that a scaling back of the test burden would not be appropriate. Such a scaling would most appropriately be based on the inability of manufacturers to sustain the costs associated with the OHV Field Durability program; however, the ability to sustain the costs of the program would not appear to differ significantly among manufacturers. Therefore, EPA is proposing the same cap on the field engine test burden for all manufacturers. EPA believes that this 24 engine per year cap is a manageable burden on the smaller volume manufacturers as well as the larger volume manufacturers. The Agency does not anticipate identifying families certified by manufacturers who would qualify as small volume engine manufacturers for in-use testing, unless there was evidence of a nonconformity (see discussion in Section IV.E). EPA requests comment on all aspects of the applicability of a cap to the number of field aged engines that EPA could require to be tested in any one year.

d. In-Use Testing Program for Handheld Engines. In today's action, EPA is proposing an in-use testing program for handheld engines similar to that promulgated in the gasoline spark-ignition marine engine rule (see 40 CFR Part 91, Subpart I). As in the marine rule, EPA is also proposing an in-use credit program, as well as a number of criteria for evaluating other alternatives to mandatory recall. Mandatory recall is the primary remedy for noncompliance. However, as in the marine program, EPA is interested in considering options to mandatory recall and, if implemented, will monitor the use of these alternatives to make sure they are as effective as anticipated. EPA believes that the successful implementation of the in-use credits program and the other alternatives would provide a comprehensive remedy to address in-use emission noncompliance, as well as incentives to manufacturers to produce emission-durable engines, without the use of recall. The program for handheld engines proposed today differs from the gasoline marine engine program in that the engines may be bench-aged rather than field-aged, at the manufacturer's option, provided the manufacturer has previously established an adjustment factor between the bench aging cycle and field aging through the program described above at Section IV.C. EPA requests comment on the technical requirements which would allow bench-aged engines to represent the emission performance of field-aged products.

i. In-use Testing for Handheld Engines

EPA is today proposing an in-use testing program for handheld engines which would make all engine families potentially subject to mandatory in-use testing by the manufacturer. The manufacturer would age the test engines in the field to their full useful lives. Alternatively, the manufacturer could choose to age the engines on a bench cycle to their full useful lives, providing that an adjustment factor had previously been established between the bench-aged and field-aged results, through the procedures described above in Section IV.C. The engines would then be emission tested for all regulated pollutants using the full test procedure described in this proposed rule. The number of engines per engine family tested would vary depending on test results. Except for small volume and carry-over engine families, the

minimum number of test engines would be four. For each engine that failed any pollutant, the manufacturer would test two additional engines, up to a maximum of ten. Small volume engine manufacturers would begin by testing two engines, adding two more for each failing engine up to the same maximum (see discussion of provisions for small volume engine manufacturers and other flexibilities in Section IV.E). Carry-over engine families would start with one engine. In the end, the emissions for each pollutant would be averaged and the family average compared against the appropriate standard to ascertain compliance. The in-use testing program proposed is designed as a method to provide adequate data on which to make compliance decisions, while allowing the testing of families which are found to emit below standard to conclude as expeditiously as possible.

Manufacturers would provide a schedule to EPA each year of the engine families and approximate quantities of engines they intend to produce for U.S. sale over the coming four year period. EPA would then select engine families to be in-use tested by the manufacturer over that time period or a fraction of that time period. EPA would identify no more than 25 percent of a manufacturer's families for in-use testing in any one year.

EPA received a comment on the ANPRM that it would be equally effective and potentially less costly to permit engine manufacturers to select the engine families for in-use testing. This would allow manufacturers to schedule in-use testing to better conform to production, marketing and budgetary constraints, and to choose their own mixture of commercial and residential engines to test each year. This commenter added that manufacturers could provide a testing schedule in advance to enable EPA to raise any concerns it has with a manufacturer's test plans.

EPA believes it is important to retain the authority to select engine families for in-use testing that potentially show risk of higher emissions in-use than predicted at the time of certification. Therefore, EPA is proposing to retain the authority select the engine families for in-use testing. However, EPA would work with manufacturers in an attempt to schedule testing to take into account production, marketing, test facility and budgetary constraints and would invite manufacturers to recommend a testing program which best suits their needs.

ii. In-Use Credit Program for Handheld Engines

As discussed above, the proposed in-use credit program for handheld engines is designed to address in-use nonconformities of handheld engines without the need for ordering manufacturers to conduct recalls of nonconforming engines. A reasonable means must exist to address in-use noncompliance that provides incentives to manufacturers to build emission-durable engines, that can be implemented practically, that encourages additional in-use testing, that offsets additional emissions resulting from noncompliance, and that is not unduly burdensome. EPA believes that the successful implementation of the proposed in-use credit program described below could be part of a comprehensive remedy to address in-use noncompliance, and that EPA would not, in practice, order mandatory recall of Phase 2 engines. When a manufacturer determines its average in-use emission levels for each pollutant, it would compare those numbers against the applicable standards. Emission levels below the standards could generate in-use credits. Emission levels above the standard would require the use of in-use credits. The credit formula as proposed here would be a function of the sales of the engine family, the difference between the family emission average and the applicable standard, the power rating of the engine, load factor, and the useful life of the engine.

In-use credits could be used to remedy emission exceedances of previously produced engines determined to be in nonconformity by in-use testing, production line testing or SEA failures. They would not be useable in handheld certification, and they would not be transferrable to nonhandheld engines, due to the considerable differences between the handheld and nonhandheld programs. Unlike certification credits for nonhandheld engines, they would not be useable for offsetting the high emissions from prospective production of an engine family following a PLT or SEA failure. In such cases, the manufacturer would be required to make a product change to improve emission performance of future production.

EPA is proposing that these in-use credits could be used at any time during the Phase 2 program, and that any future rulemaking concerning Phase 3 standards would address the use of the Phase 2 credits in Phase 3. EPA believes this unlimited life for in-use credits during the Phase 2 handheld program is justified since, if an engine demonstrates that it can remain under standards for its full useful life, then an environmental benefit has occurred and the manufacturer is entitled to that benefit for later use. However, unlimited life is not being extended beyond the Phase 2 program at this point, given the concern that Phase 2 credits could be used to effectively delay the implementation date of any Phase 3 standards. EPA requests comments on all aspects of credit life for in-use credits in the handheld in-use credits program.

A manufacturer could use in-use credits to average against in-use failures identified in that model year's testing. It could bank the credits for use in a later model year or trade the credits to another manufacturer. Manufacturers could test additional families and would generate or require additional credits according to that testing. However, the manufacturer would be required to report all in-use testing to EPA, including any test engines that were deleted from the aging process or testing process, and to provide to EPA a technical justification to support the deletion.

No restrictions are proposed on the application of in-use credits from one handheld engine class to another. EPA is not aware of any environmental or competitive concerns with allowing unrestricted use of in-use credits across handheld engine classes. EPA requests comments on the need for cross-class averaging restrictions, and the impact of having or not having them.

EPA is also proposing an adjustment factor to increase credits earned as the in-use testing sample size increases, similar to the program promulgated for the gasoline marine engine rule (see 40 CFR 91.1307). The proposal for an adjustment factor is reasonable because EPA's statistical certainty of the sample mean generally will increase with sample size.

In addition, EPA is proposing a provision that would require manufacturers to apply in-use test results to two past and one future model year when the engine family being tested meets the carryover criteria for those model years. EPA contemplates that manufacturers would not make frequent significant changes to engine families and that carryover certification would be common. Essentially, under this provision, the test results from one model year could apply to up to four model years; the one subject to testing, the two previous model years and the next model year. In-use credits would be generated or required, as appropriate. EPA requests comment on the

appropriateness of and the need for these provisions.

The handheld in-use credit program is meant, in part, to obviate the need to resort to a traditional recall program, and the Agency wants to ensure that this alternative program, or any other alternatives considered, provide incentives to manufacturers to design engine configurations that will comply with standards for their entire useful lives. EPA believes that manufacturers should make every effort to prove out their designs prior to certification so that in-use nonconformities will not occur. Therefore, this notice proposes that credits be discounted by 10 percent before they are used. This would require a manufacturer to obtain or generate credits sufficient to offset 110 percent of the emissions from a family found to be in noncompliance. This discount is consistent with that applied to in-use credits in the gasoline marine rule. Comment is requested on the appropriateness of such discounting and on the appropriate size of the discount.

4. Criteria for Evaluating Alternatives to Mandatory Recall

This proposal contemplates that for handheld engines, in-use credits would be the primary method of addressing emission nonconformities determined through in-use testing or production line testing, whether through the use of credits banked or averaged, or credits purchased through available sources. For nonhandheld engines, EPA is proposing that in some cases, the use of certification credits would be allowed as a method of addressing emission exceedances determined through production line testing (as discussed above in Section IV.D.2).

However, EPA is also proposing that manufacturers have available alternatives to using in-use credits or certification credits, if they lack sufficient credits and are unable to obtain them, that would still avoid necessitating an order for mandatory recall. One such alternative could be for the manufacturer to conduct a voluntary recall. However, EPA would consider other alternatives as well. This proposal contains a number of criteria for evaluating alternatives to determine whether they meet the goals of addressing the environmental impact of the in-use problem while providing incentives to the manufacturer to produce emission-durable engines. EPA intends to allow a manufacturer to implement a reasonable alternative that met these criteria prior to making a determination of substantial nonconformity under section 207 of the Act.

In evaluating alternatives to mandatory recall, EPA would consider alternatives which (1) represent a new initiative that the manufacturer was not otherwise planning to perform at that time and that has a nexus to the emission problem demonstrated by the subject engine family; (2) cost substantially more than foregone compliance costs and consider the time value of the foregone compliance costs and the foregone environmental benefit of the subject family; (3) offset at least 100 percent of the exceedance of the standard; and (4) are able to be implemented effectively and expeditiously and completed in a reasonable time.

These proposed criteria would function as ground rules for evaluating projects to determine whether their nature and burden is appropriate to remedy the environmental impact of the nonconformity while providing assurance to the manufacturer that EPA would not require excessive projects.

In addition to being evaluated according to the above criteria, EPA is proposing that alternatives would be subject to a cost cap, as contemplated by the proposal for handheld engines in the March 1997 ANPRM. EPA proposes a cost cap of 75 percent above and beyond the foregone costs adjusted to present value, provided the manufacturer can appropriately itemize and justify these costs. EPA believes that this is an appropriate value which is both ''substantial'' and sufficient to encourage manufacturers to produce emission durable engines and maintain positive in-use credit balances.

In deciding what cost cap to propose, EPA believes a figure of 75 percent more than the foregone costs adjusted to present value is consistent with and informed by the principles inherent in the criteria for evaluating alternatives to recall. For example, criterion (2) would require that the alternative must cost substantially more than the costs the manufacturer was able to forego by producing a nondurable engine, and consider the time value of those foregone costs.

EPA believes that manufacturers should prove out the in-use durability of their designs carefully before certification and desires to set the cost cap for alternative projects high enough that manufacturers will take measures to carefully evaluate in-use durability before certification and to bank and maintain substantial in-use credits to handle an unforeseen problem. EPA believes that a cost cap which would merely measure the foregone costs, and adjust them to their present value would not provide the appropriate incentive, because the manufacturer would ''break even'' and may become indifferent between assuring in-use durability up front and addressing it only when durability problems are detected.

EPA is proposing in this rule that in-use credits be discounted by 10 percent when they are used. If in-use credits are marketed freely and their price is determined by what it costs to generate them, a manufacturer would pay at least 10 percent more than it cost another manufacturer to comply with the standards and generate the credits. This suggests that the minimum figure for the cap should be at least 10 percent of the failing manufacturer's foregone costs, after those costs have been adjusted to the present value. Given that under the proposal no more than one fourth of a manufacturer's families would be subject to in-use testing in a given year, a manufacturer that produces a non-durable, non-carryover family has at most a 25 percent chance that EPA would be aware that such a non-durable family was being produced. A reasonable individual might risk a 10 percent cost penalty if the risk of actually having to pay it was never more than 25 percent. EPA can not estimate the savings a manufacturer may reap by building a non-durable engine, and therefore can not compute the expected value of the savings when the 25 percent risk factor is added in.

EPA believes a figure of 75 percent more than the foregone costs adjusted to present value would be both ''substantial'' and sufficient to encourage manufacturers to produce emission durable engines and maintain positive in-use credit balances. EPA notes that these projects are alternatives to recall and that a recall with a response rate similar to those in the motor vehicle program would likely have a much higher cost than would be permitted under a 75 percent cap. EPA considered proposing that the cap be tied to the cost of purchasing in-use credits on the open market, but is concerned that these alternatives would be needed when there are no in-use credits available for sale. Further, based on EPA experience with other ABT programs, there is no guarantee that routine sales of credits would ever occur. EPA requests comment on the appropriate cap and the appropriate methodology for determining the cap, and the difficulties that could be faced in trying to ascertain foregone costs.

E. Flexibilities

This section addresses a variety of flexibilities proposed today to ease the transition from the Phase 1 to the Phase 2 program, to ensure that the Phase 2

standards are cost-efficient and achievable, and to reduce the compliance burden while maintaining the environmental benefits of the rule. Following an overview of the approach to providing compliance flexibilities, and a discussion of the proposed cutoffs for determining whether a manufacturer, an engine family, or an equipment model would qualify for the flexibilities proposed today, this section describes the flexibility provisions proposed today, including general flexibilities, phase-in flexibilities, flexibilities to address the concerns of small volume engine manufacturers, flexibilities to address the concerns of small volume equipment manufacturers, and provisions to encourage engine availability. While some of these flexibilities may overlap, EPA is proposing these flexibilities as a means to reduce the compliance costs of the proposed rule for those that can least afford them, while maintaining the environmental benefits of the proposed rule and adopting the most stringent emissions standards achievable. EPA requests comment on the proposed flexibilities individually and as a whole.

1. Overview of Approach to Providing Compliance Flexibilities

In this proposal, EPA has attempted to facilitate compliance by creating provisions that help avoid unnecessary hardship for engine and equipment manufacturers but that still achieve the desired environmental benefits. EPA believes that these provisions will help to avoid disruption of supplies of engines needed by equipment manufacturers and will enable both engine and equipment manufacturers to more easily and economically make the transition from Phase 1 to Phase 2. These provisions will also help ensure that the stringent standards proposed in the rule are achievable with technology that will be available during the Phase 2 time frame.

Some engine manufacturers have expressed concern that the Phase 2 program might be too burdensome for engine families with small volume production or for small volume manufacturers. These manufacturers have stated that, without some kind of relief, these burdens will lead them to stop producing certain engines rather than bear the additional costs. The engines most likely to be affected are special engines designed for niche markets. For these markets, there could be significant consequences to equipment manufacturers and operators if production of special engines were to cease. To address these concerns, EPA is proposing several compliance flexibilities intended especially to reduce the compliance burden on small volume products or small volume engine or equipment manufacturers.

2. Proposed Production Volume Cutoffs

EPA has developed proposed cutoffs to determine whether a manufacturer or engine/equipment family would qualify for the flexibilities proposed today. These cutoffs are described here, with a more detailed discussion in Chapter 9 of the Draft RSD. EPA decided not to propose the Small Business Administration's definition of ''small business'' as the criterion for a manufacturer to qualify for the proposed flexibilities (the SBA definition is either 500 or 1000 employees, depending on the SIC code of the industry). This is because, of 15 engine manufacturers qualifying as ''small business'' by the SBA definition, at least three produce large volumes of engines, between 75,000 and 700,000 units, and have very high annual income. EPA believes these companies will not experience significant burdens in complying with the proposed Phase 2 program. Instead, EPA is proposing the following production volume cutoffs [50] for qualifying for the flexibilities proposed today.

First, nonhandheld engine manufacturers would be considered ''small volume engine manufacturers'' when their total annual production is 10,000 units or less; handheld engine manufacturers would be considered ''small volume engine manufacturers'' when their total annual production is 25,000 units or less. While over 50 percent of the nonhandheld engine manufacturers, and up to 30 percent of the handheld engine manufacturers could qualify under this proposed cutoff, fewer than 1 percent of the engines sold in the U.S. would be covered by these cutoffs.

Second, nonhandheld small volume engine families would be those families of 1000 units of less; handheld small volume engine families would be those families of 2,500 units or less. These proposed thresholds were selected as high enough to include approximately 30 percent of the engine families in each category, while low enough to account for less than 1 percent of the engines sold. At these levels, EPA believes a reasonable amount of flexibility could be provided to a significant number of manufacturers without undue risk of loss in emission control. In comments to the ANPRM, PPEMA has recommended 10,000 units or less as a definition for small volume handheld families. Since this definition will impact the number of engines families within a manufacturer that could be exempt from PLT testing, EPA is uncertain as to why a larger sales volume cut-off is both appropriate from an enforcement perspective and of particular benefit to the manufacturer. EPA requests information on the necessity for expanding its small volume engine family definition to include larger volume family sales such as recommended by PPEMA (and a comparable volume for nonhandheld engine families), especially regarding the cost benefit to specific individual manufacturers, and the impact such a higher number would have on the confidence EPA would have that its PLT compliance program adequately evaluates the emission performance of the manufacturer's production.

Third, equipment manufacturers using nonhandheld engines would be considered ''small volume equipment manufacturers'' when their total annual output across all models is 2500 units or less; equipment manufacturers using handheld engines would be considered ''small volume equipment manufacturers'' when their total annual output across all models is 5000 units or less. Again, while over 80 percent of the nonhandheld equipment manufacturers, and up to 67 percent of the handheld equipment manufacturers could qualify under this proposed cutoff, fewer than 2 percent of the nonhandheld engines and 1 percent of the handheld engines sold in the U.S. would be covered under these thresholds.

Finally, equipment models using nonhandheld engines would be considered ''small volume equipment models'' when 500 or fewer units are produced per year; equipment models using handheld engines would be considered ''small volume equipment models'' when 2500 or fewer units are produced per year. On the nonhandheld side up to 3 percent of the equipment sold in the U.S. would be considered small volume equipment models. On the handheld side, up to 3.5 percent of the equipment sold in the U.S. would be considered small volume equipment models.

3. General Flexibilities

The program proposed today contains several general provisions intended to facilitate compliance for engine manufacturers. One proposed flexibility, available to both handheld and

[50] Annual production volume of U.S. sales, as defined by these proposed regulations. Note that the vast majority of ''small'' manufacturers together produce a very small fraction of the engines; a few very large manufacturers produce the large majority of the engines.

nonhandheld engine manufacturers, is the ability to carry-over certification from one year to the next. This would reduce certification costs after the first year for those engines using technology that does not change significantly from year to year.

In addition, today's proposal contains two sets of proposed standard structure flexibilities which differ for handheld and nonhandheld engine manufacturers. For handheld engine manufacturers, the standards proposed in today's rule would be phased in, on a percentage of sales basis, which would facilitate compliance by allowing a manufacturer to spread initial compliance costs out over several years. It would also provide an opportunity for engine manufacturers to continue to supply Phase 1 engines to various equipment manufacturers, including the small volume equipment manufacturers that would also benefit from the special flexibilities described below.

For nonhandheld engine manufacturers, a declining corporate average standard for Class II nonhandheld engines would achieve those same goals. In addition, nonhandheld engine manufacturers would benefit from the certification averaging, banking, and trading program, which would help reduce compliance costs by allowing manufacturers to meet the standards with the most cost-effective technologies. Today's proposal would also allow manufacturers of nonhandheld overhead valve engines to use an assigned deterioration factor for nonhandheld overhead valve engines, further easing the compliance burden by reducing the number of tests needed to determine compliance.

For equipment manufacturers, EPA is proposing that the current provisions of 40 CFR 90.1003(b)(4) applicable for the transition from uncontrolled to Phase 1 emission regulations would also apply in concept during the transition from Phase 1 to Phase 2. Under today's proposal, equipment manufacturers would be allowed to continue to use Phase 1 engines until their stocks of engines are depleted, provided they do not engage in ''stockpiling'' (i.e., build up of an inventory of engines outside of normal business practices).

4. Phase-In Flexibilities

In addition to these general flexibilities, EPA is proposing two other provisions that would be applicable to all manufacturers of certain kinds of nonhandheld engines to ease compliance during the phase-in of the standards and ensure their achievability. First, because manufacturers' testing capacities may be substantially constrained during the transition to fully-phased-in standards, EPA is proposing to allow manufacturers of Class II OHV nonhandheld engines who elect not to use assigned dfs to use good engineering judgment to establish deterioration factors for the 500 and 1000 hour useful life categories during the phase-in of the 12.1 g/kW-hr Class II standard, subject to the approval of the Administrator. Recognizing the need to verify deterioration factors established based on good engineering judgment, EPA is proposing that, beginning in 2006, the Administrator may direct manufacturers to verify such deterioration factors using the same process as that for calculating deterioration factors described in Section IV.D.1 above (i.e, aging at least three engines in the field and calculating the deterioration factor based on the average of the test data). EPA is also proposing that the manufacturer would be allowed to offset any emission shortfalls resulting from a low deterioration factor through the use of certification credits (see discussion, Section IV.A.5) or other compensating measures approved by the Administrator.

Second, EPA is proposing an additional flexibility for manufacturers of Class II nonhandheld engines that use side-valve technology engines or engines with aftertreatment. During the transition to the Phase 2 standards, for engines which the manufacturer commits to cease production by the end of the 2004 model year, manufacturers would have the option to age engines for less than their full useful lives and extrapolate the deterioration factor to the full useful life using good engineering judgment.[51] Again, demonstration of such good engineering judgment would need to be made to the satisfaction of the Administrator. For the engine families which the manufacturer commits to phase out, engines certified to 250 hours could be aged for 120 hours, engines certified to 500 hours could be aged to 250 hours, and engines certified to 1000 hours could be aged to 500 hours. This flexibility, like the previous one, is intended to reduce the testing burden during the phase-in of the 12.1 g/kW-hr standard. However, EPA is not proposing to extend this flexibility to Class II engines which the manufacturer does not commit to cease production. In essence, this flexibility is designed to reduce the compliance burden at the start of the program for engines that are to be phased out, and thus to allow manufacturer to focus their resources on transitioning to engines that will meet the 2005 standards.

5. Flexibilities for Small Volume Engine Manufacturers and Small Volume Engine Families

EPA is proposing five compliance flexibilities to ensure the achievability of the standards and reduce the compliance burden on small volume engine manufacturers and small volume engine families, as follows.

First, small volume engine manufacturers could opt out of mandatory production line testing. This option would apply only to nonhandheld engine manufacturers with a total annual production of 10,000 engines or less and to handheld engine manufacturers with a total annual production of 25,000 engines or less. These engines would be subject to SEA testing. However, EPA anticipates little such testing unless it receives evidence of nonconformities or other problems.

Second, manufacturers of small volume nonhandheld engine families (those with total annual production of 1000 engines or less) and manufacturers of small volume nonhandheld engine families (those with total annual production of 2500 engines or less) could opt out of mandatory production line testing for those engine families. As above, these engines would remain subject to SEA testing, which would likely only occur if EPA had evidence of nonconformity.

Third, manufacturers of very clean engine families, that is, those whose $HC+NO_X$ certification levels are at least 50 percent below the standard (or FEL, if applicable) could also opt out of mandatory production line testing for those families. These engines would also be subject to SEA testing, although EPA sees little likelihood of conducting SEAs on engines certified substantially below the standard (or FEL). EPA seeks comment on the margin below the standard (or FEL) necessary to qualify for this exemption.

Fourth, small volume Class II side-valve technology engine families (whose annual production is 1,000 engines or less) would be allowed to meet an $HC+NO_X$ standard of 24 g/kW-hr, which represents the Phase 1 standard adjusted for deterioration. Note that these families could also opt out of mandatory production line testing, consistent with provision 2 above. This flexibility is intended to ensure that manufacturers can continue to produce these small

[51] As described in Section IV.D.1 of this preamble, Class II side-valve engines and engines with aftertreatment would be able to certify through a bench aging certification program, provided that a field/bench adjustment factor had been established.

volume engines, many of which are used in niche-market specialty equipment.

Fifth, small volume engine manufacturers could defer compliance with Phase 2 handheld requirements and Class II nonhandheld standards until the last year of the phase in. For handheld engines, this would mean that the engine manufacturer could, at its option, produce Phase 1 engines exclusively through the 2004 model year, with full Phase 2 compliance required in 2005. For nonhandheld Class II engines, the engines would be subject to the Phase 2 requirements beginning in 2001, but would not have to comply with the actual Phase 2 corporate average standards until the 2005 model year. These manufacturers could certify Class II engines to a standard of 24 g/kW-hr through 2004. These engines would neither use nor generate certification credits. If a small volume engine manufacturer desired to generate credits prior to the 2005 model year, it could do so for those engines certified below the applicable corporate average emission standard. Note that, consistent with the first provision above, these families would not have to be tested under mandatory production line testing. This flexibility is intended to provide another mechanism to reduce impact on small volume engine manufacturers and help ensure that manufacturers can continue to produce engines for specialty equipment.

EPA is not proposing to specifically exempt from in-use testing any group of engines to which in-use testing requirements are applicable based on the group's or the manufacturer's size. The Agency believes that all engines should meet their standards (or FELs, as applicable) for their full useful life and that manufacturers should design engines to be emission durable. It is therefore appropriate that all engines to which in-use testing or demonstration requirements are applicable be subject to in-use testing. However, under this proposal, the choice of engines which would require in-use testing or demonstration is EPA's. EPA would not be inclined to identify for mandatory in-use testing a very small volume engine family or a family certified by a very small company unless there was evidence of a nonconformity. EPA requests comment on the appropriateness of this position.

6. Flexibilities for Small Volume Equipment Manufacturers and Small Volume Equipment Models

Several equipment manufacturers who do not make their own engines have expressed concern that the transition to the Phase 2 program may disrupt their production because engine suppliers do not always provide adequate lead time for equipment redesigns needed to accommodate engine design changes. Engine changes could affect mounting and connection locations, heat rejection loads, and engine compartment requirements, for example. In addition, some equipment manufacturers cannot implement equipment design changes quickly, even with timely information from manufacturers because of the sheer volume of redesign work needed to change diverse product offerings with limited engineering staffs.

EPA believes that the engine manufacturer flexibilities described above will extend the availability of engines currently used by small volume equipment manufacturers and will help ease the transition from Phase 1 to Phase 2 for those entities. However, to respond more directly to concerns raised by equipment manufacturers, EPA is proposing three compliance flexibilities to help enable equipment manufacturers to make the transition from Phase 1 to Phase 2 engines.

First, EPA is proposing to temporarily exempt small volume equipment manufacturers from the requirement to use Phase 2 engines in cases where no Phase 2 engines with appropriate physical and performance characteristics are available to fit existing equipment models. This exemption would apply to those equipment manufacturers whose annual output across all models uses 2500 or fewer nonhandheld engines, or 5000 or fewer handheld engines, and would last through the third year after the last applicable phase-in date for that class of engines. Thus, for example, small volume equipment manufacturers who use Class II nonhandheld engines in an existing piece of equipment could continue using Phase 1 engines through the end of the 2008 model year, in cases where no suitable Phase 2 engines are available to fit existing equipment models.

Second, EPA is proposing to delay the impact of the Phase 2 requirements on individual small volume equipment models in cases where no suitable Phase 2 engines are available to fit existing equipment models. A small volume model, as proposed, is one with 500 or less units produced per year for nonhandheld equipment, and 2500 or fewer units produced per year for handheld equipment. These small volume models could continue to use Phase 1 engines throughout Phase 2, except as discussed below. EPA is proposing that this exemption would be allowed only for those equipment models in which a certified Phase 2 engine will not fit, and would apply only to models in production prior to the effective date of the Phase 2 standards. This is to avoid encouraging manufacturers to bring out new models designed to use Phase 1 engines after the Phase 2 standards have gone into effect. This exemption would also apply only so long as the equipment is not significantly modified. EPA believes that if the equipment manufacturer takes steps to significantly redesign a particular model, the use of a Phase 2 engine should be included. Finally, this exemption could apply only through the applicability of the Phase 2 program. EPA seeks comments on each of these restrictions, especially with regard to how they would affect equipment manufacturers who might incur a significant change in the cost of the engine if they were required to switch to a Phase 2 engine as the result of a significant model redesign.

Finally, EPA is proposing a hardship relief provision by which any equipment manufacturer could obtain relief to continue using Phase 1 engines, by demonstrating to the Administrator's satisfaction that, despite its best efforts, the manufacturer cannot meet the implementation dates without incurring substantial economic hardship, even with the transition flexibilities described above, due to unforeseeable factors beyond the equipment manufacturer's control. Such a situation may occur if an engine supplier were to change or drop an engine model very late in the implementation process. The intent of this provision is to recognize the concerns of equipment manufacturers about the uncertainty of timely supply of engines that meet equipment requirements by providing fair, objective criteria for hardship appeal that minimize the potential loss in environmental benefit, minimize the Agency's involvement in the financial affairs of the affected equipment manufacturer, and avoids straining the Agency's resources.

As proposed, this hardship relief provision would require requests to be made in writing, submitted before the earliest date of noncompliance, include evidence that failure to comply was unforeseeable and was not the fault of the equipment manufacturer (such as a supply contract broken by the engine supplier), and include evidence that the inability to sell the subject equipment will have a major impact on the company's solvency. The Agency would work with the applicant to ensure that all other remedies available under the flexibility provisions are exhausted

before granting further relief, and would limit the period of relief to no more than one year. Furthermore, the Agency proposes that applications for hardship relief could only be submitted through the first year after the last effective date of the phase-in period. EPA seeks comment on all aspects of this flexibility provision and on whether the Agency should require those who receive relief to cover some of the lost environmental benefit, such as purchasing lower emitting engines.

7. Engine Availability

EPA recognizes that the above-described equipment manufacturer flexibility provisions are of little use if Phase 1 engines are not available. Therefore, to help ensure availability of Phase 1 engines necessary for the above relief provisions to have full effect, EPA is proposing that engine manufacturers be allowed to build and sell the engines needed to meet the market demand created by these flexibilities. Specifically, EPA is proposing to continue to apply the Phase 1 compliance provisions to these engines. Thus, these Phase 1 engines would not be subject to Phase 2 useful life, production line testing or in-use demonstration requirements contained in today's program, since Phase 1 engines are not currently subject to those provisions. EPA desires to minimize any disincentives that engine manufacturers may have to producing these engines for small volume equipment users and is therefore proposing that these engines would be counted only to the extent necessary to determine the availability of the specific flexibility item that was being applied. These engines would not count in any other calculation of compliance with phase in requirements or against any other ceilings or limits proposed in this rule. These engines would not be required to use any emission credits nor would they be permitted to generate any such credits.

However, to prevent abuse of the ability to continue to produce Phase 1 engines, EPA believes it is necessary to impose some restrictions on the continued manufacture and sale of those engines. Therefore, EPA is proposing that equipment manufacturers procuring engines for use under the flexibility programs described above provide written assurance to the supplying engine manufacturer that such engines are being procured for this purpose. EPA requests comment on the need for a requirement that engine manufacturers maintain or annually provide to EPA records on the engines manufactured in support of the equipment manufacturer flexibilities described above, or whether EPA should rely on equipment manufacturer records.

F. Nonregulatory Programs

The following is a description of three nonregulatory programs which, though outside of the scope of the regulation, could yield important environmental benefits from the small SI engine sector. The first program is a voluntary incentive and recognition program for low-emitting nonhandheld and handheld engines, which would take the form of a ''green labeling'' program to identify engines which have emissions significantly lower than required by the proposed standards. The second program is a voluntary fuel spillage reduction program for nonhandheld and handheld engines. The third program is a particulate matter (PM) and hazardous air pollutant (HAP) testing program for handheld engines. These programs are described in the remainder of this section.

1. Voluntary ''Green'' Labeling Program

EPA is very interested in encouraging the design, production, and sale of small engines which are substantially cleaner than would be required by today's proposed Phase 2 programs. EPA plans to implement a voluntary program which would include consumer labeling of engines and equipment with superior emission performance as a way of providing public recognition and also allowing consumers to easily determine which engines have especially clean emission performance. At this time, EPA is considering a threshold of around 50 percent of the proposed standard (e.g., around 12.5 g/kW-hr for Class I engines) as the level below which engines would qualify for ''green'' labeling. To develop the details of such a program, the Agency requests comment on all aspects of the program, including the threshold for determining a ''green'' engine, whether the sales weighted certification level after dfs are applied should be used to establish the eligibility of an engine family, the design of and information to be included on the label, and other matters relevant to the successful implementation of the program. The Agency requests comment on program recommendations as part of today's proposal. In particular, the Agency seeks information on when such a program must be in place to effectively impact the sale of especially clean Phase 2 engines. The Agency is interested in working closely with consumer groups, engine and equipment manufacturers and others with an interest in making this program work. The Agency invites comment on the interest of any of these groups in working with the Agency to develop and implement this program.

2. Voluntary Fuel Spillage and Evaporative Emission Reduction Program

EPA is planning to develop a voluntary fuel spillage and evaporative emission reduction program specifically for the small engine industry and its customers. While this program would not impose enforceable requirements on engine manufacturers subject to this rulemaking, it is important to reduce fuel spillage and other sources of evaporative emissions. Every year, millions of gallons of gasoline are lost during refueling. It is estimated that if a few ounces are spilled during each refueling of lawn and garden equipment, they would total about 17 million gallons of gasoline, most of which evaporates into the air to contribute to the ground-level ozone problems. To reduce and prevent this pollution, a variety of measures will be needed, most involving increased public awareness and education.

The Agency believes it is appropriate to develop and implement a program targeted at the small SI industry and its customers to encourage public awareness and act as an incentive for technology investments. The Agency is interested in a voluntary partnership program which would involve EPA, engine manufacturers and equipment manufacturers, regional, state, and local air pollution agencies, health and environmental organizations, fuel container manufacturers, and other interested parties who would all contribute to the successful development and implementation of a voluntary fuel spillage and evaporative emission reduction program.

While the design of such a program will benefit from the thoughtful input of all partners, the program would likely encourage the development of technology that will assist equipment users in reducing spills and evaporative emissions, provide recognition for implementing technology developments that will assist equipment users in reducing spills, and provide education and training to commercial operators of equipment and to those persons who influence individuals doing the refueling (such as equipment sales staff or small engine course instructors), and similar target audiences.

Initial steps in this program involve identifying interested partners and convening a meeting to discuss the roles and responsibilities of each partner. The Agency seeks comment on the proposed voluntary partnership program, interest

in participating in this partnership, appropriate strategies and target audiences, and other matters pertinent to establishing this program.

3. Particulate Matter and Hazardous Air Pollutant Testing Program for Handheld Engines

While section 213(a)(4) of the Clean Air Act allows EPA to establish standards for nonroad emissions of any air pollution which may reasonably be anticipated to endanger public health or welfare, today's notice does not propose to establish emission standards in Phase 2 for particulate matter (PM) or non-hydrocarbon hazardous air pollutants (HAP) listed under section 112(b) of the Clean Air Act. However, EPA and other parties have agreed that a PM and HAP test program will be conducted (see 62 FR 14746). The Portable Power Equipment manufacturers Association (PPEMA), in cooperation with EPA, will conduct a test program to evaluate and quantify emissions of PM and HAP including, but not limited to, formaldehyde, acetaldehyde, benzene, toluene, and 1,3 butadiene. EPA anticipates that testing will be conducted on Phase 2 technology handheld engines, with a sufficient magnitude of engines tested to represent the range of new basic technologies used to comply with Phase 2 small engine standards. EPA expects that the information generated by this program will be useful in informing any future implementation of section 213(a)(4) regarding small SI engines.

G. General Provisions

This section includes a description of certain other general provisions proposed in today's notice, including provisions related to annual production period flexibilities during the transition to Phase 2, the definition of handheld engines, a small displacement nonhandheld engine class, propane fueled indoor power equipment, dealer responsibility, engines used in recreational vehicles, engines used in rescue and emergency equipment, and replacement engines.

1. Model Year Definition and Annual Production Period Flexibilities During Transition to Phase 2

The programs for nonhandheld and handheld engines proposed today would be effective beginning with the 2001 and 2002 model years, respectively. EPA is not proposing to change the Phase 1 definition of model year for Phase 2. That is, model year (MY) would continue to mean the manufacturer's annual new model production period which includes January 1 of the calendar year, ends no later than December 31 of the calendar year, and does not begin earlier than January 2 of the previous calendar year. When a manufacturer has no annual new model production period, model year would mean calendar year (see 40 CFR 90.3). Under no circumstances would the model year definition be allowed to be interpreted to let existing models ''skip'' annual certification by pulling ahead the production of every other model year.

In addition, in order to provide additional lead time for the implementation of the program for nonhandheld engines, EPA is proposing to adopt similar flexibilities for the beginning of the Phase 2 program for nonhandheld engines as were available for the Phase 1 program (see 40 CFR 90.106 (a) and (b)). Thus, for the start up of Phase 2, EPA is proposing that every manufacturer of new nonhandheld engines produced during or after model year 2001 would be required to certify those engines to the Phase 2 program requirements. Nonhandheld engines manufactured during an annual production period beginning prior to September 1, 2000, would be allowed to certify to Phase 1 standards. However, annual production periods beginning prior to September 1, 2000, would not be allowed to exceed 12 months in length. In effect, all nonhandheld engine families would be required to be certified to the Phase 2 program by September 1, 2001. EPA is not proposing this provision for handheld engines, which have both a later effective date as well as a phase-in of the Phase 2 program based on percentage of engine sales. EPA requests comment on whether similar provisions for handheld engines should be adopted (except that in the case of handheld engines, September 1 of each year would be the date that the percentage of engine sales requirements for Phase 2 certification would have to be met). EPA requests comments on all aspects of these provisions relating to annual production periods in the transition from Phase 1 to Phase 2 certified engines.

2. Definition of Handheld Engines

EPA is not proposing any changes to the criteria listed in Phase 1 used to determine whether engines could be classed as Class III, IV or V. For Phase 2, EPA would continue to make determinations of applicability of the Class III, IV, or V standards based on the criteria found at 40 CFR 90.103(a)(2). During Phase 1, the multipositional use criterion has been used by EPA to make handheld determinations for certain two-person earth augurs, breakers and rammers, and power shovels. In each case, the manufacturer presented evidence to the satisfaction of the Agency demonstrating the multipositional use of the equipment, and provided a discussion of any constraints on engine design imposed by the usage of the equipment. The interpretation of multipositional use by EPA has been made relative to the equipment category and the technology available to meet the constraints imposed by the usage of the equipment.

EPA received comment on the ANPRM that EPA should revise the definition of handheld.[52] This commenter suggests that the Phase 1 definition of handheld restricts the replacement of 2-strokes by significantly cleaner 4-stroke engines, making it difficult to introduce a significantly cleaner engine for a product application. This commenter suggests that a different handheld definition and interpretation would improve the environment and permit the continued use of necessary products.

EPA believes that the current interpretation of criteria used to determine applicability of Class III, IV and V standards addresses this concern. Provided the 4-stroke engines are capable of performing the same intended functions as 2-stroke engines used in similar handheld applications, then EPA would likely determine that the 4-stroke engine also meets the criteria for applicability of the Class III, IV or V standards.

3. Small Displacement Nonhandheld Engine Class

EPA has considered whether there is a need for changes or additions to the five classes of small SI engines for regulatory purposes. In particular, the Agency has considered whether there is a need for addition of a new, small displacement class that would be considered ''nonhandheld.'' In comments on the ANPRM, one commenter specifically requested EPA to consider proposing a new class, as follows: the new class would be nonhandheld engines with displacements less than 75cc, and be subject to an in-use standard of 72.4 g/kW-hr with useful life categories of 125 hours and 250 hours. The commenter believes a new class for nonhandheld is needed for several reasons. The commenter believes the existing Phase 1 standards did not contemplate small displacement nonhandheld engines, yet the Phase 1 rule left a void in the market

[52] See comments from Honda, Item #II–D–07 in EPA Air Docket A–96–55.

which could be filled by small displacement nonhandheld engines. The commenter believes the Phase 1 standards prevented less than 75 cc 2-stroke engines from being certified into some nonhandheld applications which utilize small displacement engines, but that the proposed Phase 2 Class I standard is too stringent for less than 75 cc 4-strokes to meet.

The Agency is not proposing the addition of a new small displacement nonhandheld class. The Agency believes that the proposed Class I standard, which can be met through averaging, will allow a full range of small displacement nonhandheld engines to certify to the proposed Phase 2 standards. If the proposed Class I standard can be met through averaging, the creation of a new displacement class with a higher standard could result in a smaller environmental benefit from the Phase 2 program.

The Agency understands it is possible that some nonhandheld applications which use small displacement engines may no longer be able to utilize two-stroke engines if the Phase 2 standards are adopted as proposed, but believes that complying engines, perhaps of larger displacement, can be used. EPA requests additional information on this issue and the extent of its occurrence. The Agency also once again requests comment on the need for a new small displacement class, in particular, whether the proposed average Class I standard is sufficient to cover smaller displacement engines. The Agency also requests comment on the displacement cutoff (75cc), standard (72.4g/kW-hr), and useful lives (125 hours and 250 hours) suggested by the ANPRM commenter.

4. Liquefied Petroleum Gas Fueled Indoor Power Equipment

Manufacturers of equipment using liquefied petroleum gas (LPG) have argued that their situation deserves special consideration within the Phase 2 regulations.[53] The type of equipment they produce is often designed specifically for indoor use including, for example, floor washing and buffing equipment. The relatively low sales (likely fewer than 10,000 annually nationwide for the industry) and the fact that many of these manufacturers likely sell less than one thousand pieces of equipment annually means that both individually and collectively they account for a very small portion of the small SI engines sold annually. LPG is a popular fuel for indoor equipment due to the proven ability to calibrate LPG-fueled engines to operate at very low carbon monoxide (CO) levels. Low CO performance is especially important for indoor equipment to minimize CO exposure to the operator and others in the building. The Occupational Health and Safety Administration (OSHA) has set maximum CO standards for indoor ambient concentrations and some states have adopted even tighter indoor CO standards. While these are ambient standards, not emission limits for individual pieces of equipment, equipment manufacturers, to successfully market in this area, must be assured their equipment emits very low levels of CO and thus can be routinely used indoors without causing violations of OSHA or state indoor air quality requirements.

Because the specialized nature of their equipment places unique demands on these engines and due to the typically low sales volumes of many of the pieces of equipment, many of these indoor equipment manufacturers must not only design and produce their equipment but also to a significant extent are responsible for the modification of engines to power their equipment. In a number of cases these indoor equipment manufacturers buy gasoline-fueled engines and convert them to operate on LPG.

While manufacturers of LPG-fueled indoor power equipment must power their equipment with engines which meet all the requirements of the small engine Phase 1 rules, the manufacturers argue that the proposed Phase 2 rules would add significantly to their burden. While meeting the proposed federal $HC+NO_X$ Phase 2 standard should not be particularly difficult for LPG engines compared to gasoline-fueled engines, the combined need to also achieve very low CO emission levels in order to not cause violations of indoor ambient CO standards may present a design challenge. The necessary controls may well exceed those required to meet just the Phase 2 standards and may include, for example, the use of electronically controlled fuel systems and perhaps catalysts. This could add significant cost to a relatively few engines. Even at a higher cost, those equipment manufacturers currently being supplied LPG-fueled engines by an original engine manufacturer are concerned that their suppliers may decide it is not worth the effort to supply engines complying with the Phase 2 standards. For those equipment manufacturers modifying engines to operate on LPG at low CO levels, the same technical challenges are faced while their ability to spread the development costs across their engines is limited by the low number of engines modified.

While EPA has not done a thorough cost analysis for the impact of Phase 2 standards on this unique segment of the industry, EPA is persuaded that the technical challenges faced by this segment are significant. Many of these manufacturers would be considered ''small volume engine manufacturers'', with engines produced in ''small volume engine families'', under the criteria proposed today, and would therefore qualify for proposed compliance flexibilities for small volume engine manufacturers and small volume engine families. These include both additional flexibilities in the phase-in of the Phase 2 standard, and also an option to opt out of mandatory production line testing. In effect, the additional phase-in flexibilities would allow nonhandheld manufacturers of indoor LPG-fueled power equipment engines, whose annual production of small SI engines is 10,000 units or less, to continue producing Class II nonhandheld engines which meet a Phase 1 equivalent standard (24 g/kW-hr) until 2005. Beginning in 2005, when the Phase 2 standards are proposed to be fully phased in for gasoline-fueled engines, these LPG-fueled engines are proposed to also be required to meet the Phase 2 $HC+NO_X$ standards. This extra lead time would allow manufacturers to spread their development efforts over several additional years, for those manufacturers choosing or required to make their own fuel modifications. In addition, while these engine families would be certified to the Phase 2 program, the cost of the proposed compliance program for these manufacturers would be minimized, as these manufacturers and engine families would likely qualify for the proposed flexibilities that would allow manufacturers to carry-over certification from one year to the next and to opt out of mandatory production line testing. The provisions for small volume engine manufacturers and small volume engine families are discussed in more detail in Section IV.E.

Comments are requested on the impact of this proposed phase-in flexibility and other proposed compliance program flexibilities on the technical and economic ability of the indoor power equipment engine industry segment to successfully comply with the Phase 2 standard beginning in 2005, and any air quality impact concerns such a delayed implementation might cause.

EPA is also requesting comment on the possible deletion of the existing § 90.1003(b)(3). EPA believes this

[53] See EPA Air Docket A–96–55, Items #II–D–02, II–D–04, and II–D–08.

provision may be of only limited utility for this program and believes it could prove problematic for small SI engines. This provision provides that certain activities connected to conversion of engines to alternative fuels will not be regarded as tampering. At one point, the existing regulatory paragraph makes reference to ''vehicle'' standards, of which, of course, there are none in the small SI program. Further, it might be misconstrued as requiring an engine modifier to reinstall hardware that was removed in the conversion process after the conversion was complete. Under such a misreading, a modifier engaged in converting gasoline engines to operate on propane might be viewed as having to reinstall the original gasoline carburetor on an engine after conversion, even if that were not feasible.

Existing converters of small SI engines are currently certifying their products on the alternative fuel or are operating under EPA's tampering enforcement Memorandum 1–A. In light of this, for small SI engines, EPA believes that the discussion of the tampering implications of alternative fuel conversions for small SI engines could be best handled by the application of Memorandum 1–A. EPA does not expect that existing engine modifiers would be harmed by the deletion of this paragraph.

Text similar to existing § 90.1003(b)(3) is found in other nonroad rules. EPA intends, at some future date, to review the appropriateness and usefulness of this language in those rules.

5. Dealer Responsibility

This proposal contains no new constraints or responsibilities for dealers and repair facilities from the Phase 1 rule. Dealers and repair shops, like all other persons, would continue to be prohibited from tampering or causing tampering. Tampering refers to the removal or rendering inoperative of any device or element of design installed on or in an engine for purposes of emission control.

During the Phase 2 regulatory negotiation process, the issue of dealer responsibility was frequently raised out of concern that increasingly sophisticated control technologies would result in greater numbers of tampered engines being brought in for service. Another concern was that the Phase 2 rule not require that repair parts for emission control systems be obtained from the engine manufacturer.

While all persons, including dealers and repair facilities, are prohibited from tampering or causing tampering, they are not prohibited from working on tampered engines. Under EPA tampering policies, dealers and repair facilities are not expected to restore tampered products to their originally certified and functioning configuration unless the repair is to the tampered system or a component of the tampered system. In such a case, the dealer or repair facility should restore the system to a certified and properly functioning condition, but need not conduct emission testing to verify compliance with emission standards. With regard to the use of emission control repair parts, dealers and repair facilities may use parts represented by their manufacturers to be functionally equivalent to original equipment parts.

6. Engines Used in Recreational Vehicles

EPA is not proposing any changes to the provision in the Phase 1 rule that engines used in recreational vehicles would not be subject to the small SI engine regulations. EPA continues to believe that these engines are more appropriately regulated under a rulemaking separate from this small SI engine program. Thus, these engines would remain outside the scope of the program when Phase 2 takes effect. The Agency's rationale for excluding engines used to propel recreational vehicles was presented in the preamble for the Phase 1 Notice of Proposed Rulemaking (NPRM) (see 59 FR 25403, 25414), and the Agency addressed the comments received on this topic in the Phase 1 Response to Comments document (see Section 3.8 ''Non-Coverage of Recreational Propulsion Engines'', EPA Air Docket A–93–25, Docket Item V–C–01). As discussed in the Preamble for the Phase 1 NPRM, ''EPA's primary reason for this exclusion is the extremely transient operation of the products in which these engines are used, which limits the ability of the proposed steady state test procedure to adequately represent exhaust emissions. This exclusion is not based on a determination that these engines do not contribute to air pollution and therefore need not be controlled.'' (59 FR 25414) EPA continues to be concerned that the test procedures covering the Phase 1 and Phase 2 engines may not be appropriate for engines used to propel recreational vehicles.

Engines used in recreational vehicles are defined at 40 CFR 90.1(b)(5), in part, as having a rated speed greater than or equal to 5,000 RPM and having no installed speed governor. While EPA is not proposing any changes to the provisions which exclude recreational vehicles from this rule, EPA does wish to clarify that some engines with installed ''speed governors'' and with ungoverned rated speed above 5000 rpm still qualify as recreational. For example, engines used in typical recreational vehicles such as snowmobiles and 4-wheel ATVs which, when designed for use by children have ''speed governors'' installed for safety purposes to limit the top speed of the vehicle, have been found by EPA to be ''recreational vehicles'' in implementation of Phase 1. These vehicles are still operated in a typical fashion for recreational vehicles up to that top speed. During the development of the Phase 1 rule, the Agency was not aware of the existence of snowmobiles designed for children, and therefore not aware of the existence of snowmobiles with ''speed governors.'' The Agency would like to clarify that EPA continues to believe snowmobiles should not be covered under this rule, including snowmobiles designed for use by children which may in fact have a ''speed governor'' installed for safety purposes.

7. Engines Used in Rescue and Emergency Equipment

In consideration of safety factors associated with compliance with the Phase 2 program, today's proposal includes a provision that would exempt engines which are used exclusively in emergency and rescue equipment from compliance with any standards if the equipment manufacturer can demonstrate that no certified engine is available to power the equipment safely and practically. Although under Phase 1 EPA has received no reports of problems caused by the need to use certified engines in emergency and rescue equipment, EPA is concerned that such problems could arise. EPA foresees this exemption applying especially to handheld items used to work in tight places to perform such tasks as cutting metal to extricate passengers from wrecked vehicles, if the size, heat or other characteristics of the certified engine would render its use unsafe. EPA does not foresee this exemption applying to portable generators, compressors or hydraulic pumps that may be used to power rescue equipment from a distance, since such devices are not as subject to the size, weight and other considerations surrounding a tool that contains its own source of power.

EPA proposes this exemption to avoid any possible conflict between emission control and public safety. EPA wishes to reduce the chance that a piece of rescue equipment will go out of production or become more cumbersome because of the need to use certified engines. EPA sees no significant air quality impact

from such an exemption, because it would apply only to engines that are few in number and are subject to infrequent use for very short periods of time. In fact, EPA is not currently aware of any engine that is used exclusively in emergency or rescue equipment. The exemption, as proposed, would apply to engines and equipment produced during the remainder of the Phase 1 period as well as Phase 2 engines and equipment.

8. Replacement Engines

After promulgation of the Phase 1 rule, equipment manufacturers approached EPA with concerns that, once the rule took effect, they would not be able to obtain replacement engines to repair certain items of more expensive equipment such as commercial mowing and construction equipment when their engines fail. The equipment manufacturers provided evidence that many Phase 1 engines, especially Class II nonhandheld engines, would be configured differently from uncertified engines and would not fit in the engine compartments of some pre-regulatory equipment. The equipment manufacturers explained that occasional engine failures are often best remedied by replacing the engine. Commercial operators, many of whom are small businesses, may not be able to afford the downtime associated with waiting for an extensive engine repair. In effect, repairing the engines becomes more costly than replacing the engines, and may be less environmentally beneficial. EPA evaluated these concerns and gathered information from engine manufacturers, equipment manufacturers and their associations. EPA concluded that permitting the sale of uncertified replacement engines, which likely constitute less than one percent of annual small SI engine sales, was a cheaper alternative that was no worse for air quality than the repair or rebuilding of the failed engines, which were not prohibited by the Phase 1 rule. On August 7, 1997 (62 FR 42638), EPA issued a direct final rule amending the Phase 1 rule to allow engine manufacturers to sell uncertified engines for replacement purposes subject to certain controls designed to prevent abuse.[54] These controls require that the engine manufacturer ascertain that there is no currently certified engine that will fit in the equipment, that the engines be labeled for replacement purposes only, and that the engine manufacturer or its agent take ownership and possession of the old engine.

An environmental group has recently expressed concern to EPA about the replacement engine provisions for small SI engines published in the direct final rule described above. This group recommends that additional constraints and controls should be placed on the sale of these engines to prevent abuse since these engines either will not be built to comply with any standards, or will be built to comply with Phase 1 standards after those standards have been superseded by Phase 2 standards.

In today's notice, EPA is proposing to continue the replacement engine provision with an accommodation necessary to address Phase 1 engines after the implementation of Phase 2. EPA is also proposing additional requirements to address the concerns of the environmental group and better ensure that the ability to use replacement engines is not abused.

During Phase 2, the universe of small SI engines will expand to include uncertified engines, Phase 1 engines and Phase 2 engines. Consequently, the provision as proposed would be amended to permit uncontrolled engines to be sold for pre-regulatory equipment, and Phase 1 engines to be sold for equipment built with Phase 1 engines, subject to certain constraints. EPA has no reason to believe that this provision will result in significant adverse air quality impacts. In fact, many replacement engines for older equipment will be certified Phase 2 engines. This provision provides flexibility and cost savings for equipment operators. It affects primarily commercial equipment where the equipment cost is high enough to justify major engine repairs or replacement and the usage of the equipment is such that downtime for repairs is costly. Replacement engines are not typically used in handheld equipment, nor in lower cost nonhandheld items such as walk behind mowers. A more detailed discussion of the rationale for the replacement engine provision can be found in the preamble to the direct final rule cited above.

Although EPA does not believe that replacement engines will cause any significant air quality impacts, it is proposing to add safeguards and reporting and record keeping requirements to further ensure against abuse. EPA is proposing to amend the existing replacement engine provisions to require: (1) that manufacturers follow specific guidelines when ascertaining that no certified engine is available which can suitably repower a specific item of equipment; (2) that old engines being replaced are destroyed; (3) that engine manufacturers report to EPA annually the number of uncertified engines sold under the replacement engine provisions; (4) that manufacturers keep records, accessible to EPA, of the purchasers, quantities and equipment applications of replacement engines; and (5) that there be a limit on the time period for which uncertified replacement engines are normally available. EPA requests comment on the need for these additional requirements, and the burden they may pose to industry, equipment operators and engine distributors.

V. Environmental Benefit Assessment

National Ambient Air Quality Standards (NAAQS) have been set for criteria pollutants which adversely affect human health, vegetation, materials and visibility. Concentrations of ozone (O_3) are impacted by HC and NO_X emissions. Ambient concentrations of CO are, of course, impacted by CO emissions. EPA believes that the standards proposed today would reduce emissions of HC and NO_X and help most areas of the nation in their progress towards compliance with the NAAQS for ozone. The following provides a summary of the roles of HC and NO_X in ozone formation, the estimated emissions impact of the proposed regulations, and the health and welfare effects of ozone, CO, hazardous air pollutants, and particulate matter.

Much of the evaluation of the health and environmental effects related to HC, NO_X and CO found in this section is also discussed in the draft Regulatory Support Document (RSD), and in the March 1997 ANPRM. EPA encourages comments on the Agency's beliefs expressed in this proposal and in the RSD, a copy of which is in the public docket for this rulemaking.

A. Roles of HC and NO_X in Ozone Formation

Both HC and NO_X contribute to the formation of tropospheric ozone through a complex series of reactions. In a recent report, researchers emphasize that both HC and NO_X controls are needed in most areas of the United States.[55] EPA's primary reason for controlling emissions from small SI engines is the role of their HC emissions in forming ozone. Of the major air pollutants for which NAAQS have been designated under the CAA, the most widespread problem continues to be ozone, which is the most prevalent photochemical oxidant and an

[54] The docket for this rulemaking, EPA Air Docket #A–97–25, is incorporated by reference.

[55] National Research Council, *Rethinking the Ozone Problem in Urban and Regional Air Pollution*, National Academy Press, 1991.

important component of smog. The primary ozone NAAQS represents the maximum level considered protective of public health by the EPA. Ozone is a product of the atmospheric chemical reactions involving oxides of nitrogen and volatile organic compounds. These reactions occur as atmospheric oxygen and sunlight interact with hydrocarbons and oxides of nitrogen from both mobile and stationary sources.

A critical part of this problem is the formation of ozone both in and downwind of large urban areas. Under certain weather conditions, the combination of NO_X and HC has resulted in urban and rural areas exceeding the national ambient ozone standard by as much as a factor of three. Thus it is important to control HC over wider regional areas if these areas are to come into compliance with the ozone NAAQS.

B. Health and Welfare Effects of Tropospheric Ozone

Ozone is a powerful oxidant causing lung damage and reduced respiratory function after relatively short periods of exposure (approximately one hour). The oxidizing effect of ozone can irritate the nose, mouth, and throat causing coughing, choking, and eye irritation. In addition, ozone can also impair lung function and subsequently reduce the respiratory system's resistance to disease, including bronchial infections such as pneumonia.

Elevated ozone levels can also cause aggravation of pre-existing respiratory conditions such as asthma.[56] Ozone can cause a reduction in performance during exercise even in healthy persons. In addition, ozone can also cause alterations in pulmonary and extrapulmonary (nervous system, blood, liver, endocrine) function.

The newly revised primary NAAQS [57] for ozone based on an 8-hour standard of 0.08 parts per million (ppm) is set at a level that, with an adequate margin of safety, is protective of public health. EPA also believes attainment of the new primary standard will substantially protect vegetation. Ozone effects on vegetation include reduction in agricultural and commercial forest yields, reduced growth and decreased survivability of tree seedlings, increased tree and plant susceptibility to disease, pests, and other environmental stresses, and potential long-term effects on forests and ecosystems.

High levels of ozone have been recorded even in relatively remote areas, since ozone and its precursors can travel hundreds of miles and persist for several days in the lower atmosphere. Ozone damage to plants, including both natural forest ecosystems and crops, occurs at ozone levels between 0.06 and 0.12 ppm.[58] Repeated exposure to ozone levels above 0.04 ppm can cause reductions in the yields of some crops above ten percent.[59] While strains of some crops are relatively resistant to ozone, many crops experience a loss in yield of 30 percent at ozone concentrations below the pre-revised primary NAAQS.[60] The value of crops lost to ozone damage, while difficult to estimate precisely, is on the order of $2 billion per year in the United States.[61] The effect of ozone on complex ecosystems such as forests is even more difficult to quantify. However, there is evidence that some forest types are negatively affected by ambient levels of ozone.[62] Specifically, in the San Bernadino Mountains of southern California, ozone is believed to be the agent responsible for the slow decline and death of ponderosa pine trees in these forests since 1962.[63]

Finally, by trapping energy radiated from the earth, tropospheric ozone may contribute to heating of the earth's surface, thereby contributing to global warming (that is, the greenhouse effect),[64] although tropospheric ozone is also known to reduce levels of UVB radiation reaching the earth's surface, the increase of which is expected to result from depletion of stratospheric ozone.[65]

C. Estimated Emissions Impact of Proposed Regulation

The emission standards proposed in today's action should reduce average in-use exhaust HC+NO_X emissions from small SI engines 30 percent beyond Phase 1 standards by year 2025, by which time a complete fleet turnover is realized. This translates into an annual nationwide reduction of roughly 134,674 tons of exhaust HC+NO_X in year 2025 over that expected from Phase 1. Reductions in CO beyond Phase 1 levels, due to improved technology, is also to be expected by year 2025.

Along with the control of all hydrocarbons, the proposed standards should be effective in reducing emissions of those hydrocarbons considered to be hazardous air pollutants (HAPs), including benzene and 1,3-butadiene. However, the magnitude of reduction would depend on whether the control technology reduces the individual HAPs in the same proportion as total hydrocarbons.

These emission reduction estimates are based on in-use population projections using estimates of annual engine sales, engine attrition (scrappage), activity indicator, and current new engine and proposed in-use emission factors. Data on activity indicators were based on the Phase 1 small SI regulation. Estimates of annual engine sales for years from 1973 to 1995 were based on engine data available from the PSR databases [66] and national shipment data provided by Outdoor Power Equipment Institute (OPEI), the Portable Power Equipment Manufacturers Association (PPEMA), and a study done for the California Air Resources Board by Booz Allen & Hamilton (BAH). Sales projections into the future were for the most part based on estimates of population growth for the United States. Attrition rates (survival probability that an engine remains in service into a specific calendar year) for all engines included in this analysis were developed on the assumption that the equipment attrition function may be represented by a two-parameter Weibull cumulative distribution function. The in-use emission factors are based on a multiplicative deterioration factor which is a function of the square root of the hours of equipment usage.

For the analysis summarized in Table 18, the emission inventories were developed for the five regulated engine classes as well as for all pieces of equipment using engines covered by this proposed rule. Using estimated engine sales and attrition, EPA projected the total in-service engine population for each year from 1973 to 2025. EPA projected the total annual nationwide HC, NO_X and CO emissions from small SI engines included in the proposal under the baseline (that is, with Phase 1 controls applied) and controlled (Phase 2) scenarios.

For the controlled scenario, EPA assumed that for both handheld and

[56] United States Environmental Protection Agency, Review of the National Ambient Air Quality Standards for Ozone—Assessment of Scientific and Technical Information: OAQPS Staff Paper, EPA–450/2–92–001, June 1989, pp. VI–11 to 13.

[57] See 62 FR 38896, Friday, July 18, 1997.

[58] U.S. EPA, *Review of NAAQS for Ozone,* p. X–10.

[59] U.S. EPA, *Review of NAAQS for Ozone,* p. X–10.

[60] See 62 FR 38856, Friday, July 18, 1997.

[61] U.S. EPA, *Review of NAAQS for Ozone,* p. X–22.

[62] U.S. EPA, *Review of NAAQS for Ozone,* p. X–27.

[63] U.S. EPA, *Review of NAAQS for Ozone,* p. X–29.

[64] NRC, *Rethinking the Ozone Problem,* p. 22.

[65] *The New York Times,* September 15, 1992, p. C4.

[66] Power Systems Research, Engine Data and Parts Link data bases, St. Paul, Minnesota, 1992.

nonhandheld engines the standards would be phased in on a percentage of production basis as proposed in today's notice. Deterioration factors were determined using manufacturer-supplied in-use emission data and other relevant information.

TABLE 18.—PROJECTED ANNUAL NATIONWIDE EXHAUST HC+NO_X EMISSIONS

[tons/year]

Year	Without proposed controls (Phase 1)	With proposed controls	Tons reduced from Phase 1 revised baseline	Percentage reduction
2000	378,700	378,700		
2005	368,195	297,873	70,322	19.1
2010	389,641	279,061	110,580	28.4
2015	414,626	292,829	121,797	29.4
2020	439,413	309,221	130,192	29.6
2025	452,973	318,299	134,674	29.7

For simplicity in modeling the projected emission reductions, the Agency has assumed in the emissions inventory model that under the Phase 2 program, each engine would meet the proposed standard for the minimum useful life category: i.e., Class I engines meet the proposed standards at 66 hours; Class 2 engines at 250 hours; and Classes III, IV, and V at 50 hours. Therefore, the Agency has under estimated the emission benefits of the proposed standards, because some engines will be certifying to the longer useful life categories, and therefore a greater emission reduction than predicted in Table 18 will occur. The Agency will attempt to address this issue for a more accurate prediction of the emission benefits of the proposed program for the final rule.

In addition to the reductions in exhaust HC+NO_X emissions, the Agency is also estimating the proposed standards would result in a small reduction in HC refueling emissions (refueling emissions are HC emissions caused from fuel spillage and vapor displacement during the refueling of a small engine). As discussed in the RSD, refueling emissions represent approximately an additional 89,000 tons/year of HC in 2025 without Phase 2 controls. The Agency estimates that refueling emissions would be reduced under Phase 2 by the percent reduction in fuel consumption under Phase 2. The Agency estimates the proposed Phase 2 program would result in approximately a 9 percent reduction in fuel consumption by 2025. Therefore, the Agency estimates refueling emissions would be reduced by 9 percent. A 9 percent reduction in refueling emissions equates to an approximate 8,000 ton/year reduction in HC emissions in 2025.

D. Health and Welfare Effects of CO Emissions

Carbon monoxide (CO) is a colorless, odorless gas which can be emitted or otherwise enter into ambient air as a result of both natural processes and human activity. Although CO exists as a trace element in the troposphere, much of human exposure resulting in elevated levels of carboxyhemoglobin (COHb) in the blood is due to incomplete fossil fuel combustion, as occurs in small SI engines.

The concentration and direct health effect of CO exposure are especially important in small SI engines because the operator of a small SI engine application is typically near the equipment as it functions. In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. According to numbers published in the Nonroad Engine and Vehicle Emission Study (NEVES), a 4-stroke, 2.9 kW lawnmower engine emits 1051.1 g/hr CO, while a 2-stroke, 2.9 kW engine emits 1188.4 g/hr CO.

A Swedish study [67–69] on occupational exposure to 2-stroke chainsaw exhaust concludes, among other things, that a rich fuel-air mixture results in high levels of CO emissions (a mean exposure rate of 37.0 $^{mg/m3}$). The work conditions that gave rise to the most intense problems for loggers were deep snow, thick forest stands and calm weather. The main discomforts experienced by loggers from chainsaw exhaust were cough and eye, nose and throat irritation. In view of the discomfort experienced by loggers and the complex nature of the exposure to chainsaw exhaust, it was recommended that action be taken to reduce exposure by making technical modifications to the engine or control exhaust emissions.

The toxicity of CO effects on blood and tissues, and how these effects manifest themselves as organ function changes, have also been topics of substantial research efforts. Such studies provided information for establishing the National Ambient Air Quality Standard for CO. The current primary and secondary NAAQS for CO are 9 parts per million for the one-hour average and 35 parts per million for the eight-hour average.

E. Health and Welfare Effects of Hazardous Air Pollutant Emissions

The focus of today's action is reduction of HC emissions as part of the solution to the ozone nonattainment problem. However, direct health effects are also a reason for concern due to direct human exposure to emissions from small SI engines during operation of equipment using such engines. Of specific concern is the emission of hazardous air pollutants (HAPs). In some applications, the operator must be adjacent to the exhaust outlet and is in the direct path of the exhaust as it leaves the engine. Today's proposed regulations should be effective in reducing HAPs such as benzene and 1,3-butadiene, in so far as these are components of the HC emissions being reduced by the Phase 2 standards.

Benzene is a clear, colorless, aromatic hydrocarbon which is both volatile and flammable. Benzene is present in both exhaust and evaporative emissions. Health effects caused by benzene emissions differ based on concentration and duration of exposure. The International Agency for Research on Cancer (IARC), classified benzene as a Group I carcinogen., namely an agent carcinogenic to humans. Exposure to benzene has also been linked with genetic changes in humans and animals. 1,3-butadiene is a colorless, flammable

[67–69] Occupational Exposure to Chain Saw Exhausts in Logging Operations, Am. Ind. Hyg. Assoc. J48, 1987.

gas at room temperature. This suspected human carcinogen is insoluble in water and its two conjugated double bonds make it highly reactive. 1,3-butadiene is formed in internal combustion engine exhaust by the incomplete combustion of the fuel and is assumed not present in evaporative and refueling emissions.

Epidemiologic studies of occupationally exposed workers were inconclusive with respect to the carcinogenity of 1,3-butadiene in humans. IARC has classified 1,3-butadiene as a Group 2A, probable human carcinogen. Other adverse noncancer health effects due to very high levels of exposure include heart, blood and lung diseases.

Since air toxic levels generally decrease in proportion to overall emissions once emission control technology is applied, the amount of benzene and 1,3-butadiene produced by new small SI engines should diminish after this rule becomes effective. Consequently, exposure to HAPs from new small SI engines would be reduced, as would associated health and environmental effects. Although there is little data on direct health effects of small SI engines, the Swedish study concludes benzene emissions from chain saw engines as being rather high. No study has been conducted involving the health effects of HAP emissions specifically from small SI engines. The Agency requests additional information on this topic.

F. Particulate Matter

Particulate matter, a term used for a mixture of solid particles and liquid droplets found in the air, has been linked to a range of serious respiratory health problems. These fine particles are of health concern because they easily reach the deepest recesses of the lungs. Batteries of scientific studies have linked particulate matter, especially fine particles (alone or in combination with other air pollutants), with a series of significant health problems including premature death, aggravated asthma and chronic bronchitis and increased hospital admissions. EPA has recently (July 1997) announced new NAAQS standards for particulate matter (PM) , by adding two new primary PM2.5 standards set at concentrations of 15 micrograms per cubic meter ($\mu g/m^3$), annual arithmetic mean, and 65$\mu g/m^3$, 24-hour average, to provide increased protection against the PM-related health effects found in community studies. EPA believes that the new standards will protect and improve the lives of millions of Americans.

Separate from the proposed rule, which would not establish emission standards for PM or toxic air contaminants listed under section 112(b) of the Clean Air Act, an agreement with PPEMA to conduct PM/HAP testing program for handheld engines in cooperation with EPA has been reached. Testing under the program would be conducted on Phase 2 technology handheld engines at EPA, industry, and/or independent facilities. The test program is to be designed to evaluate and quantify emissions of particulate matter and toxics including, but not limited to: formaldehyde, acetaldehyde, benzene, toluene and 1,3 butadiene.

VI. Economic Impacts

EPA has calculated the cost effectiveness of this proposed rule by estimating costs and emission benefits from these engines. EPA made best estimates of the combination of technologies that an engine manufacturer might use to meet the new standards, best estimates of resultant changes to equipment design, engine manufacturer compliance program costs and engine fuel savings in order to assess the expected economic impact of the proposed Phase 2 emission standards. Emission benefits are taken from the results of the environmental benefit assessment (Section V, above). The cost-effectiveness result of this rule is \$390 per ton of $HC+NO_X$ when fuel savings are not taken into account. When fuel savings are also considered, the cost-effectiveness calculation results in −\$700 per ton of $HC+NO_X$. This section describes the background and analysis behind these results.

The analysis for this proposed rulemaking is based on data from engine families certified to EPA's Phase 1 standards. It does not include any engine families or production volumes that are covered by CARB's Tier 1 standard. The California Air Resources Board (CARB) will implement emission standards for many of these engines a year or two prior to the proposed federal Phase 2 regulations. Therefore, this rule only accounts for costs for each engine sold outside California and those engines sold in California that are not covered by the CARB Tier II rulemaking, such as those used in farm and construction equipment. Although EPA expects that engines already designed to meet CARB's earlier standards would incur no additional design cost to meet federal standards, no effort was made to estimate which models would be sold in California and subject to the earlier California standards. Rather for the purpose of this proposal, any Phase 1 engine design that would need to be modified to meet Phase 2 standards was assumed to incur the full cost of that modification including design cost. Similarly, the cost to equipment manufacturers was assumed to be fully attributed to this federal rule even if an equipment manufacturer would have to make the same modifications in response to the CARB Tier 2. Therefore, in both of these cases, the cost to the manufacturer due to these proposed rules is likely over estimated. EPA requests comment on these assumptions. The details of EPA's cost and cost-effectiveness analyses can be found in Chapters 4 and 7 of the Draft RSD.

A. Engine Technologies

Table 19 lists the changes in technology, compared to Phase 1 engines, that have been considered in the cost estimation for this rulemaking. As discussed in Section IV.A of this preamble, the proposed standards would require different engine improvements amongst the five classes and engine designs within those classes.[70] For example, several Class I SV models are expected to require some internal improvements to reduce new engine out emissions and several additional components to increase emission durability. For the purposes of this cost analysis, Class II standards are assumed to require that engines be of clean OHV design. For Classes III–V, the proposed standards for the handheld engines are assumed to require improved scavenging techniques, for the two stroke engines, to be developed to reduce the approximately 30 percent of the air/oil/fuel mixture that traditionally escapes from these engines unburned. This analysis assumes that engine manufacturers would not be required to adopt advanced technologies such as catalysts or fuel injection systems. Manufacturers who did adopt such technologies would choose to do so for other perceived benefits. Therefore, the cost of such optional technology is not included in this cost estimate. Additional detail regarding the impact of these modifications can be found in Chapter 3 and 4 of the Draft RSD.

[70] Currently, carbureted two-stroke, four-stroke side-valve and four-stroke overhead valve engine designs comprise the vast majority of engines used in nonhandheld and handheld applications.

TABLE 19.—POTENTIAL TECHNOLOGY IMPROVEMENTS PER CLASS AND ENGINE DESIGN

Class	Engine design	Technologies
I	4 stroke—SV	Carburetor Improvements. Combustion Chamber Improvements and Intake System. Improved Oil Consumption (Piston oil control rings, valve stem seals).
I	4 stroke—OHV	None necessary.
I	2 stroke	None necessary.
II	4 stroke—SV	Conversion to clean OHV.
II	4 stroke—OHV	Piston and piston ring improvements. Improved combustion and intake system.
III–V	2 stroke	Carburetor Improvements. Improved Scavenging and Combustion Chamber Design. Manufacturing Tolerance Improvements.
IV	4-stroke	None necessary.

B. Engine Costs

The engine cost increase is based on incremental purchase prices for new engines and is comprised of variable costs (for hardware, assembly time and compliance programs), and fixed costs (for R&D and retooling). Variable costs were applied on a per engine basis and fixed costs were amortized at seven percent over five years. Engine technology cost estimates were based on the study by ICF and EF&EE in October 1996 entitled ''Cost Study for Phase Two Small Engine Emission Regulations''. Details of the assumed costs and analysis can be found in Chapters 4 and 7 of the Draft RSD.

1. Nonhandheld Engine Costs

Based on analysis of the EPA Phase 1 certification database, and use of the ABT program available to nonhandheld engines, it is assumed that four high production Class I SV engine families will need to incorporate all those technologies listed in Table 19. Incorporation of these technologies will require the engine manufacturer to incur both variable and fixed costs.

Analysis of Class II engine families, from the EPA Phase 1 certification database and use of the ABT calculation, shows that a number of Class II SV engine families will be converted to OHV engine design and a large number of OHV engine families will need to incorporate emission improvements. Such technologies will require both variable and fixed expenditures.

The proposed Phase 2 emission standards for this diverse industry would impact companies differently depending on the existing product offerings. Some companies currently manufacture very clean Class II OHV engines geared toward the commercial market and would be required to make very few changes in their current models. Companies that target the consumer market with SV and perhaps less expensive OHV engines would require application of the emission reduction technologies.

2. Handheld Engine Costs

Analysis of the Phase 1 certification database for handheld engines shows that nearly all engine families of two stroke design will require technologies to reduce engine emissions. Redesign of the existing two-stroke engine is allocated to fixed costs as companies perform R&D, build prototypes and perform numerous emission tests to achieve production-ready models.

C. Equipment Costs

While equipment manufacturers would bear no responsibility for meeting emission standards, they may need to make changes in the design of their equipment models to accommodate the Phase 2 engines. EPA's treatment of the impacts of the proposal therefore includes an analysis of costs for equipment manufacturers. The 1996 PSR EOLINK database was utilized as the source of information for equipment manufacturers, models and sales estimates for all classes. The costs for equipment conversion was derived from the ICF/EF&EE cost study [71] and improved through the work by ICF and EPA on the small business impact analysis. Full details of EPA's cost analysis can be found in Chapter 4 of the Draft RSD. EPA has assumed that capital costs would be amortized at seven percent over ten years.

1. Nonhandheld Equipment Manufacturers

Based on engine technologies estimated for this rulemaking, it is assumed that Class I engine redesign would have no impact on equipment manufacturers since the proposed standard would not require external changes or adversely impact the engine's performance.

The Class II engine change from SV to OHV design will have the largest impact on equipment changes. Review of the PSR database for equipment manufacturers that utilize Class II SV engines reveals that the majority (90 percent) of small engine equipment is produced from 32 companies with the remaining 353 companies representing only 10 percent of the overall production.

EPA's work analyzing small business impacts, as summarized in the work with ICF Incorporated,[72] indicates that many of the small businesses, indicated by the PSR database to use SV Class II engines, have already converted or are in the process of converting to using OHV engine design due to market forces or changes in their engine manufacturer's offerings. These companies tend to produce professional or commercial equipment and competition has driven the use of OHV engines. The study also revealed that at least one equipment manufacturer that produces a large volume of equipment, has already switched their lines from SV to OHV. For today's proposal, EPA assumed only the one large manufacturer has already incurred the costs of converting to the use of OHV engine. For the purpose of this proposal, EPA has assumed that any switch from SV to OHV engines by equipment manufacturers is a cost incurred due to this proposal. The cost estimates were based on equipment application (garden tractor, tiller, commercial turf, etc.) and in the case of the commercial turf equipment, on the power of the engine within that application. Flexibilities within this proposal which may lessen

[71] ICF and Engine, Fuel and Emissions Engineering, Incorporated; ''Cost Study for Phase Two Small Engine Emission Regulations'', Draft Final Report, October 25, 1996, in EPA Air Docket A–93–29, Item #II–A–04.

[72] ''Small Business Impact Analysis of New Emission Standards for Small Spark-Ignition Nonroad Engines and Equipment'', ICF Incorporated, September 1997, located in EPA Air Docket A–96–55, Item#II–A–01 .

the impact of the costs of this rulemaking to equipment manufacturers were also not taken into account.

2. Handheld Equipment Manufacturers

The majority of technologies assumed in this analysis for handheld engines, see Table 19, include only internal redesign and thereby no change in the external design of the handheld engine is expected. Therefore, it is assumed that the outer dimensions and performance characteristics would be similar to the existing models and therefore the handheld equipment would not require any changes. Equipment costs have been included for manufacturers of augers who will need to incorporate changes to the transmission boxes in order to incorporate different speed-torque signatures of Phase 2 compliant engines.

D. Operating Costs

The total life-cycle operating costs for this proposed rulemaking include any expected decreases in fuel consumption. Life cycle costs have been calculated per class using the nonroad small engine emission model. The model calculates fuel savings from the year 2001–2026 and takes into account factors including equipment scrappage, projected yearly sales increase per equipment type and engine power. Details on the assumptions and calculations on fuel savings are included in Chapter 4 and 7 of the Draft RSD.

1. Nonhandheld Engines

No fuel consumption savings have been assumed from Class I engines. The addition of oil control piston rings and valve stem seals are not expected to affect fuel economy or maintenance requirements and changes to carburetion are expected to be only slight. The Class II SV engine conversion to OHV design is expected to result in improved fuel economy since data show that OHV engines can run at leaner air to fuel ratio's than SV engines.

2. Handheld Engines

Redesigned two-stroke engines are assumed to result in significant fuel savings as fuel/oil/air scavenging is significantly reduced.

E. Cost Per Engine and Cost-Effectiveness

1. Cost Per Engine

Total costs for this proposed rulemaking vary per year as engine families are phased-in to compliance with the Phase 2 standards over several years, capital costs are recovered and compliance programs are conducted. The term ''uniform annualized cost'' is used to express the cost of this rulemaking over the years of this analysis.

The methodology used for estimating the uniform annualized cost per engine is as follows. Cost estimates from 1996 and 1997 model years, for technology and compliance programs respectively, were estimated and increased at an inflation rate of 4 percent per year to the years in which they were assumed to be incurred. For engine technology costs, one set of technologies per class and engine design was assumed (see Table 19). The Phase 1 database was then analyzed to determine the number of engine families per class that would likely incorporate the emission reduction technologies. The estimated costs per year were then calculated by multiplying the number of engine families and corresponding production volume by the fixed and variable costs per technology grouping, respectively. Retail markups used are 16 percent by the engine manufacturer, 5 percent by the equipment manufacturer and 5 percent by the mass merchandiser. All markups are based on industry specific information from Phase 1. For compliance program costs, each program was outlined and assigned costs based on the likely number of participants or engine families to be included in each program which were determined from the Phase 1 certification database. The costs per year were discounted seven percent to the first year of Phase 2 regulation, 2001 for nonhandheld and 2002 for handheld engine classes, respectively. A uniform annualized cost was then calculated. Costs per engine are calculated from the uniform annualized cost for the first full year of implementation of the Phase 2 standard, 2005, and the last year of this analysis, 2026. The average cost per engine is calculated from these two values and the results are presented in Table 20.

The yearly fuel savings (tons/yr) per class were calculated from the nonroad small engine emission model. The tons/yr were converted to savings ($) per year through conversion to gallons per year multiplied by $0.765 (a 1995 average refinery price to end user). The yearly fuel savings were discounted by 3 percent to the first year of Phase 2 regulation, 2001 for nonhandheld engines and 2002 for handheld engines. The yearly results were totaled and then divided by an annualized factor to yield the uniform annualized fuel savings. The engine lifetime fuel savings for each engine class was calculated for the production years of 2005 and 2026. The average of these two values was utilized as the average fuel savings per engine per class is shown in Table 20. In particular, EPA notes that its estimate of fuel savings for Class II engine conversion to OHV technology is greater than the estimated cost of this conversion and thus would be economically beneficial to the consumer. EPA requests comment on its analysis of the fuel economy benefit for Class II conversion from SV to OHV technology and information as to why the market has not responded with a greater penetration of the more fuel efficient OHV technology.

The average resultant cost per engine class is calculated by subtracting the average fuel savings from the average cost, see Table 20. See Chapter 7 of the Draft RSD for more details of this analysis.

TABLE 20.—ENGINE LIFE TIME FUEL SAVINGS AND RESULTANT COST PER ENGINE

[Costs based on uniform annualized costs]

Class	Cost per engine	Savings per engine	Resultant cost per engine
I	$0.87	$0.00	$0.87
II	10.54	33.20	($22.66)
III	0.74	0.45	0.29
IV	1.92	0.99	0.92
V	16.21	4.12	12.07

2. Cost Effectiveness

EPA has estimated the cost-effectiveness (i.e., the cost per ton of emission reduction) of the proposed $HC+NO_X$ standard over the typical lifetime of the small SI equipment that would be covered by today's proposed rule. EPA has examined the cost-effectiveness by performing a nationwide cost-effectiveness in which the net present value of the cost of compliance per year is divided by the nationwide emission benefits per year over a period of 26 years. This is sufficient time to achieve fleet turnover. The resultant cost-effectiveness is $390 cost/ton $HC+NO_X$ without fuel savings. Chapter 7 of the Draft RSD contains a more detailed discussion of the cost-effectiveness analysis. EPA requests comments on all aspects of the cost-effectiveness analysis.

The overall cost-effectiveness of this rule on $HC+NO_X$ emission reductions, with fuel savings, is shown in Table 21. Table 21 contains the cost effectiveness of other nonroad rulemakings, which contain fuel savings, to which the cost-effectiveness of this rulemaking can be compared.

TABLE 21.—COST-EFFECTIVENESS OF THE PROPOSED STANDARDS WITH FUEL SAVINGS

Standard	NPV cost/NPV ton (with fuel savings)	Pollutants
Proposed Small SI Engines <19 kW Phase 2	−$700	$HC+NO_X$
Small SI Engines <19 kW Phase 1	$217	$HC+NO_X$
Spark Ignition Marine Engines	$1000	HC
Proposed Nonroad CI Standards	$180–$400	$HC+NO_X$

VII. Public Participation

A. Comments and the Public Docket

The Agency welcomes comments on all aspects of this proposed rulemaking. All comments (preferably in duplicate), with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–96–02 (see **ADDRESSES**). Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by:

- Labeling proprietary information "Confidential Business Information" and,
- Sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket.
- This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by and in accordance with the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least two business days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first-come, first-served basis, and will follow the testimony that is arranged in advance.

The Agency recommends that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least two business days before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Advance copies should be submitted to the contact person listed.

C. Obtaining Electronic Copies of Documents

Materials relevant to this proposed rule are contained in Docket No. A–96–55, located at the Air Docket, 401 M Street, S.W., Washington, DC 20460, and may be reviewed in Room M–1500 from 8:00 a.m. until 5:30 p.m. Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying docket materials.

The preamble, regulatory language and draft Regulatory Support Document are also available electronically from the EPA internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. The text of the proposed rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below.

Internet (Web)

http://www.epa.gov/docs/fedrgstr/EPA–AIR/

(Either select desired data or use search feature)

http://www.epa.gov/OMSWWW/

(Look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

VIII. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866,[73] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or 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;

[73] 58 FR 51735 (October 4, 1993).

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(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.

A regulatory support document which presents EPA's analysis of the cost impacts of this proposed rule is available for review in the public docket. EPA estimates that the proposed standards and other regulatory provisions, if adopted, would not have an annual effect on the economy of more than $100 million, a criterion which is a major determinant in defining an ''economically significant regulatory action.'' Although not ''significant'' based on this criterion, the rule may adversely affect in a material way that sector of the economy involved with the production of small spark-ignition engines or equipment utilizing such engines. As such, this action was submitted to OMB for review. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this proposal.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Copies of the ICR document may be obtained from Sandy Farmer, Regulatory Information Division, EPA, 401 M Street, SW (2137), Washington, DC 20460 or by calling (202) 260–2740.

Table 22 provides a listing of this proposed rulemaking's information collection requirements along with the appropriate information collection request (ICR) numbers. The cost of this burden has been incorporated into the cost estimate for this rule. The Agency has estimated that the public reporting burden for the collection of information required under this rule would average approximately 6702 hours annually for a typical engine manufacturer. The hours spent by a manufacturer on information collection activities in any given year would be highly dependent upon manufacturer specific variables, such as the number of engine families, production changes, emission defects etc.

TABLE 22.—PUBLIC REPORTING BURDEN

EPA ICR No.	Type of information	OMB control No.
151490	Certification	2060–0338
23420	Averaging, banking and trading	2060–0338
N/A	Production line testing	N/A
1675.01	In-use testing	2060–0292
N/A	In-use credits	N/A
0095.07	Pre-certification and testing exemption	2060–0007
0012	Engine exclusion determination	2060–0124
0282	Emission defect information	2060–0048
1673.01	Importation of nonconforming engines	2060–0294

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M Street, SW (PM–223Y), Washington DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will contain responses to OMB or public comments on the information collection requirements contained in this proposal.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising and small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective or least burdensome alternative. EPA has estimated the rule to cost the private sector an annualized cost of $90 million per year . However, the Agency has appropriately considered cost issues in developing this proposal as required by section 213(a)(3) of the Clean Air Act, and has designed the proposed rule such that it will in EPA's view be a cost-effective program. Because small governments would not be significantly or uniquely affected by this proposed rule, the Agency is not required to develop a plan with regard to small governments.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For the reasons set out below, this proposed rule would not have a significant impact on a substantial number of small entities.

EPA has identified industries that would be subject to this proposed rule and has contacted small entities and small entity representatives to gain a better understanding of potential impacts of the proposed Phase 2 program on their businesses. This

information was useful in estimating potential impacts of this rule on affected small entities, the details of which are fully discussed in Chapter 8 of the Draft RSD. Small not-for-profit organizations and small governmental jurisdictions are not expected to be impacted by this proposal. Thus EPA's impact analysis focuses on small businesses. For purposes of the impact analysis, ''small business'' is defined by number of employees or dollars of annual receipts according to Small Business Administration (SBA) regulations. The analysis focuses especially on impacts to manufacturers of Class II nonhandheld and Classes III–V handheld engines and equipment, since Class I side-valve engines are only expected to need minor modifications.

The economic impact of the proposed rule on engine and equipment manufacturers defined as small by the SBA was evaluated using a ''sales test'' approach which calculates annualized compliance costs as a function of sales revenue. The ratio is an indication of the severity of the potential impacts. The results of the analysis suggest that of those small entities analyzed, one small business engine manufacturer and two small business equipment manufacturers would experience an impact of greater than one percent of their sales revenue. However, none of these small entities would experience an impact greater than three percent of their sales revenue. These three companies represent approximately five percent of the total small business manufacturers on which the analysis was based. Given this, and the ratio levels at which these companies are projected to be impacted (i.e., less than three percent), EPA expects today's proposal to have a light impact on small business entities. The analysis assumes no passthrough of costs in price increases and thus can be characterized as depicting worst case impacts.

While the Agency does not consider these impacts to be significant, the Agency desires to minimize impacts to the extent possible for those companies which may be adversely affected and to ensure that the proposed emissions standards are achievable. Thus, flexibility provisions for the proposed rule (discussed in Section IV.E) were developed based on information gained through discussions with potentially affected small entities. Many of the flexibilities being proposed in today's rule should benefit both engine and equipment manufacturers qualifying as small. Some, but not all, of these provisions were considered in the impact assessment on small entities (see Chapter 8 of the Draft RSD). Those flexibilities not considered, including a hardship relief provision described in Section IV.E, were developed too late in the rule development process to be included in the impact assessment, but as they were added in order to further ensure the achievability of the proposed standards it is expected that they would further reduce the impacts of the proposed rule. EPA requests comment as to whether these proposed provisions adequately address the needs of affected manufacturers, and small entities in particular.

The results of the impact analysis show minimal impacts on small businesses. EPA expects impacts may be negligible if small companies take advantage of those additional flexibilities not considered in the analysis, and if companies pass through most of their costs to customers as was indicated as likely by most small companies contacted. Furthermore, EPA's outreach activities with small entities indicated that many engine and equipment manufacturers have already made the switch from side-valve engine technology to producing or using overhead valve engine technology for reasons other than today's proposed rule, and therefore may not incur substantial additional costs as a result of this program. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities and therefore a regulatory flexibility analysis for this proposal has not been prepared. The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes additional comments during the rulemaking process on issues related to such impacts. In spite of the expected minimal impacts on small entities, the Agency is continuing its efforts to notify other small business engine and equipment manufacturers of this rule and inform them of their opportunities for providing feedback to the Agency.

List of Subjects in 40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: December 23, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

Subpart A—General

2. Section 90.1 is amended by removing the period at the end of paragraph (b)(5)(iv) and adding a semicolon in its place, by adding paragraphs (b)(6) and (d) and by revising paragraph (c) to read as follows:

§ 90.1 Applicability.

* * * * *

(b) * * *

(6) Engines that are used exclusively in emergency and rescue equipment where no certified engines are available to power the equipment safely and practically, but not including generators, alternators, compressors or pumps used to provide remote power to a rescue tool. The equipment manufacturer bears the responsibility to ascertain on an annual basis and maintain documentation available to the Administrator that no appropriate certified engine is available from any source.

(c) Engines subject to the provisions of this subpart are also subject to the provisions found in subparts B through N of this part, except that subparts C, H, M and N of this part apply only to Phase 2 engines as defined in this subpart.

(d) Certain text in this part is identified as pertaining to Phase 1 or Phase 2 engines. Such text pertains only to engines of the specified Phase. If no indication of Phase is given, the text pertains to all engines, regardless of Phase.

3. Section 90.3 is amended by adding the following definitions in alphabetical order to read as follows:

§ 90.3 Definitions.

* * * * *

Aftertreatment means the passage of exhaust gases through a device or system such as a catalyst whose purpose is to chemically alter the gases prior to their release to the atmosphere.

* * * * *

Commercial Engine means a handheld engine that is not a residential engine.

DF or *df* means deterioration factor.

Eligible sales or *U.S. sales* means Phase 2 engines sold for purposes of being used in the United States, and includes any engine exported and

subsequently imported in a new piece of equipment, but excludes any engine introduced into commerce, by itself or in a piece of equipment, for use in a state that has established its own emission requirements applicable to such engines pursuant to a waiver granted by EPA under section 209(e) of the Clean Air Act.

* * * * *

Family Emission Limit or *FEL* means an emission level that is declared by the manufacturer to serve in lieu of an emission standard for certification, production line testing, Selective Enforcement Auditing, and in-use testing for engines participating in the averaging, banking and trading program. An FEL must be expressed to the same number of decimal places as the applicable emission standard.

* * * * *

HC+NO$_X$ means total hydrocarbons plus oxides of nitrogen.

In-use credit means an emission credit that represents the difference between the mean in-use emission results of a regulated pollutant, CO, HC+NO$_X$ or NMHC+NO$_X$, and the applicable certification emission standard. In-use results below the standard lead to the calculation of positive in-use credits, while in-use results above the standard lead to the calculation of negative in-use credits.

* * * * *

NMHC+NO$_X$ means nonmethane hydrocarbons plus oxides of nitrogen.

* * * * *

Overhead valve engine means an otto-cycle, four-stroke engine in which the intake and exhaust valves are located above the combustion chamber within the cylinder head. Such engines are sometimes referred to as ''valve-in-head'' engines.

Overhead valve emission performance or *OEP engine* means a Class II overhead valve engine, or a Class II non-overhead valve engine that complies with the applicable 2005 model year emission standards without using emission credits.

Phase 1 engine means any handheld or nonhandheld engine, that was produced under a certificate of conformity issued under the regulations in this part and that is not a Phase 2 engine.

Phase 2 engine means any handheld engine as defined in this subpart that is subject to the standards that begin to phase-in in the 2002 model year; and any nonhandheld engine as defined in this subpart of the 2001 model year or later including those 1999 and 2000 model year engines certified under early banking provisions described in this part. Any engines exempted from the Phase 2 standards under this part are excluded from coverage under this definition.

* * * * *

Residential engine means a handheld engine for which the engine manufacturer makes a written statement to EPA as part of its certification application that such engine and the equipment it is installed in by the engine manufacturer, where applicable, is not produced, advertised, marketed or intended for commercial or professional usage.

Round, rounded or *rounding* means, unless otherwise specified, that numbers will be rounded according to *ASTM–E29–93a*, which is incorporated by reference in this part pursuant to § 90.7.

* * * * *

Side valve engine means an otto-cycle, four stroke engine in which the intake and exhaust valves are located to the side of the cylinder, not within the cylinder head. Such engines are sometimes referred to as ''L-head'' engines.

Small volume engine family means any handheld engine family whose eligible sales in a given model year are projected at the time of certification to be no more than 2,500 engines; or any nonhandheld engine family whose eligible sales in a given model year are projected at the time of certification to be no more than 1,000 units.

Small volume engine manufacturer means, for handheld engines, any engine manufacturer whose total eligible sales of handheld engines subject to regulation under this part are projected at the time of certification of a given model year to be no more than 25,000 handheld engines; and, for nonhandheld engines, any engine manufacturer whose total eligible sales of nonhandheld engines are projected at the time of certification of a given model year to be no more than 10,000 nonhandheld engines.

Small volume equipment manufacturer means, for handheld equipment, any equipment manufacturer whose production of handheld equipment subject to regulation under this part or powered by engines regulated under this part, does not exceed 5000 pieces for a given model year or annual production period excluding that equipment intended for introduction into commerce for use in a state that has established its own emission requirements applicable to such equipment or engines in such equipment, pursuant to a waiver granted by EPA under section 209(e) of the Clean Air Act. For nonhandheld equipment, the term ''small volume equipment manufacturer'' has the same meaning except that it is limited to 2500 pieces rather than 5000.

Small volume equipment model means, for handheld equipment, any unique model of equipment whose production subject to regulations under this part or powered by engines regulated under this part, does not exceed 2500 pieces for a given model year or annual production period excluding that equipment intended for introduction into commerce for use in a state that has established its own emission requirements applicable to such equipment or engines in such equipment, pursuant to a waiver granted by EPA under section 209(e) of the Clean Air Act. For nonhandheld equipment, the term ''small volume equipment model'' has the same meaning except that it is limited to 500 pieces rather than 2500.

Technology subgroup means a group of engine families from one or more manufacturers having similar size, application, useful life and emission control equipment; e.g., Class III, residential, non-catalyst, two stroke engine used in generator set applications.

* * * * *

Subpart B—Emission Standards and Certification Provisions

4. Section 90.103 is amended by revising paragraph (a) introductory text, and paragraphs (a)(3) and (a)(5) and by adding paragraphs (a)(6) through (a)(9) to read as follows:

§ 90.103 Exhaust emission standards.

(a) Exhaust emissions for new Phase 1 and Phase 2 nonroad spark ignition engines at or below 19 kilowatts (kW), shall not exceed the following levels. Throughout this part, NMHC+NO$_X$ standards are applicable only to natural gas fueled engines at the option of the manufacturer, in lieu of HC+NO$_X$ standards. The tables for Phase 1 and Phase 2 exhaust emissions levels follow:

TABLE 1.—PHASE 1 EXHAUST EMISSION STANDARDS

[Grams per kilowatt-hour]

Engine displacement class	Hydrocarbons + oxides of nitrogen ($HC+NO_X$)	Hydrocarbons	Carbon monoxide	Oxides of nitrogen (NO_X)
I	16.1	.....	519	.....
II	13.4	.....	519	.....
III	.....	295	805	5.36
IV	.....	241	805	5.36
V	.....	161	603	5.36

TABLE 2.—PHASE 2 NONHANDHELD EXHAUST EMISSION STANDARDS BY MODEL YEAR

[Grams per kilowatt-hour]

Engine class	Emission requirement	Model year				
		2001	2002	2003	2004	2005 and later
I	$HC+NO_X$	25.0	25.0	25.0	25.0	25.0
	$NMHC+NO_X$	23.0	23.0	23.0	23.0	23.0
	CO	610	610	610	610	610
II	$HC+NO_X$	18.0	16.6	15.0	13.6	12.1
	$NMHC+NO_X$	16.7	15.3	14.0	12.7	11.3
	CO	610	610	610	610	610
	Assumed OEP Percentage	50	62.5	75	87.5	100

TABLE 3.—PHASE 2 HANDHELD EXHAUST EMISSION STANDARDS SHOWING PHASE-IN BY AGGREGATE PERCENTAGE OF SALES

[Grams per kilowatt-hour]

Engine class	Emission standard		Model year			
	$HC+NO_X$	CO	2002 (percent)	2003 (percent)	2004 (percent)	2005 and later (percent)
III	210	805	.....	.....	.....	.....
IV	172	805	20	40	70	100
V	116	603	.....	.....	.....	.....

* * * * *

(3) Notwithstanding paragraph (a)(2) of this section, two stroke engines used to power lawnmowers or other nonhandheld equipment may meet Phase 1 Class III, IV or V standards and requirements, as appropriate, through model year 2002 subject to the provisions of § 90.107(e), (f) and (h). Such engines shall not be included in any computations of Phase 2 nonhandheld credits or sales nor in any computations used to ascertain compliance with Phase 2 phase-in requirements for handheld engines.

* * * * *

(5) Notwithstanding paragraph (a)(2) of this section, engines used exclusively to power products which are used exclusively in wintertime, such as snowthrowers and ice augers, at the option of the engine manufacturer, need not certify to or comply with standards regulating emissions of HC, NO_X, $HC+NO_X$ or $NMHC+NO_X$, as applicable. If the manufacturer exercises the option to certify to standards regulating such emissions, such engines must meet such standards. If the engine is to be used in any equipment or vehicle other than an exclusively wintertime product such as a snowthrower or ice auger, it must be certified to the applicable standard regulating emissions of HC, NO_X, $HC+NO_X$ or $NMHC+NO_X$ as applicable.

(6) During the phase-in of Phase 2 emission requirements for handheld engines, as applicable, those engine families not certified to Phase 2 requirements shall be certified to and shall meet Phase 1 requirements.

(7) Manufacturers of Phase 2 Class II engines must comply with the OEP percentages shown in Table 2 of this section in each model year in cases where the manufacturer desires to engage in cross class averaging of emission credits as permitted under subpart C of this part, and in cases where the manufacturer desires to use credits banked by itself or another manufacturer in the 1999 or 2000 model year as permitted under subpart C of this part. Compliance with OEP percentages shall be determined by dividing the manufacturer's eligible sales of Class II engines that are overhead valve engines or are certified at or below the 2005 $HC+NO_X$ ($NMHC+NO_X$) standard, by the manufacturer's total eligible sales of Class II engines for the subject model year. Side valve engine families with annual US sales of less than 1000 may be excluded from the calculation.

(8) Notwithstanding the standards shown in Table 2 of this section, the $HC+NO_X$ ($NMHC+NO_X$) standard for Phase 2 Class II sidevalve engine families with annual production of 1000 or less shall be 24.0 g/kW-hr (22.0 g/kW-hr) for model years 2005 and later. Engines produced subject to this provision may not exceed this standard and are excluded from the averaging,

banking and trading program and any related credit calculations after the 2004 model year. During the 2001 through 2004 model years these engines are subject to applicable Phase 2 standards, but shall not require the application of certification credits if their $HC+NO_X$ ($NMHC+NO_X$) certification level is 24.0 g/kW-hr (22.0 g/kW-hr) or less.

(9) Notwithstanding the standards shown in Table 2 of this section, small volume engine manufacturers as defined in this part may, at their option, certify Phase 2 Class II engines to an $HC+NO_X$ ($NMHC+NO_X$) standard of 24.0 g/kW-hr (22.0 g/kW-hr) through the 2004 model year. Such engines shall not exceed this standard and are excluded from the averaging, banking and trading program through the 2004 model year.

* * * * *

5–6. Section 90.104 is amended by adding introductory text and paragraphs (d) through (i) to read as follows:

§ 90.104 Compliance with emission standards.

Paragraphs (a) through (c) of this section apply to Phase 1 engines only. Paragraphs (d) through (i) of this section apply only to Phase 2 engines.

* * * * *

(d) The exhaust emission standards (FELs, where applicable) for Phase 2 engines set forth in this part apply to the emissions of the engines for their full useful lives as determined pursuant to § 90.105.

(e) For all Phase 2 engines:

(1) If all test engines representing an engine family have emissions, when properly tested according to procedures in this part, less than or equal to each Phase 2 emission standard (FEL, where applicable) in a given engine displacement class and given model year, when multiplicatively adjusted by the deterioration factor determined in this section, that family complies with that class of emission standards for purposes of certification. If any test engine representing an engine family has emissions adjusted multiplicatively by the deterioration factor determined in this section, greater than any one emission standard (FEL, where applicable) for a given displacement class, that family does not comply with that class of emission standards.

(2) Except as otherwise permitted under this section, each manufacturer of handheld engines must comply with the Phase 2 phase-in schedule shown in § 90.103. Compliance with the Phase 2 phase-in schedule shall be determined each model year by dividing the manufacturer's total eligible sales of Phase 2 handheld engines of that model year by the manufacturer's total eligible sales of handheld engines subject to regulation under this part.

(3) In each model year during the Phase 2 phase-in period for handheld engines (i.e. model years 2002, 2003, and 2004), manufacturers of handheld engines shall project, updating as appropriate, and make available to the Administrator upon request, the sales figures necessary to complete the calculation required in paragraph (e)(2) of this section. Within 270 days after the end of each model year in the Phase 2 phase-in period, each manufacturer shall submit a report to the Administrator showing its calculation of compliance with the phase-in schedule.

(4) Small volume manufacturers of handheld engines as defined in this part are not subject to the phase-in requirements applicable to the 2002, 2003 or 2004 model years.

(f) Each manufacturer of nonhandheld engines must comply with all provisions of the averaging, banking and trading program outlined in subpart C of this part for each engine family participating in that program.

(g)(1) Deterioration factors for $HC+NO_X$ and $NMHC+NO_X$ emissions for all nonhandheld OHV Phase 2 engines without aftertreatment may be taken from Table 1 of this section or may be calculated according to the process described in paragraph (h) of this section. Except where the Administrator directs a nonhandheld engine manufacturer to calculate a df under paragraph (g)(2) or (g)(3) of this section, if a manufacturer elects to calculate a df for an engine family, it must do so for all families of that class in the same useful life category. Where a manufacturer elects to take an $HC+NO_X$ or $NMHC+NO_X$ df from the table, it may use good engineering judgment to determine an appropriate CO df, provided it maintains and makes available to the Administrator upon request, such rationale and supporting data used to determine the CO df.

(2) If the Administrator has evidence for a given class and useful life category indicating that a sales weighted average of a manufacturer's actual dfs of those families for which an assigned df is being used, exceeds the assigned df by more than 15%, the Administrator may require the manufacturer to submit appropriate data to establish a df for some or all of the engine families. Such data may be generated through the process described in paragraph (h) of this section or through another process approved by the Administrator.

(3) If the Administrator has evidence indicating that the actual df of an engine family for which a manufacturer is using an assigned df, exceeds 1.8, the Administrator may require the manufacturer to submit appropriate data to establish a df for that engine family. Such data may be generated through the process described in paragraph (h) of this section or through another process approved by the Administrator.

(4) Table 1 follows:

TABLE 1.—ASSIGNED $HC+NO_x$ and $NMHC+NO_x$ DETERIORATION FACTORS FOR NONHANDHELD PHASE 2 OVERHEAD VALVE ENGINES WITHOUT AFTERTREATMENT

Class I	Usefule life (hours)	66	250	500
	Deterioration factor	1.3	1.3	1.3
Class II	Useful life (hours)	250	500	1000
	Deterioration factor	1.3	1.3	1.3

(h) Manufacturers shall obtain an assigned df or calculate a df, as appropriate, for each regulated pollutant for all Phase 2 handheld and nonhandheld engine families. Such dfs shall be used, as applicable, for certification, production line testing, and Selective Enforcement Auditing. For handheld engines, and nonhandheld engines not using assigned dfs from Table 1 of this section, manufacturers shall calculate dfs for each pollutant through one of the following options:

(1) For handheld engines, dfs shall be determined using good engineering judgment and reflect the exhaust emission deterioration expected over the useful life of the engine except that no df may be less than 1.0. EPA may reject a df if it has evidence that the df is not appropriate for that family. The manufacturer must retain actual emission test data to support its choice of df and furnish that data to the Administrator upon request. Acceptable

data sources include, but are not limited to:

(i) In-use data from an earlier model year of this family or a closely related family;

(ii) Data from engines used in the field/bench adjustment program described in subpart M of this part.

(2) For nonhandheld engines:

(i) On at least three test engines representing the configuration chosen to be the most likely to exceed $HC+NO_X$ ($NMHC+NO_X$) emission standards, (FELs where applicable), and constructed to be representative of production engines pursuant to § 90.117, conduct full Federal test procedure emission testing pursuant to the regulations of Subpart E of this part at the number of hours representing stabilized emissions pursuant to § 90.118. Average the results and round to the same number of decimal places contained in the applicable standard, expressed to one additional significant figure. Conduct such emission testing again following field aging in actual usage to a number of hours equivalent to the applicable useful life hours, plus or minus five percent. Average the results and round to the same number of decimal places contained in the applicable standard, expressed to one additional significant figure. Divide the full useful life average emissions for each regulated pollutant by the stabilized average emission results and round to two significant figures. The resulting number shall be the df, unless it is less than 1.0, in which case the df shall be 1.0; or

(ii) On at least three test engines representing the configuration chosen to be the most likely to exceed $HC+NO_X$ ($NMHC+NO_X$) emission standards (FELs where applicable), and constructed to be representative of production engines pursuant to § 90.117, conduct full Federal test procedure emission testing pursuant to the regulation of Subpart E of this part at no fewer than three points as follows: at the number of hours representing stabilized emissions pursuant to § 90.118; again following field aging in actual usage to a number of hours equivalent to the applicable useful life hours, plus or minus five percent; and also at no fewer than one point spaced approximately equally between the other two. The test results for each pollutant shall be rounded to the same number of decimal places contained in the applicable standard, expressed to one additional significant figure and plotted as a function of hours on the engine, rounded to the nearest whole hour. The best fit straight line, determined by the method of least squares, shall be drawn. Using this line, interpolate the emissions of each pollutant at 12 hours and at a number of hours equal to the applicable useful life. Divide the interpolated useful life emissions by the interpolated emissions at 12 hours and round this figure to two significant figures. The resultant number shall represent the df unless it is less than 1.0, in which case the df shall be 1.0; or

(iii) Perform another process, approved in advance by the Administrator, which will have the objective of adequately ascertaining the relationship of field aged emissions at full useful life with those tested with stabilized emissions at low hours; or

(iv) For manufacturers of Class II overhead valve engines certifying to 500 or 1000 hour useful lives, such manufacturers may establish dfs for such engines based on good engineering judgment that has been proposed in advance and determined to be satisfactory to the Administrator, for certification of model years 2001 through 2004. The Administrator may, in model year 2006 or later, direct the manufacturer to verify, in a period of time the Administrator determines to be reasonable, such dfs using methods described in paragraphs (h)(2)(i), (ii) or (iii) of this section. If the dfs established by the manufacturer under this provision underestimate the dfs determined by the methods under paragraphs (h)(2)(i), (ii) or (iii) of this section, by 15% or more, the Administrator shall provide the manufacturer with a period of two model years in which to obtain sufficient certification emission credits from other nonhandheld engines to cover the credit shortfall calculated by substituting the df determined under this provision for the original df in the equation in § 90.207(a).

(3) Calculated deterioration factors may cover families and model years in addition to the one upon which they were generated if the manufacturer submits a justification acceptable to the Administrator in advance of certification that the affected engine families can be reasonably expected to have similar emission deterioration characteristics.

(i)(1) Except as allowed in paragraph (i)(2) of this section, nonhandheld sidevalve engines or nonhandheld engines with exhaust aftertreatment shall be certified by field aging one engine in actual usage or by bench aging one engine on an aging cycle determined to represent field aged engines under § 90.1207 and § 90.1208, to its full useful life followed by emission testing using applicable test procedures under this part. Emission test results for such bench aged engines shall be adjusted using adjustment factors calculated under § 90.1208 to determine the certification levels. The dfs for such engines shall be calculated during this bench aging process using the techniques described in paragraphs (h)(2)(i), (ii) or (iii) of this section, except that bench aging of one engine may be used in place of field aging. In calculating the dfs of bench aged nonhandheld sidevalve engines or nonhandheld engines with aftertreatment, the emission test data at the number of hours equal to full useful life, shall first be multiplied by the adjustment factor applicable to that engine family and determined under § 90.1208.

(2) Sidevalve Class II or aftertreatment-equipped Class II engines for which the manufacturer commits in writing, at the time of certification, to cease production by the end of the 2004 model year, are eligible for reduced certification testing, at the manufacturer's option. Bench aging or field aging for the certification of such engines may be stopped at 120 hours for engines having a useful life of 250 hours as determined pursuant to regulations in this part; at 250 hours for engines having a useful life of 500 hours; and at 500 hours for engines having a useful life of 1000 hours. In such cases, based on emission results from stabilized engines and engines aged as described in this paragraph (i), the manufacturer shall project emissions to 250, 500 or 1000 hours, as applicable, using good engineering judgment acceptable to the Administrator. The manufacturer shall then adjust bench aged emissions (if applicable) with the adjustment factor determined pursuant to § 90.1208 for purposes of certification and computation of credits or credit needs. The manufacturer shall compute dfs for bench aged engines from the adjusted emission levels using good engineering judgment acceptable to the Administrator. For field aged engines, the manufacturer shall compute dfs from the projected 250, 500 or 1000 hour emissions, as applicable, using good engineering judgment acceptable to the Administrator.

7. Section 90.105 is revised to read as follows:

§ 90.105 Useful life periods for Phase 2 engines.

(a) Manufacturers shall declare the applicable useful life category for each engine family at the time of certification as described in this section. Unless otherwise approved by the Administrator, such category shall be that category which most closely

approximates the actual useful lives of the equipment into which the engines are expected to be installed. Manufacturers shall retain data appropriate to support their choice of useful life category for each engine family. Such data shall be sufficient to show that the majority of engines or a sales weighted average of engines of that family are used in applications having a useful life best represented by the chosen category. Such data shall be furnished to the Administrator upon request.

(1) For handheld engines:

(i) Engines declared by the manufacturer at the time of certification as residential, as defined in § 90.3, shall have a useful life for purposes of regulation under this part of 50 hours.

(ii) Engines declared by the manufacturer at the time of certification as commercial, as defined in § 90.3, shall have a useful life for purposes of regulation under this part of 300 hours.

(2) For nonhandheld engines: Manufacturers shall select a useful life category from Table 1 of this section at the time of certification, as follows:

TABLE 1.—USEFUL LIFE CATEGORIES FOR NONHANDHELD ENGINES (HOURS)

	Category C	Category B	Category A
Class I ...	66	250	500
Class II ..	250	500	1000

(3) Data to support a manufacturer's choice of useful life category, for a given engine family, may include but are not limited to:

(i) Surveys of the life spans of the equipment in which the subject engines are installed;

(ii) Engineering evaluations of field aged engines to ascertain when engine performance deteriorates to the point where usefulness and/or reliability is impacted to a degree sufficient to necessitate overhaul or replacement;

(iii) Warranty statements and warranty periods;

(iv) Marketing materials regarding engine life;

(v) Failure reports from engine customers; and

(vi) Engineering evaluations of the durability, in hours, of specific engine technologies, engine materials or engine designs.

(b) [Reserved]

8. Section 90.106 is amended by revising paragraph (a) and adding new paragraph (b)(3) to read as follows:

§ 90.106 Certificate of conformity.

(a)(1) Except as provided in § 90.2(b), every manufacturer of new engines produced during or after model year 1997 must obtain a certificate of conformity covering such engines; however, engines manufactured during an annual production period beginning prior to September 1, 1996 are not required to be certified.

(2) Except as required in paragraph (b)(3) of this section, nonhandheld engines manufactured during an annual production period beginning prior to September 1, 2000 are not required to meet Phase 2 requirements.

(b) * * *

(3) Manufacturers who commence an annual production period for a nonhandheld engine family between January 1, 2000 and September 1, 2000 must meet Phase 2 requirements for that family only if that production period will exceed 12 months in length.

* * * * *

9. Section 90.107 is amended by adding a semicolon at the end of paragraph (d)(5), by removing ''and'' at the end of paragraph (d)(9), by removing the period at the end of paragraph (d)(10) and adding a semicolon in its place, and by adding new paragraphs (d)(11) and (d)(12) to read as follows:

§ 90.107 Application for certification.

* * * * *

(d) * * *

(11) This paragraph (d)(11) is applicable only to Phase 2 engines.

(i) Manufacturers of nonhandheld engines participating in the Averaging, Banking and Trading Program as described in Subpart C of this part shall declare the applicable Family Emission Limit (FEL) for $HC+NO_X$ ($NMHC+NO_X$).

(ii) Provide the applicable useful life as determined under § 90.105;

(12) In cases where the regulations in § 90.114(f) are applicable, a copy of the language to be included in the documents intended for the ultimate purchaser to describe the emission compliance period.

* * * * *

10. Section 90.108 is amended by adding paragraphs (c) and (d) to read as follows:

§ 90.108 Certification.

* * * * *

(c) For certificates issued for engine families included in the averaging, banking and trading program as described in subpart C of this part:

(1) All certificates issued are conditional upon the manufacturer complying with the provisions of subpart C of this part and the averaging, banking and trading related provisions of other applicable sections, both during and after the model year of production.

(2) Failure to comply with all applicable averaging, banking and trading provisions in this part will be considered to be a failure to comply with the terms and conditions upon which the certificate was issued, and the certificate may be determined to be void *ab initio.*

(3) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was granted were satisfied or waived.

(d) The Administrator may, upon request by a manufacturer, waive any requirement of this part otherwise necessary for the issuance of a certificate. The Administrator may set such conditions in a certificate as he or she deems appropriate to assure that the waived requirements are either satisfied or are demonstrated, for the subject engines, to be inappropriate, irrelevant or met by the application of a different requirement under this chapter. The Administrator may indicate on such conditional certificates that failure to meet these conditions may result in suspension or revocation or the voiding *ab initio* of the certificate.

11. Section 90.113 is amended by revising the section heading and adding two sentences to the beginning of paragraph (a) to read as follows:

§ 90.113 In-use testing program for Phase 1 engines.

(a) This section applies only to Phase 1 engines. In-use testing requirements for Phase 2 engines are found in subpart M of this part.* * *

* * * * *

12. Section 90.114 is amended by removing ''and'' at the end of paragraph (c)(9), by removing the period at the end of paragraph (c)(10) and adding a semicolon in its place, and by adding new paragraphs (c)(11), (c)(12) and (f) to read as follows:

§ 90.114 Requirement of certification—engine information label.

* * * * *

(c)* * *

(11) For nonhandheld Phase 2 engines, the useful life category as determined by the manufacturer pursuant to § 90.105. Such useful life category shall be shown by one of the following statements to be appended to the statement required under paragraph (c)(7) of this section:

(i) ''EMISSIONS COMPLIANCE PERIOD: [useful life] HOURS''; or

(ii) ''EMISSIONS COMPLIANCE PERIOD: CATEGORY [fill in C, B or A as indicated and appropriate from the chart in § 90.105], REFER TO OWNER'S

MANUAL FOR FURTHER INFORMATION'';

(12) For handheld Phase 2 engines, the useful life category as determined by the manufacturer pursuant to § 90.105. Such useful life category shall be shown by the following statement to be appended to the statement required under (c)(7) of this section: ''EMISSIONS COMPLIANCE PERIOD: [50 or 300, as applicable] HOURS''.

* * * * *

(f)(1) Manufacturers electing to use the labeling language of paragraph (c)(11)(ii) of this section must provide in the documents intended to be conveyed to the ultimate purchaser, the statement:

The Emissions Compliance Period referred to on the label entitled ''Important Engine Information'' indicates the number of operating hours for which the engine has been shown to meet Federal emission requirements. For engines less than 225 cc displacement, Category C= 66 hours, B= 250 hours and A = 500 hours. For engines of 225 cc or more, Category C = 250 hours, B = 500 hours and A = 1000 hours.

(2) The manufacturer must provide, in the same document as the statement in paragraph (f)(1) of this section, a statement of the engine's displacement or an explanation of how to readily determine the engine's displacement. The Administrator may approve alternate language to the statement in paragraph (f)(1) of this section, provided that the alternate language provides the ultimate purchaser with a clear description of the number of hours represented by each of the three letter categories for the subject engine's displacement.

13. Section 90.116 is amended by revising paragraph (d)(6) and (d)(7) and adding paragraphs (d)(8) through (d)(10) to read as follows:

§ 90.116 Certification procedure—determining engine displacement, engine class, and engine families.

* * * * *

(d) * * *

(6) The location of valves, where applicable, with respect to the cylinder (e.g., side valves or overhead valves);

(7) The number of catalytic converters, location, volume and composition;

(8) The thermal reactor characteristics;

(9) The fuel required (e.g., gasoline, natural gas, LPG); and

(10) The useful life category.

* * * * *

14. Section 90.117 is amended by revising paragraph (a) to read as follows:

§ 90.117 Certification procedure—test engine selection.

(a) For Phase 1 engines, the manufacturer must select, from each engine family, a test engine that the manufacturer determines to be most likely to exceed the emission standard. For Phase 2 engines, the manufacturer must select, from each engine family, a test engine of a configuration that the manufacturer determines to be most likely to exceed the $HC+NO_X$ [$NMHC+NO_X$] Family Emission Limit (FEL), or $HC+NO_X$ [$NMHC+NO_X$] standard if no FEL is applicable.

* * * * *

15. Section 90.118 is amended by revising the section heading and adding a new paragraph (e) to read as follows:

§ 90.118 Certification procedure—service accumulation and usage of deterioration factors.

* * * * *

(e) For purposes of establishing whether Phase 2 engines comply with applicable exhaust emission standards or FELs, the test results for each regulated pollutant as measured pursuant to § 90.119 shall be multiplied by the applicable df determined under § 90.104 (g), (h) or (i). The product of the two numbers shall be rounded to the same number of decimal places contained in the applicable standard, and compared against the applicable standard or FEL, as appropriate.

16. Section 90.122 is amended by revising the first sentence of paragraph (a) and adding paragraph (d)(4) as follows:

§ 90.122 Amending the application and certificate of conformity.

(a) The engine manufacturer must notify the Administrator when either an engine is to be added to a certificate of conformity, an FEL is to be changed, or changes are to be made to a product line covered by a certificate of conformity.

* * *

* * * * *

(d)* * *

(4) If the Administrator determines that a revised FEL meets the requirements of this subpart and the Act, the appropriate certificate of conformity will be amended, or a new certificate will be issued to reflect the revised FEL. The certificate of conformity is revised conditional upon compliance with § 90.207(b).

* * * * *

17. Subpart C, which was formerly reserved, is added to part 90 to read as follows:

Subpart C—Certification Averaging, Banking, and Trading Provisions for Nonhandheld Engines

Sec.
90.201 Applicability.
90.202 Definitions.
90.203 General provisions.
90.204 Averaging.
90.205 Banking.
90.206 Trading.
90.207 Credit calculation and manufacturer compliance with emission standards.
90.208 Certification.
90.209 Maintenance of records.
90.210 End-of-year and final reports.
90.211 Request for hearing.

Subpart C—Certification Averaging, Banking, and Trading Provisions for Nonhandheld Engines

§ 90.201 Applicability.

The requirements of this subpart C are applicable to all Phase 2 nonhandheld spark-ignition engines subject to the provisions of subpart A of this part except as provided in § 90.103(a). These provisions are not applicable to any Phase 1 engines or to any Phase 2 handheld engines. Participation in the averaging, banking and trading program is voluntary, but if a manufacturer elects to participate, it must do so in compliance with the regulations set forth in this subpart. The provisions of this subpart are applicable for $HC+NO_X$ ($NMHC+NO_X$) emissions but not for CO emissions.

§ 90.202 Definitions.

The definitions in subpart A of this part apply to this subpart. The following definitions also apply to this subpart:

Averaging means the exchange of emission credits between engine families within a given manufacturer's product line.

Banking means the retention of emission credits by the manufacturer generating the emission credits or obtaining such credits through trading, for use in future model year averaging or trading as permitted in this part.

Emission credits represent the amount of emission reduction or exceedance, by an engine family, below or above the applicable $HC+NO_X$ ($NMHC+NO_X$) emission standard, respectively. FELs below the standard create ''positive credits,'' while FELs above the standard create ''negative credits.'' In addition, ''projected credits'' refer to emission credits based on the projected applicable production/sales volume of the engine family. ''Reserved credits'' are emission credits generated within a model year waiting to be reported to EPA at the end of the model year. ''Actual credits'' refer to emission credits based on actual applicable sales volume as contained in the end-of-year

reports submitted to EPA. Some or all of these credits may be revoked if EPA review of the end-of-year reports or any subsequent audit action(s) reveals problems or errors of any nature with credit computations.

Point of first retail sale means the point at which the engine is first sold directly to an end user. Generally, this point is the retail engine or equipment dealer. If the engine is sold first to an equipment manufacturer for installation in a piece of equipment, the equipment manufacturer may be the point of first retail sale if the equipment manufacturer can determine with reasonable certainty whether the engine is or is not exported or destined for retail sale in a state that has adopted applicable emission standards pursuant to a waiver granted by EPA under section 209(e) of the Act once it has been installed in a piece of equipment.

Trading means the exchange of emission credits between manufacturers.

§ 90.203 General provisions.

(a) The certification averaging, banking, and trading provisions for $HC+NO_X$ and $NMHC+NO_X$ emissions from eligible engines are described in this subpart.

(b) A nonhandheld engine family may use the averaging, banking and trading provisions for $HC+NO_X$ and $NMHC+NO_X$ emissions if it is subject to regulation under this part with certain exceptions specified in paragraph (c) of this section. $HC+NO_X$ and $NMHC+NO_X$ credits shall be interchangeable subject to the limitations on credit generation, credit usage, cross class averaging and other provisions described in this subpart.

(c) A manufacturer shall not include in its calculation of credit generation and may exclude from its calculation of credit usage, any new engines:

(1) Which are exported, unless the manufacturer has reason or should have reason to believe that such engines have been or will be imported in a piece of equipment; or

(2) Which are subject to state engine emission standards pursuant to a waiver granted by EPA under section 209(e) of the Act, unless the manufacturer demonstrates to the satisfaction of the Administrator that inclusion of these engines in averaging, banking and trading is appropriate.

(d) For an engine family using credits, a manufacturer may, at its option, include its entire production of that engine family in its calculation of credit usage for a given model year.

(e) A manufacturer may certify engine families at Family Emission Limits (FELs) above or below the applicable emission standard subject to the limitation in paragraph (f) of this section, provided the summation of the manufacturer's projected balance of credits from all credit transactions for each engine class in a given model year is greater than or equal to zero, as determined under § 90.207.

(1) A manufacturer of an engine family with an FEL exceeding the applicable emission standard must obtain positive emission credits sufficient to address the associated credit shortfall via averaging, banking, or trading.

(2) An engine family with an FEL below the applicable emission standard may generate positive emission credits for averaging, banking, or trading, or a combination thereof.

(3) In the case of an SEA failure, credits may be used to cover subsequent production of engines for the family in question if the manufacturer elects to recertify to a higher FEL. Credits may not be used to remedy a nonconformity determined by a Selective Enforcement Audit (SEA) or by in-use testing, except that the Administrator may permit the use of credits to address a nonconformity determined by an SEA where the use of such credits is one component of a multi-part remedy for the previously produced engines and the remedy, including the use of credits and the quantity of credits being used, is such that the Administrator is satisfied that the manufacturer has strong and lasting incentive to accurately verify its new engine emission levels and will set or reset its FELs for current and future model years so that production line compliance is assured.

(4) In the case of a production line testing failure pursuant to subpart H of this part, a manufacturer may revise the FEL based upon production line testing results obtained under subpart H of this part and upon Administrator approval pursuant to § 90.122(d). The manufacturer may use certification credits to cover both past production and subsequent production of nonhandheld engines as needed.

(f) No engine family may have an FEL that is greater than 32.2 g/kW-hr for Class I engines or 26.8 g/kW-hr for Class II engines.

(g)(1) All credits generated under this subpart will be designated as Class I or Class II credits, as appropriate. Except as described in § 90.204(b), credits generated in a given model year by an engine family subject to the Phase 2 emission requirements may only be used in averaging, banking or trading, as appropriate, for any nonhandheld engine family of the same class for which the Phase 2 requirements are applicable. Credits generated in one model year may not be used for prior model years, except as allowed under § 90.207(c) or § 90.104(h)(2)(iv).

(2) For the 2005 model year and for each subsequent model year, manufacturers of Class II engines must provide a demonstration that the sales weighted average FEL for $HC+NO_X$ (including $NMHC+NO_X$ FELs), for all of the manufacturer's Class II engines, will not exceed 13.6 g/kW-hr for the 2005 model year, 13.1 g/kW-hr for the 2006 model year and 12.6 g/kW-hr for the 2007 and each subsequent Phase 2 model year. Such demonstration shall be subject to the review and approval of the Administrator, shall be provided at the time of the first Class II certification of that model year and shall be based on projected eligible sales for that model year.

(h) Manufacturers must demonstrate compliance under the averaging, banking, and trading provisions for a particular model year by 270 days after the end of the model year. An engine family generating negative credits for which the manufacturer does not obtain or generate an adequate number of positive credits by that date from the same or previous model year engines will violate the conditions of the certificate of conformity. The certificate of conformity may be voided *ab initio* pursuant to § 90.123 for this engine family.

§ 90.204 Averaging.

(a) Negative credits from engine families with FELs above the applicable emission standard must be offset by positive credits from engine families having FELs below the applicable emission standard, as allowed under the provisions of this subpart. Averaging of credits in this manner is used to determine compliance under § 90.207(b).

(b) Cross-class averaging, i.e. the use of credits from Class I engines to cover Class II engines and vice versa, is permitted only for the two situations described in paragraphs (b)(1) and (b)(2) of this section and only when the affected Class II manufacturer meets the following minimum sales percentages for Class II overhead valve emission performance engines in that model year: 2001 (50%); 2002 (62.5%); 2003 (75%); 2004 (87.5%) and 2005 and later (100%). A manufacturer's sales percentage of overhead valve emission performance engines is determined by dividing the manufacturer's eligible sales (as defined in this part) of Class II overhead valve emission performance

engines certified under this part by the manufacturer's total eligible sales of Class II engines certified under this part, and multiplying the resultant quotient by 100.

(1) Cross class averaging is allowed for credit exchanges from credit generating Class II engines to credit using Class I engines.

(2) Cross class averaging is allowed for credit exchanges from Class I engines to Class II engines where credits are necessary to address production line testing failures as permitted in § 90.207 or to address credit shortfalls that arise due to testing pursuant to § 90.104(h)(2)(iv) .

(c) Subject to the limitations in § 90.204(b), credits used in averaging for a given model year may be obtained from credits generated in the same model year by another engine family, credits banked in previous model years, or credits of the same or previous model year obtained through trading. The restrictions of this paragraph notwithstanding, credits from a given model year may be used to address credit needs of previous model year engines as allowed under § 90.207(c).

(d) The use of Class II credits from the 1999 and 2000 model years (early banking) is subject to regulation under this subpart and also to the provisions of § 90.103(a)(7).

§ 90.205 Banking.

(a) Beginning with the 2001 model year, a manufacturer of an engine family with an FEL below the applicable emission standard for a given model year may bank credits in that model year for use in averaging and trading. Negative credits may be banked only according to the requirements under § 90.207(c). Credits may also be banked in model years 1999 and 2000 subject to the requirements of paragraph (b) of this section.

(b) A manufacturer may bank credits for a given class of engines in the 1999 and 2000 model years for use in the 2001 and later model years, provided:

(1) For Class I credits: the manufacturer certifies its entire Class I production to the applicable 2001 model year requirements. $HC+NO_X$ ($NMHC+NO_X$) credits may only be banked from engine families certified below 16.0 g/kW-hr (15.0 g/kW-hr) where those credits are not needed to bring the manufacturer's total Class I sales into compliance with the 2001 model year standard.

(2) For Class II credits: the manufacturer certifies its entire Class II product line to the applicable 2001 model year requirements. $HC+NO_X$ ($NMHC+NO_X$) credits may only be banked from engine families certified below 12.1 (11.3 g/kw-hr) for engines where those credits are not needed to bring the manufacturer's total Class II sales into compliance with the 2001 model year standard.

(3) Engines certified under the provisions of this paragraph are subject to all of the requirements of this part applicable to Phase 2 engines.

(c) A manufacturer may bank actual credits only after the end of the model year and after EPA has reviewed the manufacturer's end-of-year reports. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging in the end-of-year report and final report.

(d) Credits declared for banking from the previous model year that have not been reviewed by EPA may be used in averaging or trading transactions. However, such credits may be revoked at a later time following EPA review of the end-of-year report or any subsequent audit actions.

§ 90.206 Trading.

(a) An engine manufacturer may exchange emission credits with other nonhandheld engine manufacturers in trading.

(b) Credits for trading can be obtained from credits banked in previous model years or credits generated during the model year of the trading transaction.

(c) Traded credits can be used for averaging, banking, or further trading transactions.

(d) Traded credits are subject to the limitations on cross-class averaging, use for past model years, and the use of credits from early banking as set forth in § 90.204(b), (c) and (d).

(e) In the event of a negative credit balance resulting from a transaction, both the buyer and the seller are liable, except in cases involving fraud. Certificates of all engine families participating in a negative trade may be voided ab initio pursuant to § 90.123.

§ 90.207 Credit calculation and manufacturer compliance with emission standards.

(a) (1) For each engine family, $HC+NO_X$ [$NMHC+NO_X$] certification emission credits (positive or negative) are to be calculated according to the following equation and rounded to the nearest gram. Consistent units are to be used throughout the following equation:

$$\text{Credits} = \text{Sales} \times (\text{Standard—FEL}) \times \text{Power} \times \text{Useful life} \times \text{Load Factor}$$

Where:

Sales = eligible sales as defined in this part. Annual sales projections are used to project credit availability for initial certification. Eligible sales volume is used in determining actual credits for end-of-year compliance determination.

Standard = the current and applicable Small SI engine $HC+NO_X$ ($NMHC+NO_X$) emission standard in grams per kilowatt hour as determined in § 90.103.

FEL = the family emission limit for the engine family in grams per kilowatt hour.

Power = the sales weighted maximum modal power, in kilowatts, as calculated from the applicable federal test procedure as described in this part. This is determined by multiplying the maximum modal power of each configuration within the family by its eligible sales, summing across all configurations and dividing by the eligible sales of the entire family.

Useful Life = the useful life in hours corresponding to the useful life category for which the engine family was certified.

Load Factor = For Test Cycle A and Test Cycle B, the Load Factor = 47% (i.e. 0.47).

(2) For approved alternate test procedures, the load factor in paragraph (a)(1) of this section must be calculated according to the following formula:

$$\sum_{i=1}^{n} (\%\text{MTT mode}_i) \times (\%\text{MTS mode}_i) \times (\text{WF mode}_i)$$

Where:

$\%\text{MTT mode}_i$ = percent of the maximum FTP torque for mode i.

$\%\text{MTS mode}_i$ = percent of the maximum FTP engine rotational speed for mode i.

WF mode_i = the weighting factor for mode i.

(b) Manufacturer compliance with the emission standard is determined on a corporate average basis at the end of each model year. A manufacturer is in compliance when the sum of positive and negative emission credits it holds for each class is greater than or equal to zero, except that the sum of positive and negative credits for a given class may be less than zero as allowed under paragraph (c) of this section.

(c)(1) A manufacturer may use credits from a later model year to address dfs of model year 2001 through 2004 Class II engines certified to 500 or 1000 hours, when the dfs are shown to be underestimated pursuant to the provisions of § 90.104(h)(2)(iv).

(2) If, as a result of production line testing as required in subpart H of this part, a nonhandheld engine family is determined to be in noncompliance pursuant to § 90.710, the manufacturer may raise its FEL for past and future production as necessary. Further, a manufacturer may carry a negative credit balance (known also as a credit deficit) for the subject class and model year and for the next three model years.

The credit deficit may be no larger than that created by the nonconforming family. If the credit deficit still exists after the model year following the model year in which the nonconformity occurred, the manufacturer must obtain and apply credits to offset the remaining credit deficit at a rate of 1.2 grams for each gram of deficit within the next two model years. The provisions of this paragraph are subject to the limitations in paragraph (d) of this section.

(d) Regulations elsewhere in this part notwithstanding, if a nonhandheld engine manufacturer experiences two or more production line testing failures pursuant to the regulations in subpart H of this part in a given model year, the manufacturer may raise the FEL of previously produced engines only to the extent that such engines represent no more than 10% of the manufacturer's total eligible sales for that model year. For any additional engines determined to be in noncompliance, the manufacturer must conduct offsetting projects approved in advance by the Administrator.

(e) If, as a result of production line testing under this subpart, a manufacturer desires to lower its FEL it may do so subject to § 90.708(c).

(f) Except as allowed at paragraph (c) of this section, when a manufacturer is not in compliance with the applicable emission standard by the date 270 days after the end of the model year, considering all credit calculations and transactions completed by then, the manufacturer will be in violation of these regulations and EPA may, pursuant to § 90.123, void *ab initio* the certificates of engine families for which the manufacturer has not obtained sufficient positive emission credits.

§ 90.208 Certification.

(a) In the application for certification a manufacturer must:

(1) Submit a statement that the engines for which certification is requested will not, to the best of the manufacturer's belief, cause the manufacturer to be in noncompliance under § 90.207(b) when all credits are calculated for all the manufacturer's engine families.

(2) Declare an FEL for each engine family for $HC+NO_X$ ($NMHC+NO_X$). The FEL must have the same number of significant digits as the emission standard.

(3) Indicate the projected number of credits generated/needed for this family; the projected applicable eligible sales volume, by quarter; and the values required to calculate credits as given in § 90.207.

(4) Submit calculations in accordance with § 90.207 of projected emission credits (positive or negative) based on quarterly production projections for each family.

(5)(i) If the engine family is projected to have negative emission credits, state specifically the source (manufacturer/engine family or reserved) of the credits necessary to offset the credit deficit according to quarterly projected production.

(ii) If the engine family is projected to generate credits, state specifically (manufacturer/engine family or reserved) where the quarterly projected credits will be applied.

(b) All certificates issued are conditional upon manufacturer compliance with the provisions of this subpart both during and after the model year of production.

(c) Failure to comply with all provisions of this subpart will be considered to be a failure to satisfy the conditions upon which the certificate was issued, and the certificate may be determined to be void *ab initio* pursuant to § 90.123.

(d) The manufacturer bears the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or waived.

(e) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-year reports, follow-up audits, and any other verification steps considered appropriate by the Administrator.

§ 90.209 Maintenance of records.

(a) The manufacturer must establish, maintain, and retain the following adequately organized and indexed records for each engine family:

(1) EPA engine family identification code;

(2) Family Emission Limit (FEL) or FELs where FEL changes have been implemented during the model year;

(3) Maximum modal power for each configuration sold;

(4) Projected sales volume for the model year; and

(5) Records appropriate to establish the quantities of engines that constitute eligible sales as defined in § 90.202 for each power rating for each FEL.

(b) Any manufacturer producing an engine family participating in trading reserved credits must maintain the following records on a quarterly basis for each such engine family:

(1) The engine family;

(2) The actual quarterly and cumulative applicable production/sales volume;

(3) The values required to calculate credits as given in § 90.207;

(4) The resulting type and number of credits generated/required;

(5) How and where credit surpluses are dispersed; and

(6) How and through what means credit deficits are met.

(c) The manufacturer must retain all records required to be maintained under this section for a period of eight years from the due date for the end-of-model year report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(d) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(e) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(f) EPA may, pursuant to § 90.123, void *ab initio* a certificate of conformity for an engine family for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

§ 90.210 End-of-year and final reports.

(a) End-of-year and final reports must indicate the engine family, the class (I or II), the actual sales volume, the values required to calculate credits as given in § 90.207, and the number of credits generated/required. Manufacturers must also submit how and where credit surpluses were dispersed (or are to be banked) and/or how and through what means credit deficits were met. Copies of contracts related to credit trading must be included or supplied by the broker, if applicable. The report must include a calculation of credit balances to show that the credit summation for each class of engines is equal to or greater than zero (or less than zero in cases of negative credit balances as permitted in § 90.207(c)). For engines subject to the provisions of § 90.203(g)(2), the report must include a calculation of the sales weighted average $HC+NO_X$ (including $NMHC+NO_X$) FEL.

(b) The calculation of eligible sales for end-of-year and final reports must be based on the location of the point of first retail sale (for example, retail customer

or dealer) also called the final product purchase location. Upon advance written request, the Administrator will consider other methods to track engines for credit calculation purposes that provide high levels of confidence that eligible sales are accurately counted.

(c)(1) End-of-year reports must be submitted within 90 days of the end of the model year to: Manager, Engine Compliance Programs Group (6403–J), U.S. Environmental Protection Agency, Washington, DC 20460.

(2) Unless otherwise approved by the Administrator, final reports must be submitted within 270 days of the end of the model year to: Manager, Engine Compliance Programs Group (6403–J), U.S. Environmental Protection Agency, Washington, DC 20460.

(d) Failure by a manufacturer to submit any end-of-year or final reports in the specified time for any engines subject to regulation under this part is a violation of § 90.1003(a)(2) and section 213(d) of the Clean Air Act for each engine.

(e) A manufacturer generating credits for banking only who fails to submit end-of-year reports in the applicable specified time period (90 days after the end of the model year) may not use the credits until such reports are received and reviewed by EPA. Use of projected credits pending EPA review is not permitted in these circumstances.

(f) Errors discovered by EPA or the manufacturer in the end-of-year report, including errors in credit calculation, may be corrected in the final report.

(g) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year or final report previously submitted to EPA under this section, the manufacturer's credits and credit calculations must be recalculated. Erroneous positive credits will be void except as provided in paragraph (h) of this section. Erroneous negative credit balances may be adjusted by EPA.

(h) If within 270 days of the end of the model year, EPA review determines a reporting error in the manufacturer's favor (that is, resulting in an increased credit balance) or if the manufacturer discovers such an error within 270 days of the end of the model year, EPA shall restore the credits for use by the manufacturer.

§ 90.211 Request for hearing.

An engine manufacturer may request a hearing on the Administrator's voiding of the certificate under §§ 90.203(h), 90.206(e), 90.207(f), 90.208(c), or 90.209(f), pursuant to § 90.124. The procedures of § 90.125 shall apply to any such hearing.

Subpart D—Emission Test Equipment Provisions

18. Section 90.301 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 90.301 Applicability.

(a) This subpart describes the equipment required in order to perform exhaust emission tests on new nonroad spark-ignition engines and vehicles subject to the provisions of subpart A of this part. Certain text in this subpart is identified as pertaining to Phase 1 or Phase 2 engines. Such text pertains only to engines of the specified Phase. If no indication of Phase is given, the text pertains to all engines, regardless of Phase.

* * * * *

(d) For Phase 2 Class I and Phase 2 Class II natural gas fueled engines, the following sections from 40 CFR part 86 are applicable to this subpart. The requirements of these sections which pertain specifically to the measurement and calculation of non-methane hydrocarbon (NMHC) exhaust emissions from otto cycle heavy-duty engines must be followed when determining the NMHC exhaust emissions from Phase 2 Class I and Phase 2 Class II natural gas fueled engines. Those sections are: 40 CFR 86.1306–90 Equipment required and specifications; overview, 40 CFR 86.1309–90 Exhaust gas sampling system; otto-cycle engines, 40 CFR 86–1311–94 Exhaust gas analytical system; CVS bag sampling, 40 CFR 86.1313–94(e) Fuel Specification—Natural gas-fuel, 40 CFR 86.1314–94 Analytical gases, 40 CFR 86.1316–94 Calibrations; frequency and overview, 40 CFR 86.1321–94 Hydrocarbon analyzer calibration, 40 CFR 86.1325–94 Methane analyzer calibration, 40 CFR 86.1327–94 Engine dynamometer test procedures, overview, 40 CFR 86.1340–94 Exhaust sample analysis, 40 CFR 86.1342–94 Calculations; exhaust emissions, 40 CFR 86.1344–94(d) Required information—Pre-test data, 40 CFR 86.1344–94(e) Required information—Test data.

19. Section 90.302 is revised to read as follows:

§ 90.302 Definitions.

The definitions in § 90.3 apply to this subpart. The following definitions also apply to this subpart.

Intermediate speed means the engine speed which is 85 percent of the rated speed.

Natural gas means a fuel whose primary constituent is methane.

Rated speed means the speed at which the manufacturer specifies the maximum rated power of an engine.

Subpart E—Gaseous Exhaust Test Procedures

20. Section § 90.401 is amended by adding paragraphs (c) and (d) to read as follows;

§ 90.401 Applicability.

* * * * *

(c) Certain text in this subpart is identified as pertaining to Phase 1 or Phase 2 engines. Such text pertains only to engines of the specified Phase. If no indication of Phase is given, the text pertains to all engines, regardless of Phase.

(d) For Phase 2 Class I and Phase 2 Class II natural gas fueled engines, the following sections from 40 CFR part 86 are applicable to this subpart. The requirements of these sections which pertain specifically to the measurement and calculation of non-methane hydrocarbon (NMHC) exhaust emissions from otto cycle heavy-duty engines must be followed when determining the NMHC exhaust emissions from Phase 2 Class I and Phase 2 Class II natural gas fueled engines. Those sections are: 40 CFR 86.1327–94 Engine dynamometer test procedures, overview, 40 CFR 86.1340–94 Exhaust sample analysis, 40 CFR 86.1342–94 Calculations; exhaust emissions, 40 CFR 86.1344–94(d) Required information—Pre-test data, and 40 CFR 86.1344–94(e) Required information—Test data.

21. Section 90.404 is amended by adding a sentence after the first sentence of paragraph (b) to read as follows:

§ 90.404 Test procedure overview.

* * * * *

(b) * * * For Phase 2 Class I and II natural gas fueled engines the test is also designed to determine the brake-specific emissions of non-methane hydrocarbons. * * *

* * * * *

22. Section 90.409 is amended by revising paragraph (a)(3) to read as follows:

§ 90.409 Engine dynamometer test run.

(a) * * *

(3) For Phase 1 engines, at the manufacturer's option, the engine can be run with the throttle in a fixed position or by using the engine's governor (if the engine is manufactured with a governor). In either case, the engine speed and load must meet the requirements specified in paragraph (b)(12) of this section. For Phase 2 Class I and Class II engines equipped with an engine speed governor, the governor must be used to control engine speed during all test cycle modes except for Mode 1, and no external throttle control

may be used. For Phase 2 Class I and Class II engines equipped with an engine speed governor, during Mode 1 fixed throttle operation may be used to determine the 100% torque value.

* * * * *

23. Section 90.410 is amended by revising paragraph (b) to read as follows:

§ 90.410 Engine test cycle.

* * * * *

(b) For Phase 1 engines and Phase 2 Class III, IV, V, and Phase 2 Class I and II engines not equipped with an engine speed governor, during each non-idle mode, hold both the specified speed and load within ± five percent of point. During the idle mode, hold speed within ± ten percent of the manufacturer's specified idle engine speed. For Phase 2 Class I and II engines equipped with an engine speed governor, during Mode 1 hold both the specified speed and load within ± five percent of point, during Modes 2–5, hold the specified load with ± five percent of point, and during the idle mode hold the specified speed within ± ten percent of the manufacturer's specified idle engine speed (see Table 1 in Appendix A to subpart E of this part for a description of test Modes).

* * * * *

24. In Appendix A to Subpart E of Part 90, Table 2 is revised to read as follows:

Appendix A to Subpart E of Part 90—Tables

* * * * *

TABLE 2.—TEST CYCLES FOR CLASS I–V ENGINES

Mode	1	2	3	4	5	6	7	8	9	10	11
Speed	Rated speed					Intermediate speed					Idle
Mode Points A Cycle	.....	.....	.....	.....	.....	1	2	3	4	5	6
Load Percent—A Cycle	.....	.....	.....	.....	.....	100	75	50	25	10	0
Weighting	.....	.....	.....	.....	.....	9%	20%	29%	30%	7%	5%
Mode Points B Cycle	1	2	3	4	5	.....	.....	.....	.....	.....	6
Load Percent—B Cycle	100	75	50	25	10	.....	.....	.....	.....	.....	0
Weighting	.....	.....	.....	.....	.....	9%	20%	29%	30%	7%	5%
Mode Points C Cycle	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	2
Load Percent—C Cycle	100	.....	.....	.....	.....	.....	.....	.....	.....	.....	0
Weighting for Phase 1 Engines	90%	.....	.....	.....	.....	.....	.....	.....	.....	.....	10%
Weighting for Phase 2 Engines	85%	.....	.....	.....	.....	.....	.....	.....	.....	.....	15%

Subpart F—Selective Enforcement Auditing

25. Section 90.503 is amended by revising paragraphs (f)(3) and (f)(4) to read as follows:

§ 90.503 Test orders.

* * * * *

(f) * * *

(3) Any SEA test order for which the family or configuration, as appropriate, fails under § 90.510 or for which testing is not completed will not be counted against the annual limit.

(4) When the annual limit has been met, the Administrator may issue additional test orders to test those families or configurations for which evidence exists indicating nonconformity, or for which the Administrator has reason to believe are not being appropriately represented or tested in Production Line Testing conducted under subpart H of this part, if applicable. An SEA test order issued pursuant to this provision will include a statement as to the reason for its issuance.

26. Section 90.509 is amended by revising paragraph (b) to read as follows:

§ 90.509 Calculation and reporting of test results.

* * * * *

(b)(1) Final test results are calculated by summing the initial test results derived in paragraph (a) of this section for each test engine, dividing by the number of tests conducted on the engine, and rounding to the same number of decimal places contained in the applicable standard. For Phase 2 engines only, this result shall be expressed to one additional significant figure.

(2) Final deteriorated test results (for Phase 2 test engines only) are calculated by applying the appropriate deterioration factors, from the certification process for the engine family, to the final test results, and rounding to the same number of decimal places contained in the applicable standard.

* * * * *

27. Section 90.510 is amended by revising paragraph (b) to read as follows:

§ 90.510 Compliance with acceptable quality level and passing and failing criteria for selective enforcement audits.

* * * * *

(b) A failed engine is a Phase 1 engine whose final test results pursuant to § 90.509(b), for one or more of the applicable pollutants exceed the emission standard. For Phase 2 engines, a failed engine is a Phase 2 engine whose final deteriorated test results pursuant to § 90.509(b), for one or more of the applicable pollutants exceed the emission standard (FEL, if applicable).

* * * * *

28. Section 90.512 is amended by revising paragraph (b) to read as follows:

§ 90.512 Request for public hearing.

* * * * *

(b) The manufacturer's request shall be filed with the Administrator not later than 15 days after the Administrator's notification of his or her decision to suspend, revoke or void, unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Director of the Engine Programs and Compliance Division and file two copies with the Hearing Clerk of the Agency. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his or her discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension, revocation or voiding.

* * * * *

Subpart G—Importation of Nonconforming Engines

29. Section 90.612 is amended by revising paragraph (g) to read as follows:

§ 90.612 Exemptions and exclusions.

* * * * *

(g) Applications for exemptions and exclusions provided for in paragraphs (b), (c), and (e) of this section are to be mailed to: U.S. Environmental

Protection Agency, Office of Mobile Sources, Engine Compliance Programs Group (6403–J), Washington, D.C. 20460, Attention: Imports.

30. Subpart H, which was previously ''reserved'', is added to part 90 to read as follows:

Subpart H—Manufacturer Production Line Testing Program

Sec.

90.701 Applicability.
90.702 Definitions.
90.703 Production line testing by the manufacturer.
90.704 Maintenance of records; submittal of information.
90.705 Right of entry and access.
90.706 Engine sample selection.
90.707 Test procedures.
90.708 Cumulative Sum (CumSum) Procedure.
90.709 Calculation and reporting of test results.
90.710 Compliance with criteria for production line testing.
90.711 Suspension and revocation of certificates of conformity.
90.712 Request for public hearing.
90.713 Administrative procedures for public hearing.

Subpart H—Manufacturer Production Line Testing Program

§ 90.701 Applicability.

(a) Except as described in paragraph (b) of this section, the requirements of this subpart are applicable to all Phase 2 nonroad engines subject to the provisions of subpart A of this part.

(b) The requirements of this subpart are applicable to all handheld engine families described in paragraph (a) of this section unless otherwise exempted in this part. Manufacturers of nonhandheld engine families described in paragraph (a) of this section may choose between the Production Line Testing Program described in this subpart for all of their engine families and the Selective Enforcement Auditing Program described in Subpart F of this part for all of their engine families, subject to the restrictions of paragraph (d) of this section.

(c) Nonhandheld engine manufacturers shall notify EPA of their selection when they begin their first Phase 2 model year's certification.

(d) A manufacturer of nonhandheld Phase 2 engines may change from the Production Line Testing program described in this subpart to the Selective Enforcement Auditing program described in Subpart F of this part and vice versa, provided that:

(1) It does so for all of its engine families at the same time;

(2) When changing from Production Line Testing to Selective Enforcement Auditing, it has remained under Production Line Testing for a minimum of three model years;

(3) It provides written notice to EPA one complete model year prior to the model year for which it is requesting to change from Production Line Testing to Selective Enforcement Auditing;

(4) It provides written notice to EPA thirty (30) days prior to the date for which it is requesting to change from Selective Enforcement Auditing to Production Line Testing; and

(5) It is not carrying a negative credit balance at the time it changes from Production Line Testing to Selective Enforcement Auditing.

(e) The procedures described in this subpart are optional for small volume engine manufacturers and small volume engine families as defined in this part, and for engine families certified to a level at least 50% below the applicable $HC+NO_X$ ($NMHC+NO_X$) standard (FEL if applicable). Engine families for which the manufacturer opts not to conduct testing under this subpart pursuant to this paragraph shall be subject to the Selective Enforcement Auditing procedures of Subpart F of this part.

§ 90.702 Definitions.

The definitions in subpart A of this part apply to this subpart. The following definitions also apply to this subpart.

Configuration means any subclassification of an engine family which can be described on the basis of gross power, emission control system, governed speed, injector size, engine calibration, and other parameters as designated by the Administrator.

Test sample means the collection of engines selected from the population of an engine family for emission testing.

§ 90.703 Production line testing by the manufacturer.

(a) Manufacturers of small SI engines shall test production line engines from each engine family according to the provisions of this subpart.

(b) Production line engines must be tested using the test procedure specified in subpart E of this part except that the Administrator may approve minor variations that the Administrator deems necessary to facilitate efficient and economical testing where the manufacturer demonstrates to the satisfaction of the Administrator that such variations will not significantly impact the test results. Any adjustable engine parameter must be set to values or positions that are within the range recommended to the ultimate purchaser, unless otherwise specified by the Administrator. The Administrator may specify values within or without the range recommended to the ultimate purchaser.

(c) The Administrator, on the basis of a written application from a manufacturer, may approve alternate methods to evaluate production line compliance, where such alternate methods are demonstrated by the manufacturer to:

(1) Produce substantially the same levels of producer and consumer risk as the Cum Sum procedure described in this subpart that mean emissions of an engine family are below the appropriate standards (FEL, where applicable);

(2) Provide for continuous rather than point-in-time sampling; and

(3) Include an appropriate decision mechanism for determining noncompliance upon which the Administrator can suspend or revoke the certificate of conformity.

§ 90.704 Maintenance of records; submittal of information.

(a) The manufacturer of any new small SI engine subject to any of the provisions of this subpart must establish, maintain, and retain the following adequately organized and indexed records:

(1) *General records.* A description of all equipment used to test engines in accordance with § 90.703. Subpart D of this part sets forth relevant equipment requirements in §§ 90.304, 90.305, 90.306, 90.307, 90.308, 90.309, 90.310 and 90.313.

(2) *Individual records.* These records pertain to each production line test conducted pursuant to this subpart and include:

(i) The date, time, and location of each test;

(ii) The number of hours of service accumulated on the test engine when the test began and ended;

(iii) The names of all supervisory personnel involved in the conduct of the production line test;

(iv) A record and description of any adjustment, repair, preparation or modification performed prior to and/or subsequent to approval by the Administrator pursuant to § 90.707(b)(1), giving the date, associated time, justification, name(s) of the authorizing personnel, and names of all supervisory personnel responsible for the conduct of the repair;

(v) If applicable, the date the engine was shipped from the assembly plant, associated storage facility or port facility, and the date the engine was received at the testing facility;

(vi) A complete record of all emission tests performed pursuant to this subpart (except tests performed directly by EPA), including all individual

worksheets and/or other documentation relating to each test, or exact copies thereof, in accordance with the record requirements specified in §§ 90.405 and 90.406; and

(vii) A brief description of any significant events during testing not otherwise described under paragraph (a)(2) of this section, commencing with the test engine selection process and including such extraordinary events as engine damage during shipment.

(3) The manufacturer must establish, maintain and retain general records, pursuant to paragraph (a)(1) of this section, for each test cell that can be used to perform emission testing under this subpart.

(b) The manufacturer must retain all records required to be maintained under this subpart for a period of one year after completion of all testing required for the engine family in a model year. Records may be retained as hard copy (i.e., on paper) or reduced to microfilm, floppy disk, or some other method of data storage, depending upon the manufacturer's record retention procedure; provided, that in every case, all the information contained in the hard copy is retained.

(c) The manufacturer must, upon request by the Administrator, submit the following information with regard to engine production:

(1) Projected production or actual production for each engine configuration within each engine family for which certification has been requested and/or approved;

(2) Number of engines, by configuration and assembly plant, scheduled for production or actually produced.

(d) Nothing in this section limits the Administrator's discretion to require a manufacturer to establish, maintain, retain or submit to EPA information not specified by this section.

(e) All reports, submissions, notifications, and requests for approval made under this subpart must be addressed to: Manager, Engine Compliance Programs Group (6403J), U.S. Environmental Protection Agency, Washington, DC 20460.

(f) The manufacturer must electronically submit the results of its production line testing using EPA's standardized format. The Administrator may exempt manufacturers from this requirement upon written request with supporting justification.

§ 90.705 Right of entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions of this subpart or other subparts of this part, one or more EPA enforcement officers may enter during operating hours and upon presentation of credentials any of the following places:

(1) Any facility, including ports of entry, where any engine to be introduced into commerce or any emission-related component is manufactured, assembled, or stored;

(2) Any facility where any test conducted pursuant to this or any other subpart or any procedure or activity connected with such test is or was performed;

(3) Any facility where any test engine is present; and

(4) Any facility where any record required under § 90.704 or other document relating to this subpart or any other subpart of this part is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA enforcement officers are authorized to perform the following inspection-related activities:

(1) To inspect and monitor any aspect of engine manufacture, assembly, storage, testing and other procedures, and to inspect and monitor the facilities in which these procedures are conducted;

(2) To inspect and monitor any aspect of engine test procedures or activities, including test engine selection, preparation and service accumulation, emission test cycles, and maintenance and verification of test equipment calibration;

(3) To inspect and make copies of any records or documents related to the assembly, storage, selection, and testing of an engine; and

(4) To inspect and photograph any part or aspect of any engine and any component used in the assembly thereof that is reasonably related to the purpose of the entry.

(c) EPA enforcement officers are authorized to obtain reasonable assistance without cost from those in charge of a facility to help the officers perform any function listed in this subpart and they are authorized to request the manufacturer to make arrangements with those in charge of a facility operated for the manufacturer's benefit to furnish reasonable assistance without cost to EPA.

(1) Reasonable assistance includes, but is not limited to, clerical, copying, interpretation and translation services; the making available on an EPA enforcement officer's request of personnel of the facility being inspected during their working hours to inform the EPA enforcement officer of how the facility operates and to answer the officer's questions; and the performance on request of emission tests on any engine which is being, has been, or will be used for production line or other testing.

(2) By written request, signed by the Assistant Administrator for Air and Radiation, and served on the manufacturer, a manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA enforcement officer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

(d) EPA enforcement officers are authorized to seek a warrant or court order authorizing the EPA enforcement officers to conduct the activities authorized in this section, as appropriate, to execute the functions specified in this section. EPA enforcement officers may proceed *ex parte* to obtain a warrant or court order whether or not the EPA enforcement officers first attempted to seek permission from the manufacturer or the party in charge of the facility(ies) in question to conduct the activities authorized in this section.

(e) A manufacturer must permit an EPA enforcement officer(s) who presents a warrant or court order to conduct the activities authorized in this section as described in the warrant or court order. The manufacturer must also cause those in charge of its facility or a facility operated for its benefit to permit entry and access as authorized in this section pursuant to a warrant or court order whether or not the manufacturer controls the facility. In the absence of a warrant or court order, an EPA enforcement officer(s) may conduct the activities authorized in this section only upon the consent of the manufacturer or the party in charge of the facility(ies) in question.

(f) It is not a violation of this part or the Clean Air Act for any person to refuse to permit an EPA enforcement officer(s) to conduct the activities authorized in this section if the officer(s) appears without a warrant or court order.

(g) A manufacturer is responsible for locating its foreign testing and manufacturing facilities in jurisdictions where local law does not prohibit an EPA enforcement officer(s) from conducting the entry and access activities specified in this section. EPA will not attempt to make any inspections which it has been informed local foreign law prohibits.

§ 90.706 Engine sample selection.

(a) At the start of each model year, the small SI engine manufacturer will begin

to randomly select engines from each engine family for production line testing at a rate of one percent of the projected eligible sales of that family. Each engine will be selected from the end of the assembly line.

(1) *For newly certified engine families*: After two engines are tested, the manufacturer will calculate the required sample size for the model year for each pollutant ($HC+NO_X$($NMHC+NO_X$) and CO) according to the Sample Size Equation in paragraph (b) of this section.

(2) *For carry-over engine families*: After one engine is tested, the manufacturer will combine the test with the last test result from the previous model year and then calculate the required sample size for the model year for each pollutant according to the Sample Size Equation in paragraph (b) of this section.

(b)(1) Manufacturers will calculate the required sample size for the model year for each pollutant for each engine family using the Sample Size Equation in this paragraph. N is calculated for each pollutant from each test result. The higher of the two values for the number N indicates the number of tests required for the model year for an engine family. N is recalculated for each pollutant after each test. Test results used to calculate the variables in the following Sample Size Equation must be final deteriorated test results as specified in § 90.709(c):

$$N = \left[\frac{(t_{95} * \sigma)}{(x - FEL)} \right]^2 + 1$$

Where:

N = required sample size for the model year.

t_{95} = 95% confidence coefficient. It is dependent on the actual number of tests completed, n, as specified in the table in paragraph (b)(2) of this section. It defines one-tail, 95% confidence intervals.

o = actual test sample standard deviation calculated from the following equation:

$$\sigma = \sqrt{\frac{\sum (X_i - x)^2}{n - 1}}$$

xi_i = emission test result for an individual engine.

x = mean of emission test results of the actual sample.

FEL = Family Emission Limit or standard if no FEL.

n = The actual number of tests completed in an engine family.

(2) The following table specifies the actual number of tests (n) & 1-tail confidence coefficients (t_{95}):

n	t_{95}
2	6.31
3	2.92
4	2.35
5	2.13
6	2.02
7	1.94
8	1.90
9	1.86
10	1.83
11	1.81
12	1.80
13	1.78
14	1.77
15	1.76
16	1.75
17	1.75
18	1.74
19	1.73
20	1.73
21	1.72
22	1.72
23	1.72
24	1.71
25	1.71
26	1.71
27	1.71
28	1.70
29	1.70
30	1.70
∞	1.645

(3) A manufacturer must distribute the testing of the remaining number of engines needed to meet the required sample size N, evenly throughout the remainder of the model year.

(4) After each new test, the required sample size, N, is recalculated using updated sample means, sample standard deviations and the appropriate 95% confidence coefficient.

(5) A manufacturer must continue testing and updating each engine family's sample size calculations according to paragraphs (b)(1) through (b)(4) of this section until a decision is made to stop testing as described in paragraph (b)(6) of this section or a noncompliance decision is made pursuant to § 90.710(b).

(6) If, at any time throughout the model year, the calculated required sample size, N, for an engine family is less than or equal to the actual sample size, n, and the sample mean, x, for HC + NO_X ($NMHC+NO_X$) and CO is less than or equal to the FEL or standard if no FEL, the manufacturer may stop testing that engine family.

(7) If, at any time throughout the model year, the sample mean, x, for HC + NO_X ($NMHC+NO_X$) or CO is greater than the FEL or standard if no FEL, the manufacturer must continue testing that engine family at the appropriate maximum sampling rate.

(8) The maximum required sample size for an engine family (regardless of the required sample size, N, as calculated in paragraph (b)(1) of this section) is the lesser of thirty tests per model year or one percent of projected annual production for that engine family for that model year.

(9) Manufacturers may elect to test additional engines. Additional engines, whether tested in accordance with the testing procedures specified in § 90.707 or not, may not be included in the Sample Size and Cumulative Sum equation calculations as defined in paragraph (b)(1) of this section and § 90.708(a), respectively. However, such additional test results may be used as appropriate to ''bracket'' or define the boundaries of the production duration of any emission nonconformity determined under this subpart. Such additional test data must be identified and provided to EPA with the submittal of the official CumSum results.

(c) The manufacturer must produce and assemble the test engines using its normal production and assembly process for engines to be distributed into commerce.

(d) No quality control, testing, or assembly procedures shall be used on any test engine or any portion thereof, including parts and subassemblies, that have not been or will not be used during the production and assembly of all other engines of that family, unless the Administrator approves the modification in production or assembly procedures in advance.

§ 90.707 Test procedures.

(a)(1) For small SI engines subject to the provisions of this subpart, the prescribed test procedures are specified in subpart E of this part.

(2) The Administrator may, on the basis of a written application by a manufacturer, prescribe test procedures other than those specified in paragraph (a)(1) of this section for any small SI engine the Administrator determines is not susceptible to satisfactory testing using procedures specified in paragraph (a)(1) of this section.

(b)(1) The manufacturer may not adjust, repair, prepare, or modify any test engine and may not perform any emission test on any test engine unless this adjustment, repair, preparation, modification and/or test is documented in the manufacturer's engine assembly and inspection procedures and is actually performed by the manufacturer on every production line engine or unless this adjustment, repair, preparation, modification and/or test is required or permitted under this subpart or is approved in advance by the Administrator.

(2) The Administrator may adjust or cause to be adjusted any engine parameter which the Administrator has

determined to be subject to adjustment for certification, Production Line Testing and Selective Enforcement Audit testing, to any setting within the physically adjustable range of that parameter, as determined by the Administrator, prior to the performance of any test. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator may not adjust it or require that it be adjusted to any setting which causes a lower engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 12 hours of service on the engine under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of the comparison. The manufacturer may be requested to supply information necessary to establish an alternate minimum idle speed. The Administrator, in making or specifying these adjustments, may consider the effect of the deviation from the manufacturer's recommended setting on emission performance characteristics as well as the likelihood that similar settings will occur on in-use engines. In determining likelihood, the Administrator may consider factors such as, but not limited to, the effect of the adjustment on engine performance characteristics and information from similar in-use engines.

(c) *Service Accumulation.* (1) Unless otherwise approved by the Administrator, prior to performing exhaust emission production line testing, the manufacturer may accumulate on each test engine a number of hours of service equal to the greater of 12 hours or the number of hours the manufacturer accumulated during stabilization in the certification process for each engine family. For catalyst-equipped engines, the manufacturer must accumulate a number of hours equal to the number of hours accumulated to represent stabilized emissions on the engine used to obtain certification.

(2) Service accumulation must be performed in a manner using good engineering judgment to obtain emission results representative of production line engines.

(d) Unless otherwise approved by the Administrator, the manufacturer may not perform any maintenance on test engines after selection for testing.

(e) If an engine is shipped to a remote facility for production line testing, and an adjustment or repair is necessary because of shipment, the engine manufacturer must perform the necessary adjustment or repair only after the initial test of the engine, except in cases where the Administrator has determined that the test would be impossible or unsafe to perform or would permanently damage the engine. Engine manufacturers must report to the Administrator, in the quarterly report required by § 90.709(e), all adjustments or repairs performed on test engines prior to each test.

(f) If an engine cannot complete the service accumulation or an emission test because of a malfunction, the manufacturer may request that the Administrator authorize either the repair of that engine or its deletion from the test sequence.

(g) *Testing.* A manufacturer must test engines with the test procedure specified in subpart E of this part to demonstrate compliance with the applicable FEL (or standard where there is no FEL). If alternate or special test procedures pursuant to regulations at § 90.120 are used in certification, then those alternate procedures must be used in production line testing.

(h) *Retesting.* (1) If an engine manufacturer reasonably determines that an emission test of an engine is invalid because of a procedural error, test equipment problem, or engine performance problem that causes the engine to be unable to safely perform a valid test, the engine may be retested. A test is not invalid simply because the emission results are high relative to other engines of the family. Emission results from all tests must be reported to EPA. The engine manufacturer must also include a detailed explanation of the reasons for invalidating any test in the quarterly report required in § 90.709(e). If a test is invalidated because of an engine performance problem, the manufacturer must document in detail the nature of the problem and the repairs performed in order to use the after-repair test results for the original test results.

(2) Routine retests may be conducted if the manufacturer conducts the same number of tests on all engines in the family. The results of these tests must be averaged according to procedures of § 90.709.

§ 90.708 Cumulative Sum (CumSum) Procedure.

(a) (1) Manufacturers must construct separate CumSum Equations for each regulated pollutant ($HC+NO_X$ ($NMHC+NO_X$) and CO) for each engine family. Test results used to calculate the variables in the CumSum Equations must be final deteriorated test results as defined in § 90.709(c). The CumSum Equation follows:

$C_i = \max [0 \text{ or } (C_{i-1} + X_i - (FEL + F))]$

Where:

C_i=The current CumSum statistic.

C_{i-1}=The previous CumSum statistic. Prior to any testing, the CumSum statistic=0 (i.e. $C_0=0$).

X_i=The current emission test result for an individual engine.

FEL=Family Emission Limit (the standard if no FEL).

$F=0.25\times\sigma$.

(2) After each test pursuant to paragraph (a)(1) of this section, C_i is compared to the action limit, H, the quantity which the CumSum statistic must exceed, in two consecutive tests, before the engine family may be determined to be in noncompliance for a regulated pollutant for purposes of § 90.710.

Where:

H=The Action Limit. It is $5.0\times\sigma$, and is a function of the standard deviation, σ.

σ=is the sample standard deviation and is recalculated after each test.

(b) After each engine is tested, the CumSum statistic shall be promptly updated according to the CumSum Equation in paragraph (a) of this section.

(c)(1) If, at any time during the model year, a manufacturer amends the application for certification for an engine family as specified in § 90.122(a) by performing an engine family modification (i.e., a change such as a running change involving a physical modification to an engine, a change in specification or setting, the addition of a new configuration, or the use of a different deterioration factor) with no changes to the FEL (where applicable), all previous sample size and CumSum statistic calculations for the model year will remain unchanged.

(2) If, at any time during the model year, a manufacturer amends the application for certification for an engine family as specified in § 90.122(a) by modifying its FEL (where applicable) for future production, as a result of an engine family modification, the manufacturer must continue its calculations by inserting the new FEL into the sample size equation as specified in § 90.706(b)(1) and into the CumSum equation in paragraph (a) of this section. All previous calculations remain unchanged. If the sample size calculation indicates that additional tests are required, then those tests must be performed. CumSum statistic calculations must not indicate that the family has exceeded the action limit for two consecutive tests. Where applicable, the manufacturer's final credit report as required by § 90.210 must break out the

credits that result from each FEL and corresponding CumSum analysis for the set of engines built to each FEL.

(3) If, at any time during the model year, a manufacturer amends the application for certification for an engine family as specified in § 90.122(a) (or for an affected part of the year's production in cases where there were one or more mid-year engine family modifications), by modifying its FEL (where applicable) for past and/or future production, without performing an engine modification, all previous sample size and CumSum statistic calculations for the model year must be recalculated using the new FEL. If the sample size calculation indicates that additional tests are required, then those tests must be performed. The CumSum statistic recalculation must not indicate that the family has exceeded the action limit for two consecutive tests. Where applicable, the manufacturer's final credit report as required by § 90.210 must break out the credits that result from each FEL and corresponding CumSum analysis for the set of engines built to each FEL.

§ 90.709 Calculation and reporting of test results.

(a) Initial test results are calculated following the applicable test procedure specified in § 90.707(a). The manufacturer rounds these results to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) Final test results are calculated by summing the initial test results derived in paragraph (a) of this section for each test engine, dividing by the number of tests conducted on the engine, and rounding to the same number of decimal places contained in the applicable standard expressed to one additional significant figure.

(c) The final deteriorated test results for each test engine are calculated by applying the appropriate deterioration factors, derived in the certification process for the engine to the final test results, and rounding to the same number of decimal places contained in the applicable standard.

(d) If, at any time during the model year, the CumSum statistic exceeds the applicable action limit, H, in two consecutive tests for any regulated pollutant, ($HC+NO_X$ ($NMHC+NO_X$) or CO) the engine family may be determined to be in noncompliance and the manufacturer must notify EPA within two working days of such exceedance by the Cum Sum statistic.

(e) Within 30 calendar days of the end of each quarter, each engine manufacturer must submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's or other's exhaust emission test facilities which were utilized to conduct testing reported pursuant to this section;

(2) Total production and sample sizes, N and n, for each engine family;

(3) The FEL (standard, if no FEL) against which each engine family was tested;

(4) A description of the process to obtain engines on a random basis;

(5) A description of the test engines;

(6) For each test conducted:

(i) A description of the test engine, including:

(A) Configuration and engine family identification;

(B) Year, make, and build date;

(C) Engine identification number; and

(D) Number of hours of service accumulated on engine prior to testing;

(ii) Location where service accumulation was conducted and description of accumulation procedure and schedule;

(iii) Test number, date, test procedure used, initial test results before and after rounding, final test results before and after rounding and final deteriorated test results for all exhaust emission tests, whether valid or invalid, and the reason for invalidation, if applicable;

(iv) A complete description of any adjustment, modification, repair, preparation, maintenance, and/or testing which was performed on the test engine, was not reported pursuant to any other paragraph of this subpart, and will not be performed on all other production engines;

(v) A CumSum analysis, as required in § 90.708, of the production line test results for each engine family; and

(vi) Any other information the Administrator may request relevant to the determination whether the new engines being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued;

(7) For each failed engine as defined in § 90.710(a), a description of the remedy and test results for all retests as required by § 90.711(g);

(8) The date of the end of the engine manufacturer's model year production for each engine family; and

(9) The following signed statement and endorsement by an authorized representative of the manufacturer:

This report is submitted pursuant to Sections 213 and 208 of the Clean Air Act. This production line testing program was conducted in complete conformance with all applicable regulations under 40 CFR Part 90. No emission-related changes to production processes or quality control procedures for the engine family tested have been made during this production line testing program that affect engines from the production line. All data and information reported herein is, to the best of (Company Name) knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder. (Authorized Company Representative.)

§ 90.710 Compliance with criteria for production line testing.

(a) A failed engine is one whose final deteriorated test results pursuant to § 90.709(c), for HC + NO_X ($NMHC+NO_X$) or CO exceeds the applicable Family Emission Limit (FEL)or standard if no FEL.

(b) An engine family shall be determined to be in noncompliance, if at any time throughout the model year, the CumSum statistic, C_i, for HC + NO_X ($NMHC+NO_X$) or CO, is greater than the action limit, H, for that pollutant, for two consecutive tests.

§ 90.711 Suspension and revocation of certificates of conformity.

(a) The certificate of conformity is suspended with respect to any engine failing pursuant to § 90.710 (a) effective from the time that testing of that engine is completed.

(b) The Administrator may suspend the certificate of conformity for an engine family which is determined to be in noncompliance pursuant to § 90.710(b). This suspension will not occur before thirty days after the engine family is determined to be in noncompliance and the Administrator has notified the manufacturer of its intent to suspend. During this thirty day period the Administrator will work with the manufacturer to achieve appropriate production line changes to avoid the need to halt engine production, if possible. The Administrator will approve or disapprove any such production line changes proposed to address a family that has been determined to be in noncompliance under this subpart within 15 days of receipt. If the Administrator does not approve or disapprove such a proposed change within such time period, the proposed change shall be considered approved.

(c) If the results of testing pursuant to these regulations indicate that engines of a particular family produced at one plant of a manufacturer do not conform to the regulations with respect to which the certificate of conformity was issued,

the Administrator may suspend the certificate of conformity with respect to that family for engines manufactured by the manufacturer at all other plants.

(d) Notwithstanding the fact that engines described in the application for certification may be covered by a certificate of conformity, the Administrator may suspend such certificate immediately in whole or in part if the Administrator finds any one of the following infractions to be substantial:

(1) The manufacturer refuses to comply with any of the requirements of this subpart.

(2) The manufacturer submits false or incomplete information in any report or information provided to the Administrator under this subpart.

(3) The manufacturer renders inaccurate any test data submitted under this subpart.

(4) An EPA enforcement officer is denied the opportunity to conduct activities authorized in this subpart and a warrant or court order is presented to the manufacturer or the party in charge of the facility in question.

(5) An EPA enforcement officer is unable to conduct activities authorized in § 90.705 because a manufacturer has located its facility in a foreign jurisdiction where local law prohibits those activities.

(e) The Administrator shall notify the manufacturer in writing of any suspension or revocation of a certificate of conformity in whole or in part, except that the certificate is immediately suspended with respect to any failed engines as provided for in paragraph (a) of this section.

(f) The Administrator may revoke a certificate of conformity for an engine family after the certificate has been suspended pursuant to paragraph (b) or (c) of this section if the proposed remedy for the nonconformity, as reported by the manufacturer to the Administrator, is one requiring a design change or changes to the engine and/or emission control system as described in the application for certification of the affected engine family.

(g) Once a certificate has been suspended for a failed engine, as provided for in paragraph (a) of this section, the manufacturer must take the following actions before the certificate is reinstated for that failed engine:

(1) Remedy the nonconformity;

(2) Demonstrate that the engine conforms to the applicable standards (FELs, where applicable) by retesting the engine in accordance with these regulations; and

(3) Submit a written report to the Administrator, after successful completion of testing on the failed engine, which contains a description of the remedy and test results for each engine in addition to other information that may be required by this part.

(h) Once a certificate for a failed engine family has been suspended pursuant to paragraph (b) or (c) of this section, the manufacturer must take the following actions before the Administrator will consider reinstating the certificate:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the engines, describes the proposed remedy, including a description of any proposed quality control and/or quality assurance measures to be taken by the manufacturer to prevent future occurrences of the problem, and states the date on which the remedies will be implemented; and

(2) Demonstrate that the engine family for which the certificate of conformity has been suspended does in fact comply with the regulations of this part by testing as many engines as needed so that the CumSum statistic, as calculated in § 90.708(a), falls below the action limit. Such testing must comply with the provisions of this part. If the manufacturer elects to continue testing individual engines after suspension of a certificate, the certificate is reinstated for any engine actually determined to be in conformance with the Family Emission Limits (or standards if no FEL) through testing in accordance with the applicable test procedures, provided that the Administrator has not revoked the certificate pursuant to paragraph (f) of this section.

(i) Once the certificate has been revoked for an engine family, if the manufacturer desires to continue introduction into commerce of a modified version of that family, the following actions must be taken before the Administrator may issue a certificate for that modified family:

(1) If the Administrator determines that the proposed change(s) in engine design may have an effect on emission performance deterioration, the Administrator shall notify the manufacturer within five working days after receipt of the report in paragraph (h)(1) of this section whether subsequent testing under this subpart will be sufficient to evaluate the proposed change or changes or whether additional testing will be required;

(2) After implementing the change or changes intended to remedy the nonconformity, the manufacturer must demonstrate that the modified engine family does in fact conform with the regulations of this part by testing as many engines as needed from the modified engine family so that the CumSum statistic, as calculated in § 90.708(a) using the newly assigned FEL if applicable, falls below the action limit; and

(3) When the requirements of paragraphs (i)(1) and (i)(2) of this section are met, the Administrator shall reissue the certificate or issue a new certificate, as the case may be, to include that family. As long as the CumSum statistic remains above the action limit, the revocation remains in effect.

(j) At any time subsequent to a suspension of a certificate of conformity for a test engine pursuant to paragraph (a) of this section, but not later than 15 days (or such other period as may be allowed by the Administrator) after notification of the Administrator's decision to suspend or revoke a certificate of conformity in whole or in part pursuant to paragraph (b), (c), or (f) of this section, a manufacturer may request a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied.

(k) Any suspension of a certificate of conformity under paragraph (d) of this section shall:

(1) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with §§ 90.712 and 90.713; and

(2) Not apply to engines no longer in the possession of the manufacturer.

(l) After the Administrator suspends or revokes a certificate of conformity pursuant to this section and prior to the commencement of a hearing under § 90.712, if the manufacturer demonstrates to the Administrator's satisfaction that the decision to suspend or revoke the certificate was based on erroneous information, the Administrator shall reinstate the certificate.

(m) To permit a manufacturer to avoid storing non-test engines while conducting subsequent testing of the noncomplying family, a manufacturer may request that the Administrator conditionally reinstate the certificate for that family. The Administrator may reinstate the certificate subject to the following condition: the manufacturer must commit to performing offsetting measures that remedy the nonconformity at no expense to the owners, and which are approved in advance by the Administrator for all engines of that family produced from the time the certificate is conditionally reinstated if the CumSum statistic does not fall below the action limit.

§ 90.712 Request for public hearing.

(a) If the manufacturer disagrees with the Administrator's decision to suspend or revoke a certificate or disputes the basis for an automatic suspension pursuant to § 90.711(a), the manufacturer may request a public hearing.

(b) The manufacturer's request shall be filed with the Administrator not later than 15 days after the Administrator's notification of his or her decision to suspend or revoke, unless otherwise specified by the Administrator. The manufacturer shall simultaneously serve two copies of this request upon the Manager of the Engine Compliance Programs Group and file two copies with the Hearing Clerk for the Agency. Failure of the manufacturer to request a hearing within the time provided constitutes a waiver of the right to a hearing. Subsequent to the expiration of the period for requesting a hearing as of right, the Administrator may, in his or her discretion and for good cause shown, grant the manufacturer a hearing to contest the suspension or revocation.

(c) A manufacturer shall include in the request for a public hearing:

(1) A statement as to which engine configuration(s) within a family is to be the subject of the hearing; and

(2) A concise statement of the issues to be raised by the manufacturer at the hearing, except that in the case of the hearing requested under § 90.711(j), the hearing is restricted to the following issues:

(i) Whether tests have been properly conducted (specifically, whether the tests were conducted in accordance with applicable regulations under this part and whether test equipment was properly calibrated and functioning);

(ii) Whether sampling plans and statistical analyses have been properly applied (specifically, whether sampling procedures and statistical analyses specified in this subpart were followed and whether there exists a basis for distinguishing engines produced at plants other than the one from which engines were selected for testing which would invalidate the Administrator's decision under § 90.711(c));

(3) A statement specifying reasons why the manufacturer believes it will prevail on the merits of each of the issues raised; and

(4) A summary of the evidence which supports the manufacturer's position on each of the issues raised.

(d) A copy of all requests for public hearings will be kept on file in the Office of the Hearing Clerk and will be made available to the public during Agency business hours.

§ 90.713 Administrative procedures for public hearing.

The administrative procedures for a public hearing requested under this subpart shall be those procedures set forth in the regulations found at §§ 90.513 through 90.516. References in § 90.513 to § 90.511(j), § 90.512(c)(2), § 90.511(e), § 90.512, § 90.511(d), § 90.503, § 90.512(c) and § 90.512(b) shall be deemed to refer to § 90.711(j), § 90.712(c)(2), § 90.711(e), § 90.712, § 90.711(d), § 90.703, and § 90.712(c) and § 90.712(b), respectively. References to ''test orders'' in § 90.513 can be ignored.

31. Subpart I is amended by revising the subpart heading to read as follows:

Subpart I—Emission-related Defect Reporting Requirements, Voluntary Emission Recall Program, Ordered Recalls

32. Section 90.801 is amended by designating the existing text as paragraph (a) and adding paragraphs (b), (c), (d), (e), (f) and (g) to read as follows:

§ 90.801 Applicability.

* * * * *

(b) Phase 2 engines subject to provisions of subpart B of this part are subject to recall regulations specified in 40 CFR part 85, subpart S, except as otherwise provided in this section.

(c) Reference to section 214 of the Clean Air Act in 40 CFR 85.1801 (a) is deemed to be a reference to section 216 of the Clean Air Act.

(d) Reference to section 202 of the Act in 40 CFR 85.1802(a) is deemed to be a reference to section 213 of the Act.

(e) Reference to ''family particulate emission limits as defined in part 86 promulgated under section 202 of the Act'' in 40 CFR 85.1803(a) and 85.1805(a)(1) is deemed to be a reference to ''family emission limits as defined in subpart C of this part 90 promulgated under section 213 of the Act''.

(f) Reference to ''vehicles or engines'' throughout 40 CFR part 85, subpart S, is deemed to be a reference to ''Phase 2 nonroad small SI engines at or below 19 kw.''

(g) In addition to the requirements in 40 CFR 85.1805(a)(9) for Phase 2 engines include a telephone number which may be used to report difficulty in obtaining recall repairs.

33. Section 90.802 is amended by adding a sentence at the end of the introductory text to read as follows:

§ 90.802 Definitions.

* * * The definitions of 40 CFR 85.1801 also apply to this part.

* * * * *

34. Section 90.803 is amended by revising paragraph (c) to read as follows:

§ 90.803 Emission defect information report.

* * * * *

(c) The manufacturer must submit defect information reports to EPA's Engine Compliance Programs Group not more than 15 working days after an emission-related defect is found to affect 25 or more engines manufactured in the same certificate or model year. Information required by paragraph (d) of this section that is either not available within 15 working days or is significantly revised must be submitted to EPA's Engine Compliance Programs Group as it becomes available.

* * * * *

35. Section 90.805 is amended by revising paragraph (a) to read as follows:

§ 90.805 Reports, voluntary recall plan filing, record retention.

(a) Send the defect report, voluntary recall plan, and the voluntary recall progress report to: Group Manager, Engine Compliance Programs Group, (6403-J), Environmental Protection Agency, Washington, D.C. 20460.

* * * * *

36. A new § 90.808 is added to subpart I to read as follows

§ 90.808 Ordered recall provisions.

(a) Effective with respect to Phase 2 small SI engines:

(1) If the Administrator determines that a substantial number of any class or category of engines, although properly maintained and used, do not conform to the regulations prescribed under section 213 of the Act when in actual use throughout their useful life (as defined under § 90.105), the Administrator shall immediately notify the manufacturer of such nonconformity and require the manufacturer to submit a plan for remedying the nonconformity of the engines with respect to which such notification is given.

(i) The manufacturer's plan shall provide that the nonconformity of any such engines which are properly used and maintained will be remedied at the expense of the manufacturer.

(ii) If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing, the Administrator withdraws such determination of nonconformity, the Administrator shall, within 60 days after the completion of

such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (a)(2) of this section. The manufacturer shall comply in all respects with the requirements of this subpart.

(2) Any notification required to be given by the manufacturer under paragraph (a)(1) of this section with respect to any class or category of engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as required in subparts I and M of this part.

(3)(i) Prior to an EPA ordered recall, the manufacturer may perform a voluntary emissions recall pursuant to regulations at § 90.804. Such manufacturer is subject to the reporting and recordkeeping requirements of § 90.805.

(ii) Once EPA determines that a substantial number of engines fail to conform with the requirements of section 213 of the Act or this part, the manufacturer will not have the option of a voluntary recall.

(b) The manufacturer bears all cost obligation a dealer incurs as a result of a requirement imposed by paragraph (a) of this section. The transfer of any such cost obligation from a manufacturer to a dealer through franchise or other agreement is prohibited.

(c) Any inspection of an engine for purposes of paragraph (a)(1) of this section, after its sale to the ultimate purchaser, is to be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any state or local inspection program.

Subpart J—Exclusion and Exemption of Nonroad Engines From Regulations

37. Section 90.905 is amended by revising paragraph (f) to read as follows:

§ 90.905 Testing exemption.

* * * * *

(f) A manufacturer of new nonroad engines may request a testing exemption to cover nonroad engines intended for use in test programs planned or anticipated over the course of a subsequent one-year period. Unless otherwise required by the Director, Engine Programs and Compliance Division, a manufacturer requesting such an exemption need only furnish the information required by paragraphs (a)(1) and (d)(2) of this section along with a description of the recordkeeping and control procedures that will be employed to assure that the engines are used for purposes consistent with § 90.1004(b).

38. Section 90.906 is amended by revising paragraphs (a) introductory text and (a)(3) introductory text to read as follows:

§ 90.906 Manufacturer-owned exemption and precertification exemption.

(a) Any manufacturer owned nonroad engine, as defined by § 90.902, is exempt from § 90.1003, without application, if the manufacturer complies with the following terms and conditions:

* * * * *

(3) Unless the requirement is waived or an alternative procedure is approved by the Director, Engine Programs and Compliance Division, the manufacturer must permanently affix a label to each nonroad engine on exempt status. This label should:

* * * * *

39. Section 90.909 is amended by revising paragraph (c) to read as follows:

§ 90.909 Export exemptions.

* * * * *

(c) EPA will maintain a list of foreign countries that have in force nonroad emission standards identical to U.S. EPA standards and have so notified EPA. This list may be obtained by writing to the following address: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403–J), Environmental Protection Agency, Washington, D.C. 20460. New nonroad engines exported to such countries must comply with U.S. EPA certification regulations.

* * * * *

40. Section 90.911 is revised to read as follows:

§ 90.911 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to: Group Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), Environmental Protection Agency, Washington, D.C. 20460.

Subpart K—Prohibited Acts and General Enforcement Provisions

41. Section 90.1003 is amended by revising paragraphs (a)(2), (a)(4)(i), (b)(4), and (b)(5) and by redesignating paragraphs (a)(4)(iii) and (a)(4)(iv) as paragraphs (a)(4)(iv) and (a)(4)(v) respectively, and by adding new paragraphs (a)(4)(iii) and (b)(6) to read as follows:

§ 90.1003 Prohibited acts.

(a) * * *

(2) (i) For a person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under § 90.1004.

(ii) For a person to fail or refuse to permit entry, testing or inspection authorized under §§ 90.126, 90.506, 90.705, 90.1004, or 90.1209.

(iii) For a person to fail or refuse to perform tests or to have tests performed as required under §§ 90.119, 90.504, 90.703, 90.1004, 90.1203, or 90.1250.

(iv) For a person to fail to establish or maintain records as required under §§ 90.209, 90.704, 90.805, 90.1004, or 90.1308.

(v) For a person to fail to submit a remedial plan as required under § 90.808.

* * * * *

(4) * * *

(i) To sell, offer for sale, or introduce or deliver into commerce, a nonroad engine unless the manufacturer has complied with the requirements of § 90.1103.

* * * * *

(iii) To fail or refuse to comply with the requirements of § 90.808.

* * * * *

(b) * * *

(4) Certified nonroad engines shall be used in all equipment or vehicles that are self-propelled, portable, transportable, or are intended to be propelled while performing their function, unless the manufacturer of the equipment or vehicle can prove that the vehicle or equipment will be used in a manner consistent with paragraph (2) of the definition of nonroad engine in § 90.3. Nonroad vehicle and equipment manufacturers may continue to use noncertified nonroad engines built prior to the applicable implementation date of the Phase 1 regulations in this part until noncertified engine inventories are depleted; further after the applicable implementation date of the Phase 2 regulations in this part, nonroad vehicle and equipment manufacturers may continue to use Phase 1 engines until Phase 1 engine inventories are depleted. Stockpiling (i.e., build up of an inventory of uncertified engines or Phase 1 engines beyond normal business practices to avoid or delay compliance with the Phase 1 or Phase 2 regulations in this part, respectively) will be considered a violation of this section.

(5) A new nonroad engine, intended solely to replace an engine in a piece of nonroad equipment that was originally produced with an engine manufactured prior to the applicable implementation

date as described in §§ 90.2, 90.103 and 90.106, or with an engine that was originally produced in a model year in which less stringent standards under this part were in effect, shall not be subject to the requirements of § 90.106 or prohibitions and provisions of paragraphs (a)(1) and (b)(4) of this section provided that:

(i) The engine manufacturer has ascertained that no engine produced by itself or the manufacturer of the engine that is being replaced, if different, and certified to the requirements of this subpart, is available with the appropriate physical or performance characteristics to repower the equipment. Certified engines may be ascertained to lack appropriate physical characteristics where the engine is too large for the engine compartment or can not be connected to existing manifolds, air supplies, water supplies, fuel supplies or controls without modifications that add substantial cost or result in reliability or safety concerns. Certified engines may be ascertained to lack appropriate performance characteristics if the horsepower or rated speed of the engine are significantly different from the original engine to reduce the ability of the equipment to perform its function safely and efficiently; and

(ii) The engine manufacturer or its agent:

(A) Accepts the old engine in exchange for the new engine and destroys the old engine; or

(B) Obtains documentation from the purchaser sufficient to identify the old engine and prove that the purchaser has had the old engine destroyed by a separate party; and

(iii) The engine manufacturer retains records of the engine purchasers and the makes and models of equipment for which the engines are sold. Such records shall be made available to the Administrator upon request and shall be sufficient to enable the Administrator to determine the quantities of engines being applied to different makes and models of equipment; and

(iv) The engine manufacturer submits a written report to EPA, within 90 days of the end of each model year in which any uncertified replacement engines, or engines certified to an earlier model year's standards, were sold describing the numbers of such engines sold during the model year; and

(v) The engine manufacturer has determined and documented that the engine being replaced was no older than ten (10) years old or ten (10) model years old; and

(vi) The replacement engine is clearly labeled with the following language, or similar alternate language approved in advance by the Administrator: ''THIS engine does not comply with Federal nonroad or on-highway emission requirements. Sale or installation of this engine for any purpose other than as a replacement engine in a nonroad vehicle or piece of nonroad equipment whose original engine was not certified, or was certified to less stringent emission standards than those that apply to the year of manufacture of this engine, is a violation of Federal law subject to civil penalty''; and

(vii) Where the replacement engine is intended to replace an engine built after the applicable implementation date of regulations under this part, but built to less stringent emission standards than are currently applicable, the replacement engine shall be identical in all material respects to a certified configuration of the same or later model year as the engine being replaced.

(6)(i) Regulations elsewhere in this part notwithstanding, for three model years after the phase-in of each set of Phase 2 standards; i.e. through the 2004 model year for Class I nonhandheld engines and through model year 2008 for handheld engines and Class II nonhandheld engines, small volume equipment manufacturers as defined in this part may continue to use, and engine manufacturers may continue to supply, engines certified to Phase 1 standards (or identified and labeled by their manufacturer to be identical to engines previously certified under Phase 1 standards), provided the equipment manufacturer has demonstrated to the satisfaction of the Administrator that no certified Phase 2 engine is available with suitable physical or performance characteristics to power a piece of nonhandheld equipment in production prior to the 2001 model year, or handheld equipment in production prior to the 2002 model year. The equipment manufacturer must also certify to the Administrator that the equipment model has not undergone any redesign which could have facilitated conversion of the equipment to accommodate a Phase 2 engine.

(ii) Regulations elsewhere in this part notwithstanding, for the duration of the Phase 2 regulations in this part, equipment manufacturers who certify to the Administrator that annual eligible sales of a particular model of equipment will not exceed 500 for a nonhandheld model in production prior to the 2001 model year, or 2500 for a handheld model in production prior to the 2002 model year, may continue to use in that model, and engine manufacturers may continue to supply, engines certified to Phase 1 requirements, (or identified and labeled by their manufacturer to be identical to engines previously certified under Phase 1 standards). To be eligible for this provision, the equipment manufacturer must have demonstrated to the satisfaction of the Administrator that no certified Phase 2 engine is available with suitable physical or performance characteristics to power the equipment. The equipment manufacturer must also certify to the Administrator that the equipment model has not undergone any redesign which could have facilitated conversion of the equipment to accommodate a Phase 2 engine.

(iii) An equipment manufacturer which is unable to obtain suitable Phase 2 engines and which can not obtain relief under any other provision of this part, may, prior to the date on which the manufacturer would become in noncompliance with the requirement to use Phase 2 engines, apply to the Administrator to be allowed to continue using Phase 1 engines, through the 2002 model year for Class I engines and through the 2006 model year for Class II, III, IV and V engines, subject to the following criteria:

(A) The inability to obtain Phase 2 engines is despite the manufacturer's best efforts and is the result of an extraordinary action on the part of the engine manufacturer that was outside the control of and could not be reasonably foreseen by the equipment manufacturer; such as canceled production or shipment, last minute certification failure, unforeseen engine cancellation, plant closing, work stoppage or other such circumstance; and

(B) The inability to market the particular equipment will bring substantial economic hardship to the equipment manufacturer resulting in a major impact on the equipment manufacturer's solvency.

(iv) The written permission from the Administrator to the equipment manufacturer shall serve as permission for the engine manufacturer to provide such Phase 1 engines required by the equipment manufacturers under this paragraph (b)(6). Such engines will not count against an engine manufacturer's final (100%) handheld phase-in percentage requirements, and are excluded from the nonhandheld certification, averaging, banking and trading program. As Phase 1 engines, these engines are exempt from Production Line Testing requirements under subpart H of this part and in-use testing requirements under subpart M of this part.

Subpart L—Emission Warranty and Maintenance Instructions

42. Section 90.1103 is amended by the revising paragraph (b) to read as follows:

§ 90.1103 Emission warranty, warranty period.

* * * * *

(b)(1) The manufacturer of each new Phase 1 small SI engine must warrant to the ultimate purchaser and each subsequent purchaser that the engine is designed, built and equipped so as to conform at the time of sale with applicable regulations under section 213 of the Act, and the engine is free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period.

(2) The manufacturer of each new Phase 2 small SI engine must warrant to the ultimate purchaser and each subsequent purchaser that the engine is designed, built, and equipped so as to conform for its designated useful life with applicable regulations under section 213 of the Act, and is free from defects in materials and workmanship which cause such engine to fail to conform with applicable regulations for its warranty period.

* * * * *

43. Section 90.1104 is amended by adding paragraph (e) to read as follows:

§ 90.1104 Furnishing of maintenance instructions to ultimate purchaser.

* * * * *

(e) If a manufacturer includes in an advertisement a statement respecting the cost or value of emission control devices or systems, the manufacturer shall set forth in the statement the cost or value attributed to these devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his or her representatives, has the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Act.

44. A new subpart, Subpart M is added to part 90 to read:

Subpart M—In-Use Compliance Testing for Handheld Engines; Bench Aging Adjustment; In-Use Durability Demonstration Testing for Nonhandheld Engines

Sec.

90.1201 Applicability.
90.1202 Definitions.
90.1203 Manufacturer in-use testing program.
90.1204 Maintenance, procurement, aging and testing of engines.
90.1205 In-use test program reporting requirements.
90.1206 [Reserved]
90.1207 Bench aging adjustment factor testing.
90.1208 Bench aging adjustment; criterion for usage, calculation of adjustment factor, reporting requirements.
90.1209 Entry and access.
90.1210—90.1249 [Reserved]
90.1250 Field durability and in-use emission performance demonstration program for nonhandheld engines using overhead valve technology.

Subpart M—In-Use Compliance Testing for Handheld Engines; Bench Aging Adjustment; In-Use Durability Demonstration Testing for Nonhandheld Engines

§ 90.1201 Applicability.

The requirements of this subpart from § 90.1201 through § 90.1249 are applicable to all handheld Phase 2 engines subject to the provisions of subpart A of this part. The requirements of this subpart, except for those involving in-use credits, in §§ 90.1201, 90.1202, 90.1207, 90.1208, 90.1209 and those from § 90.1250 through § 90.1299 are applicable to nonhandheld Phase 2 engines subject to the provisions of subpart A of this part.

§ 90.1202 Definitions.

For the purposes of this subpart, except as otherwise provided, the definitions in subparts A and C of this part apply to this subpart.

§ 90.1203 Manufacturer in-use testing program.

(a) Unless otherwise approved by the Administrator, at the time of the first certification for each model year beginning with the 2002 model year, each manufacturer shall submit a schedule to the Administrator of the Phase 2 engine families, their useful lives, their design characteristics (two or four stroke; catalyst or noncatalyst, etc.), and their anticipated eligible sales, it intends to produce, by model year, over the subsequent four year period (the model year now being certified plus the next three model years).

(b) At the time the manufacturer submits the schedule required under paragraph (a) of this section, the manufacturer may include a proposed plan for the Administrator's review and approval for the in-use testing of the current model year and such future model years as it chooses to include. In such plans, the manufacturer shall propose the in-use testing of individual engine families and engine configurations subject to the requirements of this subpart. Such plans shall include a discussion of the rationale behind the choice of each family and configuration that the Administrator shall use to determine whether the manufacturer's plan meets the objective of generating in-use data on substantially all of a manufacturer's engines within a reasonable time period, and periodically updating that data.

(c) Based upon the schedule required in paragraph (a) of this section, any plan submitted under paragraph (b) of this section, and/or such other information as it has available, the Administrator may annually identify handheld engine families and at the Administrator's option, configurations within families which the manufacturer must then subject to in-use testing as described in this section and in § 90.1204. For each model year, the Administrator may identify a number of engine families that is no greater than the number of handheld engine families produced in that model year divided by four and rounded to the nearest whole number. If this calculation produces a value of zero, then the Administrator may identify no more than one engine family for in-use testing for that manufacturer. The Administrator may identify families and configurations under this paragraph by approving the manufacturer's plan described in paragraph (b) of this section, or by providing a written directive to the manufacturer.

(d) For each engine family identified by the Administrator under paragraph (c) of this section, engine manufacturers shall perform emission testing of an appropriate sample of in-use engines from each engine family. Manufacturers shall submit data from this in-use testing to the Administrator.

(e) *Number of engines to be tested.* An engine manufacturer shall test bench aged or field aged in-use engines from each engine family or family and configuration identified by the Administrator. Engines to be tested shall have accumulated a number of hours pursuant to paragraph (g) of this section. The number of engines to be tested by a manufacturer shall be determined by the following method:

(1) A minimum of four (4) engines per family provided that no engine fails any standard. For each failing engine, two more engines shall be tested until the total number of engines equals ten (10).

(2) For small volume engine families for the identified model year or for small volume engine manufacturers, a minimum of two (2) engines per family provided that no engine fails any standard. For each failing engine, two more engines shall be tested until the total number of engines equals ten (10).

(3) If an engine family was certified using carry over emission data and has

been previously tested under paragraphs (e)(1) or (e)(2) of this section (and mean results did not exceed any applicable emission standard), then only one engine for that family must be tested. If that one engine fails any pollutant, testing must be conducted as outlined at paragraph (e)(1) or (e)(2) of this section, whichever is appropriate.

(f) At the discretion of the Administrator, an engine manufacturer may test more engines than the minima described in paragraph (e) of this section or may concede failure before testing a total of ten (10) engines.

(g) The Administrator may approve alternatives to manufacturer in-use testing as described in this subpart, that are designed to determine whether an engine family is in compliance with applicable standards in use, where:

(1) Engines, in their production form, or when removed from the piece of equipment in which they were installed, cannot safely or practically be operated and tested pursuant to subparts D and E of this part; or

(2) The Administrator finds that unique or extraordinary circumstances exist that support the need for alternative methods.

(h) *Collection of in-use engines.* The engine manufacturer shall bench age engines to their full certified useful life as described in subpart B of this part using a bench aging procedure approved by the Administrator under this subpart, or the engine manufacturer shall procure field aged engines which have been operated for at least the engine's useful life. Unless otherwise approved by the Administrator, the manufacturer shall complete emission testing of bench aged engines within 12 calendar months and complete emission testing of field aged engines within 24 calendar months after receiving notice that the Administrator has identified a particular engine family for testing. Field aged engines may be procured from sources associated with the engine manufacturer (i.e., manufacturer established fleet engines, etc.) or from sources not associated with the manufacturer (i.e., consumer-owned engines, independently-owned fleet engines, etc.).

§ 90.1204 Maintenance, procurement, aging and testing of engines.

This section is applicable to handheld engines used for in-use testing pursuant to § 90.1203.

(a) An in-use field aged engine must have a maintenance and use history representative of actual in-use conditions.

(1) To comply with this requirement, a manufacturer must obtain information from the end users regarding the accumulated usage, maintenance, operating conditions, and storage of the test engines.

(2) Documents used in the procurement process must be maintained as required in § 90.121.

(3) Each engine of a sample to be field aged shall be assigned a random number. Unless otherwise approved by the Administrator, the engine with the lowest number shall be tested first, followed by the next higher number until testing is completed.

(b)(1) For an engine family which is to be emission tested following bench aging, test engines shall be randomly chosen from normal engine production or storage; or randomly chosen from normal handheld equipment production or storage.

(2) Each engine of a sample to be bench aged shall be assigned a random number. In emission testing of the bench aged engines, the engine with the lowest number shall be tested first, followed by the next higher number until testing is completed.

(c)(1) Bench aged engines must be aged on a dynamometer using a bench aging cycle that has been shown to be capable of representing field aging for the appropriate technology subgroup pursuant to the regulations at §§ 90.1207 and 90.1208.

(2) Unless otherwise approved by the Administrator, once an engine has begun the bench aging process, it can be terminated and deleted only for catastrophic failure or safety concerns requiring major engine repair, or because testing of the engine family has been completed based upon lower numbered engines.

(d) The manufacturer may perform minimal set-to-spec maintenance on components of a test engine that are not subject to parameter adjustment. Unless otherwise approved by the Administrator, maintenance to any test engine may include only that which is listed in the owner's instructions for engines with the amount of service and age of the test engine. Documentation of all maintenance and adjustments shall be maintained and retained as required by § 90.121.

(e) At least one valid emission test, according to the test procedure outlined in subpart E of this part, is required for each test engine. Unless otherwise approved by the Administrator, no other emission testing or performance testing may be performed on a test engine prior to the testing at the end of hour accumulation using the test procedure outlined in subpart E of this part.

(f) The Administrator may waive portions or requirements of the test procedure, if any, that are not necessary to determine in-use compliance with applicable emission standards.

(g) If a selected test engine fails to comply with any applicable emission standard, the manufacturer shall make a reasonable effort, including troubleshooting, repairing and retesting, to determine the cause of noncompliance. The manufacturer must report all such reasons of noncompliance with the in-use test report required pursuant to § 90.1205.

§ 90.1205 In-use test program reporting requirements.

(a) The manufacturer shall submit to the Administrator within ninety (90) days of completion of testing for a given model year's engines, all emission testing results generated from the in-use testing program. The following information must be reported for each test engine:

(1) Engine family;

(2) Model;

(3) Engine serial number;

(4) Date of manufacture;

(5) Hours of use;

(6) Date and time of each test attempt;

(7) Results (if any) of each test attempt;

(8) Schedules, descriptions and justifications of all maintenance and/or adjustments performed;

(9) Schedules, descriptions and justifications of all modifications and/or repairs; and

(10) Determinations of noncompliance.

(b) The manufacturer must electronically submit the information required in this section using EPA's electronic information format. The Administrator may exempt manufacturers from this requirement upon written request with supporting justification as to the manufacturer's lack of adequate information processing technology.

(c) The report required in paragraph (a) of this section must include a listing of any test engines that were deleted from the aging process or testing process and provide a technical justification to support the deletion.

(d) All testing reports and requests for approvals made under this subpart shall be addressed to: Manager, Engine Compliance Programs Group (6403–J), U.S. Environmental Protection Agency, Washington, D.C. 20460.

(e) The Administrator may approve and/or require modifications to a manufacturer's in-use testing programs.

§ 90.1206 [Reserved]

§ 90.1207 Bench aging adjustment factor testing.

(a) This section is applicable to the bench aging procedures for handheld engines for in-use emission testing and to the bench aging procedures for the full useful life certification testing of nonhandheld sidevalve engines and nonhandheld engines with aftertreatment.

(b) The bench aging adjustment procedure described in § 90.1208 shall be used to determine whether a given bench aging cycle, approved for adjustment factor testing by the Administrator, can be used to represent field aged engines for handheld in-use testing under this subpart or for certification of nonhandheld sidevalve engines or nonhandheld engines with aftertreatment; and, if so, what the appropriate adjustment factor should be. If both the IW_B and IW_F as defined in § 90.1208 are less than or equal to 20% of the appropriate $HC+NO_X$ ($NMHC+NO_X$) standard, then the subject bench aging cycle can be used to generate emissions data for adjustment to represent field aged emissions.

(c) (1) Nothing in this section shall be construed to prohibit different manufacturers from jointly demonstrating that a particular bench aging cycle, approved by the Administrator for adjustment factor testing, may be used to represent the field aged emissions of engines of a particular technology subgroup when they each agree to use the same bench aging cycle, when they each contribute field and bench aged test engines for testing of that technology subgroup under § 90.1208, and when they each provide justification satisfactory to the Administrator that the engines can be expected to have similar emission deterioration characteristics and that a reasonable basis exists for such joint testing.

(2) Unless otherwise approved by the Administrator, a manufacturer participating or desiring to participate in a joint adjustment factor testing program may not enter or drop out of the joint program for that technology subgroup after the adjustment factor derived from the program has been used one or more times for certification of nonhandheld engines or in-use testing of handheld engines. When a manufacturer does drop out, the adjustment factor must be recalculated without that manufacturer's data. When an additional manufacturer is allowed to join, the adjustment factor must be recalculated to reflect the data generated by the new manufacturer's engines.

(d) Field aging of engines shall be performed in representative equipment in the hands of residential customers, or professional users or in manufacturers' fleets, except that a minimum of one third of the field aged engines but not less than one engine for a given engine family or technology subgroup, shall be aged in individual customer usage or in fleets where the engine manufacturer does not carry out or exercise control over the engines' maintenance or limit their usage such that the engines are not used in a way that is representative of typical in-use engines.

(e) For each engine family or technology subgroup for which a manufacturer desires to use bench aging, the manufacturer or group of manufacturers, as applicable, shall propose to the Administrator the bench aging cycle and an engine aging plan it intends or they intend to use to demonstrate the appropriateness of such cycle to represent field aged engines. Such proposals may be made up to 48 months prior to the start of a given model year. EPA shall reject such proposed aging cycles and/or engine aging plans in writing, within 90 days of receipt, or they shall be considered approved for adjustment factor testing pursuant to this section and § 90.1208. Such proposals shall include:

(1) A detailed description of the engine families a cycle is intended to cover, a justification satisfactory to the Administrator that the engines can be expected to have similar emission deterioration characteristics, a justification of the appropriateness of the subject cycle to represent field aging of the engines the cycle is intended to cover and data sufficient for the Administrator to ascertain whether the bench aging cycle has been previously determined to represent field aging for any other engine family under the provisions of this section and § 90.1208;

(2) A detailed description of the proposed bench aging cycle including, but not limited to, such parameters as duration at each throttle setting, sequencing of throttle changes, loading and load changes, hot starts and cold starts, idles, acceleration times, presence of accessory loads, periods of shutdown and other factors as the Administrator may require;

(3) A description of each engine to be aged in the field and on the bench, including make, model, engine family, displacement, power rating, rated speed and other such information as the Administrator may require to enable the Administrator to determine whether such engines are appropriate for evaluating the bench aging cycle for the engine families or technology subgroup described in paragraph (e)(1) of this section;

(4) A description of the way in which individual engines will be selected, uniquely identified and tracked for both bench and field aging and for subsequent emission testing;

(5) A description of the method by which each engine selected for field aging will be aged, the procedures for determining and carrying out appropriate engine maintenance during field aging and bench aging, a description and rationale for any maintenance the manufacturer proposes to perform additional to routine maintenance described in the maintenance schedule provided to the purchaser, and a description of records that will be kept of both bench and field engine operation and maintenance; and

(6) The location(s) of the facilities or sites at which each bench and field aged engine will be aged and tested.

(f) Upon approval by the Administrator of the bench aging cycle for evaluation testing and the engine aging plan, the manufacturer shall conduct hour accumulation to the full regulatory useful life of the engines according to the approved engine aging plan using the approved bench aging cycle. Such aging shall be followed by emission testing pursuant to the requirements of subpart E of this part. At its option, the manufacturer may age handheld commercial engines to 75% of their regulatory useful life for bench aging adjustment testing.

(g) Handheld engines aged for adjustment factor testing pursuant to the requirements of this section may not be used in the Manufacturer In-use Test Program required under § 90.1203.

(h) The Administrator may require that testing under this section and the evaluation of the appropriateness of a bench aging cycle to represent field aging under § 90.1208, be repeated for a particular engine family or technology subgroup as often as every five years; except that the Administrator may require that such testing be repeated more frequently in model years prior to the 2006 model year.

(1) The Administrator shall notify a manufacturer or group of manufacturers of the requirement to conduct a bench aging adjustment factor program for a particular engine family or technology subgroup and the period for completion of the program. The time period for completion shall be no less than one year for engines having 500 or 1000 hour useful lives.

(2) Within sixty days of the date of the Administrator's notice, the manufacturer or group of manufacturers shall provide a plan for the

Administrator's review and approval meeting the requirements of paragraph (e) of this section including a proposed bench aging cycle and an engine aging plan.

(i) Upon completion of engine aging and testing pursuant to the requirements of this section, engine manufacturers wishing to use bench aging and the adjustment factors calculated pursuant to § 90.1208 for in-use emission testing of handheld engines or for certification of nonhandheld sidevalve engines or nonhandheld engines with aftertreatment, as applicable, shall provide a report to the Administrator describing the aging and testing conducted under this section and § 90.1208. Such report shall be submitted no less than 90 days before the initiation of any such bench aging for in-use or certification testing on the engines and engine families covered by the plan approved under this section. The Administrator shall disapprove the report within 30 days of the date of receipt, or the report shall be automatically approved and the manufacturer may use the bench aging cycle and adjustment factors described in the report for its bench aging activities of the subject families. Such report shall contain the following information about the field/bench adjustment program conducted under this section and § 90.1208:

(1) An identifying description of the bench aging cycle sufficient for the Administrator to ascertain which cycle proposed pursuant to this section has been evaluated;

(2) A description of all engines selected for bench aging and field aging for this engine family or technology subgroup, as applicable. Such description shall include the make, model, engine family, displacement, power rating, rated speed, unique identifying description, and other such information as the Administrator may require;

(3) A description of all maintenance performed on each engine during hour accumulation, including a detailed explanation of the need for any maintenance not contained in the maintenance schedule for that model engine provided to engine owners;

(4) A description of how each engine was aged (e.g., bench cycle, field aged-manufacturer fleet, or field aged-individual customer);

(5) A description of any engine selected for aging pursuant to paragraph (i)(2) of this section that was deleted from aging or testing. Include a full explanation of the rationale for deletion;

(6) Tabulations of all emission test results and all inputs and outcomes of the equations found in § 90.1208; and

(7) A statement signed by an appropriate official of the manufacturer responsible for compliance of engines with Federal emission requirements that clearly states that all engine selection, aging, maintenance, testing, results calculation, and data evaluation was performed in full accordance with the requirements under this part.

§ 90.1208 Bench aging adjustment; criterion for usage, calculation of adjustment factor, reporting requirements.

(a) Manufacturers desiring to use bench aging prior to performing in-use emission tests on handheld engines or prior to performing certification testing on nonhandheld sidevalve engines or nonhandheld engines with aftertreatment, must first demonstrate that the chosen bench aging cycle appropriately represents field aging as determined under this section and § 90.1207. Where a bench aging cycle is shown to appropriately represent field aging under this section and § 90.1207, manufacturers shall calculate separate multiplicative bench aging adjustment factors as described in this section to adjust the $HC+NO_X$ ($NMHC+NO_X$) and CO emissions of bench aged engines.

(b) A minimum of six engines from each technology subgroup shall be aged and tested. Three of these engines must be aged on the bench and three must be aged in the field.

(c) Separate 90% confidence intervals shall be calculated around the $HC+NO_X$ ($NMHC+NO_X$) mean of the bench aged engines and the $HC+NO_X$ ($NMHC+NO_X$) mean of the field aged engines. The confidence intervals are independent of each other and are calculated according to the following equations:

(1)(i) For the 90% confidence interval about the mean of the group of bench aged engines, B_{90}:

$B_{90=\bar{x}b} \pm IW_b$

Where:

B_{90}=The 90% confidence interval about the mean of the group of bench aged engines.

$\bar{x}_b$=The $HC+NO_X$ ($NMHC+NO_X$) sample mean of the group of bench aged engines.

IW_b=The confidence interval width for the group of bench aged engines as defined by the equation in paragraph (c)(1)(ii) of this section.

(ii) IW_b is defined by the following equation:

$$IW_b = t_{90} * \left(s_b / \sqrt{n_b}\right)$$

Where:

t_{90}=The appropriate 90% critical point from Student's t table for 90% confidence and $n_b - 1$ observations; this value will decrease as n_b increases.

S_b=The $HC+NO_X$ ($NMHC+NO_X$) sample standard deviation of the group of bench aged engines, where:

$$s_b^2 = 1/(n-1) \sum\left(X - \bar{x}_b\right)^2$$

n_b=The number of bench aged engines tested.

(2)(i) For the 90% confidence interval about the mean of the group of field aged engines, F_{90}:

$F_{90}=\bar{x}_f \pm IW_f$

Where:

F_{90}=The 90% confidence interval about the mean of the group of field aged engines.

$\bar{x}_f$=The $HC+NO_X$ ($NMHC+NO_X$) sample mean of the group of field aged engines.

IW_f=The confidence interval width for the group of field aged engines as defined by the equation in paragraph (c)(2)(ii) of this section.

(ii) IW_f is defined by the following equation:

$$IW_f = t_{90} * \left(s_f / \sqrt{n_f}\right)$$

Where:

t_{90}=The appropriate 90% critical point from Student's t table for 90% confidence and $n_b - 1$ observations; this value will decrease as n_b increases.

S_f=The $HC+NO_X$ ($NMHC+NO_X$) sample standard deviation of the group of field aged engines, where:

$$s_f^2 = 1/(n-1) \sum\left(X - \bar{x}_f\right)^2$$

n_f=The number of field aged engines tested.

(d) Both IW_b and IW_f must be rounded to the same number of significant digits as contained in the appropriate standard.

(e) If *both* IW_b and IW_f are less than or equal to 20% of the appropriate $HC+NO_X$ (NMHC+NOX) standard as defined by § 90.103, then separate Bench Aging Adjustment factors, AFs, can be calculated for HC+NOX ($NMHC+NO_X$) and CO as follows:

AF=the maximum of [($\bar{x}_f$ / $\bar{x}_b$) or 1.0]

(f) If either or both confidence interval widths IW_b or IW_f is/are greater than 20% of the appropriate standard as defined by § 90.103, then the manufacturer may elect to test additional engines included and described in the plan approved under § 90.1207 and recalculate the relevant

statistics. Additional testing need only be done for the group that exceeds 20% of the appropriate standard. After each additional test, B_{90}, F_{90}, IW_b and IW_f shall be recalculated according to paragraph (c) of this section. Additional engines may be added until such time as the newly calculated confidence interval width (IW_b or IW_f, or both) are less than or equal to 20% of the appropriate $HC+NO_X$ ($NMHC+NO_X$) standard as defined by § 90.103. When both IW_b or IW_f are less than or equal to 20% of the appropriate standard as defined by § 90.103, then separate Bench Aging Adjustment Factors, AFs, may be calculated for each regulated pollutant according to paragraph (e) of this section.

(g) The adjustment factors calculated under paragraph (e) of this section shall be multiplicatively applied to the appropriate full useful life bench-aged handheld in-use test results or to the appropriate full useful life certification test results of nonhandheld sidevalve engines or nonhandheld engines with aftertreatment for that engine family or technology subgroup for all manufacturers whose engines were tested in the test program for that technology subgroup, until another bench aging adjustment program is conducted for that family or technology subgroup.

§ 90.1209 Entry and access.

(a) To allow the Administrator to determine whether a manufacturer is complying with the provisions under this subpart, EPA enforcement officers or their authorized representatives, upon presentation of credentials, shall be permitted entry, during operating hours, into any of the following places:

(1) Any facility where engines undergo or are undergoing bench aging, field aging, maintenance, repair, preparation for aging, selection for aging or emission testing.

(2) Any facility where records or documents related to any of activities described in paragraph (a)(1) of this section are kept.

(3) Any facility where any engine that is being tested or aged, was tested or aged or will be tested or aged is present.

(b) Upon admission to any facility referred to in paragraph (a) of this section, EPA enforcement officers or EPA authorized representatives are authorized to perform those activities set forth in § 90.705 (b) and also to inspect and make copies of records related to engine aging (service accumulation) and maintenance.

(c) The provisions of § 90.705(c), (d), (e), (f) and (g) also apply to entry and access under this subpart.

§§ 90.1210—90.1249 [Reserved.]

§ 90.1250 Field durability and in-use emission performance demonstration program for nonhandheld engines using overhead valve technology.

The testing required pursuant to this section shall be for the purpose of validating the appropriateness of assigned deterioration factors (dfs) or manufacturer determined dfs used pursuant to § 90.104 to represent the field aged deterioration of overhead valve technology engine families. For brevity, such testing is referred to as df validation testing.

(a) Unless otherwise approved by the Administrator, at the time of the first certification for each model year of Phase 2 engines, each manufacturer shall submit a schedule to the Administrator of the overhead valve technology engine families it intends to produce over the subsequent four year period (the model year now being certified plus the next three model years) including their useful lives, their design characteristics (i.e.; catalyst or noncatalyst, carbureted or fuel injected, etc.), and their anticipated eligible sales.

(b) In the schedule submitted under paragraph (a) of this section, and for the same time period, the manufacturer shall specify the engine families for which it intends to conduct field/bench adjustment testing under §§ 90.1207 and 90.1208 and shall also specify the engine families for which it intends to compute its own dfs pursuant to § 90.104(h)(2). Such schedule shall include an estimate of the number of field aged engines that will be emission tested each calendar year for the programs referenced in this paragraph.

(c) At the time the manufacturer submits the schedule required under paragraph (a) of this section, the manufacturer may include a proposed plan for the Administrator's review and approval of the overhead valve engine families, configurations and associated quantities of engines it plans to field age to full useful life and in-use test during those four years to determine the field aged dfs for engine families for which assigned dfs were used in certification. In such plans, the manufacturer:

(1) May consider the number of field aged engines it plans to test in each calendar year from paragraph (b) of this section and the limit on additional testing of field aged engines that can be assigned by EPA pursuant to paragraph (c) of this section.

(2) Shall include a discussion of the rationale for the choice of each family and configuration sufficient to enable the Administrator to determine whether the manufacturer's plan meets the objective of generating in-use data sufficient to validate the appropriateness of the assigned dfs on a substantial portion of a manufacturer's engines within a reasonable time period, and providing for periodic revalidation of the assigned dfs.

(d) If no plan submitted pursuant to paragraph (c) of this section is approved by the Administrator, then, based upon the schedule submitted pursuant to paragraph (a) of this section and other available information, and considering the field aging requirements of §§ 90.1207, 90.1208 and 90.104(h)(2), and any requests from manufacturers to work jointly, the Administrator may provide a schedule of the overhead valve engine families and associated quantities of engines that must be field aged to full useful life and in-use tested during those four years to validate dfs.

(e) EPA shall not require any nonhandheld engine manufacturer to conduct df validation emission testing such that df validation emission testing when added to that testing of field aged engines proposed by the manufacturer under paragraph (b) of this section would require the manufacturer to emission test more than 24 total field aged engines in one calendar year for bench aged field adjustment testing pursuant to §§ 90.1207 and 90.1208, df generation testing pursuant to § 90.104(h)(2), and df validation testing pursuant to this section.

(f) The Administrator may provide a schedule for engine testing to validate dfs pursuant to this section by approving the plan submitted by the manufacturer under paragraph (c) of this section, or by a written directive to the manufacturer under paragraph (d) of this section. Unless otherwise approved by the Administrator, for each test engine tested to fulfill the testing schedule provided by the Administrator under paragraph (c) or (d) of this section, the manufacturer shall conduct a baseline emission test at a number of hours equal to that on the corresponding certification engine followed by field aging to the certified useful life. Each engine shall then be emission tested using the applicable test procedures described in this part measuring all regulated pollutants. Field aging shall be performed in representative equipment in the hands of residential customers, or professional users or in manufacturers' fleets, under usage and conditions representative of typical use.

(1) Unless otherwise approved by the Administrator, equipment shall be considered to be representative if it is of the type (e.g., walk behind lawnmowers or concrete saws) of equipment into which at least one third of the engines

are installed. If no one application of the engine constitutes one third of sales, then equipment shall be representative if it is taken from either or both of the two types of applications having the largest U.S. sales volumes.

(2) Unless otherwise approved by the Administrator, test engines that receive maintenance additional to that recommended to the purchaser in the owner's manual shall not be considered representative of typical use.

(g) No later than 90 days following the end of each model year, each manufacturer subject to this section shall provide a tabulation, by engine family, of all engines undergoing hour accumulation under this regulation, the number of hours accumulated on each engine, the equipment application for each engine and the basis for that choice of equipment. Such tabulation shall include the engine family, the engine identification number assigned for tracking purposes, the type of application, the projected test date and the geographic location (city and state) where hour accumulation is occurring. Such tabulation, or a separate tabulation submitted at the same time, shall contain all in-use test results that have been generated during the preceding model year. Such tabulation shall include the engine family, the engine identification number assigned for tracking purposes, the type of application, the applicable certification deterioration factor and the calculated $HC+NO_X$ deterioration factor determined from the testing required in this subpart.

45. Subpart N is added to part 90 to read as follows:

Subpart N—In-Use Credit Program for New Handheld Engines

Sec.
90.1301 Applicability.
90.1302 Definitions.
90.1303 General provisions.
90.1304 Averaging.
90.1305 Banking.
90.1306 Trading.
90.1307 Credit calculation.
90.1308 Maintenance of records.
90.1309 Reporting requirements.
90.1310 Request for hearing.

Subpart N—In-Use Credit Program for New Handheld Engines

§ 90.1301 Applicability.

Phase 2 handheld engines subject to the provisions of subpart A of this part are eligible to participate in the in-use credit program described in this subpart for HC $+NO_X$ ($NMHC+NO_X$) and CO emissions.

§ 90.1302 Definitions.

The definitions in subpart A of this part and the definition of ''point of first retail sale'' from subpart C of this part apply to this subpart. The following definitions shall also apply to this subpart:

Averaging means the exchange of handheld engine in-use emission credits between engine families within a given manufacturer's product line.

Banked credits refer to positive emission credits based on actual applicable production/sales volume as contained in the end of model year in-use testing reports submitted to EPA. Some or all of these banked credits may be revoked if EPA review of the end of model year in-use testing reports or any subsequent audit action(s) uncovers problems or errors.

Banking means the retention of handheld engine in-use emission credits by the manufacturer generating the emission credits or obtaining such credits through trading, for use in future model year averaging or trading as permitted by these regulations.

Carry-over engine family means an engine family which undergoes certification using carryover test data from previous model years.

Compliance level for an engine family is determined by averaging the in-use test results from each test engine of the family. The compliance level for an individual configuration may be determined in cases where the Administrator directs the testing of an individual configuration.

Emission credits or in-use credits represent the amount of emission reduction or exceedance, for each regulated pollutant, by a handheld engine family below or above, respectively, the applicable certification standard to which the engine family is certified. Emission reductions below the standard are considered ''positive credits,'' while emission exceedences above the standard are considered ''negative or required credits.''

Trading means the exchange of handheld engine in-use emission credits between manufacturers and/or brokers.

§ 90.1303 General provisions.

(a) The in-use credit program for eligible Phase 2 handheld engines is described in this subpart. Participation in this program is voluntary.

(b) Any handheld Phase 2 engine family subject to the provisions of subpart A of this part is eligible to participate in the in-use credit program described in this subpart.

(c) Credits generated and used in the nonhandheld engine certification averaging, banking, and trading program pursuant to the provisions of subpart C of this part are not interchangeable with credits generated and used in the handheld engine in-use credit program. In-use credits under this subpart may not be used to address the emissions of any nonhandheld engine. Nor may nonhandheld certification credits be used to address any in-use credit need determined under this subpart.

(d) An engine family with a compliance level, as determined by in-use testing pursuant to subpart M of this part and paragraph (h) of this section, below the applicable standard to which the engine family is certified may generate emission credits for averaging, banking, or trading in the in-use credit program.

(e) Positive credits generated in a given model year may be used in that model year and/or in any subsequent model year during the Phase 2 program.

(f) A manufacturer of an engine family with a compliance level exceeding the applicable standard to which the engine family is certified, may, prior to the date of the report required under paragraph (i) of this section, use previously banked credits, purchase credits from another manufacturer, or perform additional testing pursuant to paragraph (h) of this section to address (as calculated elsewhere in this subpart) the associated credit deficit (negative credits or a need for credits).

(g) In the case of in-use testing of engine families that were certified using carry-over data, and in the absence of other applicable test data acceptable to the Administrator, the test results from one model year's testing shall apply to up to four years of production of that family: the model year tested, the next model year (if carried over to that year), and one or two previous model years (if carried over from the previous year or the two previous years, respectively). In-use credits shall be generated or used, as appropriate.

(h) A manufacturer must notify EPA of plans to test additional engine families beyond those identified by EPA pursuant to regulations in subpart M of this part for the in-use testing program. Such notice must be submitted 30 days prior to initiation of service accumulation. If the additional testing discovers an engine family to be in noncompliance with the applicable standard, the testing must be treated as if it were a failure of the normal in-use testing requirement of an engine family. If the additional testing shows the engine family to be in compliance with the applicable standard, in-use credits may be generated subject to the provisions of this subpart.

(i) Manufacturers must demonstrate a zero or positive credit balance under the in-use credit program for all regulated pollutants for a particular model year within 90 days of the end of the in-use testing of that model year's engine families. At that time manufacturers must file a report with EPA pursuant to § 90.1309.

(j) Manufacturers shall maintain separate balances for $HC+NO_X$ ($NMHC+NO_X$) and CO credits. $HC+NO_X$ and $NMHC+NO_X$ credits are interchangeable with each other but not with CO credits.

§ 90.1304 Averaging.

(a) A manufacturer may use averaging across engine families to demonstrate a zero or positive credit balance for a model year. Positive credits to be used in averaging may be obtained from credits generated by another engine family of the same model year, credits banked in previous model years, or credits obtained through trading.

(b) Credits used to demonstrate a zero or positive credit balance must be used at a rate of 1.1 to 1.

§ 90.1305 Banking.

(a) A manufacturer of a handheld engine family with an in-use compliance level below the standard to which the engine family is certified for a given model year may bank positive in-use credits for that model year for use in in-use averaging and trading.

(b) A manufacturer may consider credits to be banked, for use in future averaging or trading, 30 days after the submission of the report required by § 90.1309(a). During the 30 day period EPA will work with the manufacturer to correct any error in calculating banked credits, if necessary.

§ 90.1306 Trading.

(a) A handheld engine manufacturer may exchange positive in-use emission credits with other handheld engine manufacturers through trading.

(b) In-use credits for trading can be obtained from credits banked for model years prior to the model year of the engine family requiring in-use credits.

(c) Traded in-use credits can be used for averaging, banking, or further trading transactions.

(d) Unless otherwise approved by EPA, a manufacturer that generates positive in-use credits must wait 30 days after it has both completed in-use testing for the model year for which the credits were generated and submitted the report required by § 90.1309(a) before it may transfer credits to another manufacturer or broker.

(e) In the event of a negative credit balance resulting from a transaction, both the buyer and the seller are liable, except in cases involving fraud. Engine families participating in a trade that leads to a negative credit balance may be subject to recall under subparts I and M of this part if the engine manufacturer having the negative credit balance is unable or unwilling to obtain sufficient credits in the time allowed under § 90.1303(i).

§ 90.1307 Credit calculation.

For each participating engine family, and for each regulated pollutant ($HC+NO_X$ ($NMHC+NO_X$) and CO) emission credits (positive or negative) are to be calculated according to the following equation and rounded to the nearest gram. Consistent units are to be used throughout the equation:

Credits = Sales × (Standard—CL) × Power × Useful life × AF × LF

Where:

Useful Life = the useful life in hours corresponding to the useful life category for which the engine family was certified.

Power = the sales weighted maximum modal power, in kilowatts, as calculated from the applicable federal test procedure as described in this part. This is determined by multiplying the maximum modal power of each configuration within the family by its eligible sales, summing across all configurations and dividing by the eligible sales of the entire family. Where testing is limited to certain configurations designated by the Administrator, the maximum modal power for the individual configuration(s) shall be used.

Sales = the number of eligible U.S. sales, as defined in subpart A of this part, for the engine family or configuration as applicable.

Standard = The applicable emission standard to which the engine family was certified under subpart B of this part.

CL = compliance level of the in-use testing for the subject pollutant in g/kW-hr.

AF = adjustment factor for the number of tests conducted as determined from the following table, except that when a manufacturer concedes failure before completion of testing as permitted under § 90.1203(f), the adjustment factor shall be 1.0:

No. Engines tested	1–5	6–7	8–9	10 or more.
Adjustment factor	0.5	0.75	0.9	1.0

LF = Load Factor of 0.85 for test cycle C. For manufacturers using alternative or special test cycles approved by the Administrator, the Load Factor is calculated using the Load Factor formula for nonhandheld engines found in § 90.207.

§ 90.1308 Maintenance of records.

(a) Any manufacturer that is participating in the in-use credit program set forth in this subpart shall establish, maintain, and retain the records required by § 90.209 with respect to its participation in the in-use credit program.

(b) EPA may void *ab initio* a certificate of conformity for an engine family for which the manufacturer fails to retain the records required under this section or to provide such information to the Administrator upon request.

§ 90.1309 Reporting requirements.

(a) Any manufacturer who participates in the in-use credit program is required to submit an in-use credit report with the end of the model year in-use testing report required under § 90.1205 within 90 days of the end of the in-use testing of a given model year's engine families. This report must show the calculation of credits from all the in-use testing conducted by the manufacturer for a given model year's engines. Such report shall show the applications of credits, the trading of credits, the discounting of credits that are used and the final credit balance. Such report shall calculate credit generation or usage for past model years and estimate credit generation or usage for the next model year when carry over families are tested pursuant to § 90.1303(g). The manufacturer may submit corrections to such end of model year reports in a final report for a period of up to 270 days after the end of the in-use testing of a given model year's engine families.

(b) The calculation of eligible sales for end-of-year and final reports must be based on the location of the point of first retail sale (for example, retail customer or dealer) also called the final product purchase location. Upon advance

written request, the Administrator will consider other methods to track engines for credit calculation purposes that provide high levels of confidence that eligible sales are accurately counted.

(c) Reports shall be submitted to: Manager, Engine Compliance Programs Group (6403–J), U.S. Environmental Protection Agency, SW., Washington, DC 20460.

(d) A manufacturer that fails to submit a timely end of year report as required in paragraph (a) of this section will be considered ineligible to have participated in the in-use credit program.

(e) If EPA or the manufacturer determines that a reporting error occurred on an end of model year report previously submitted to EPA under this subpart, or an engine family in-use testing report submitted to EPA under subpart I of this part, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative credits may be adjusted by EPA. An update of previously submitted ''point of first retail sale'' information is not considered an error and no increase in the number of credits will be allowed unless an actual error occurred in the calculation of credits due to an error in the ''point of first retail sale'' information from the time of the original end of model year report.

§ 90.1310 Request for hearing.

An engine manufacturer may request a hearing on the Administrator's voiding of an engine family's certificate of conformity under § 90.1308(b). The administrative procedures for a public hearing requested under this subpart shall be those procedures set forth in §§ 90.512, 90.513, 90.514 and 90.515.

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Part III

Department of Labor

Pension and Welfare Benefits Administration

Proposed Exemptions; MBNA America Bank, National Association (MBNA); Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10304, et al.]

Proposed Exemptions; MBNA America Bank, National Association (MBNA)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

MBNA America Bank, National Association (MBNA), Located in Newark, Delaware, (Application No. D–10304)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. Effective as of the date this proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and an employee benefit plan subject to the Act or section 4975 of the Code (a plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of the Excluded Plan that are invested in certificates.[1]

B. Effective as of the date this proposed exemption is granted, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to receivables contained in the trust constituting 0.5 percent or less of the fair market value of the obligations or receivables contained in the aggregate undivided interest in the trust allocated to the certificates of the relevant series, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate undivided interest in the trust allocated to the certificates of a series is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates of a series does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition;

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

respect to which the person has discretionary authority or renders investment advice is invested in certificates representing the aggregate undivided interest in a trust allocated to the certificates of a series and containing receivables sold or serviced by the same entity;[2] and

(v) Immediately after the acquisition of the certificates, not more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. For purposes of paragraphs B.(1)(iv) and B.(1)(v) only, an entity shall not be considered to service receivables contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in Section I. B.(1)(i), (iii) through (v) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B.(1) or (2).

C. Effective as of the date that the proposed exemption is granted, the restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, including reassigning receivables to the sponsor, removing from the trust receivables in accounts previously designated to the trust, changing the underlying terms of accounts designated to the trust, adding new receivables to the trust, designating new accounts to the trust, the retention of a retained interest by the sponsor in the receivables, the exercise of the right to cause the commencement of amortization of the principal amount of the certificates, or the use of any eligible swap transactions, provided that:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement;

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust;[3]

(3) The addition of new receivables or designation of new accounts, or the removal of receivables in previously-designated accounts, meets the terms and conditions for such additions, designations or removals as are described in the prospectus or private placement memorandum of such certificates, which terms and conditions have been approved by Standard & Poor's Ratings Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch Investors Service, L.P., or their successors (collectively, the Rating Agencies), and does not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating of the certificates; and

(4) The series of which the certificates are a part will be subject to an ''Economic Pay Out Event'' (as defined in Section III.X.), which is set forth in the pooling and servicing agreement and described in the prospectus or private placement memorandum associated with the series, the occurrence of which will cause any revolving period, scheduled amortization period or scheduled accumulation period applicable to the certificates to end, and principal collections to be applied to monthly payments of principal to, or the accumulation of principal for the benefit of, the certificateholders of such series until the earlier of payment in full of the outstanding principal amount of the certificates of such series or the series termination date specified in the prospectus or private placement memorandum.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code, for the receipt of a fee by the servicer of the trust, in connection with the servicing of the receivables and the operation of the trust, from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in Section III.U. below.

D. Effective as of the date that the proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II—General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is either: (i) in one of the two highest generic rating categories from any one of the Rating Agencies; or (ii) for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies; provided that, notwithstanding such ratings, this exemption (if granted) shall apply to a particular class of certificates only if such class (an Exempt Class) is part of a series in which credit support is provided to the Exempt Class through a senior-subordinated series structure or other form of third-party credit support which, at a minimum, represents five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a

[2] For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this proposed exemption, all references to ''prospectus'' include any related supplement thereto, and any documents incorporated by reference therein, pursuant to which certificates are offered to investors.

pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust, to the extent allocable to the series of certificates purchased by a plan, represents not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, to the extent allocable to the series of certificates purchased by a plan, represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) The trustee of the trust is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act (i.e. ERISA). The trustee, as the legal owner of, or holder of a perfected security interest in, the receivables in the trust, enforces all the rights created in favor of certificateholders of such trust, including plans;

(8) Prior to the issuance by the trust of any new series, confirmation is received from the Rating Agencies that such issuance will not result in the reduction or withdrawal of the then current rating of the certificates held by any plan pursuant to this exemption;

(9) To protect against fraud, chargebacks or other dilution of the receivables in the trust, the pooling and servicing agreement and the Rating Agencies require the sponsor to maintain a seller interest of not less than 2 percent of the principal balance of the receivables contained in the trust;

(10) Each receivable added to a trust is an eligible receivable, based on criteria of the relevant Rating Agency(ies) and as specified in the pooling and servicing agreement. The pooling and servicing agreement requires that any change in the terms of the cardholder agreements must be made applicable to the comparable segment of accounts owned or serviced by the sponsor which are part of the same program or have the same or substantially similar characteristics;

(11) The pooling and servicing agreement limits the number of the sponsor's newly originated accounts to be designated to the trust, unless the Rating Agencies otherwise consent in writing, to the following: (i) With respect to any three-month period, 15 percent of the number of existing accounts designated to the trust as of the first day of such period, and (ii) with respect to any twelve-month period, 20 percent of the number of existing accounts designated to the trust as of the first day of such twelve-month period;

(12) The pooling and servicing agreement requires the sponsor to deliver an opinion of counsel semi-annually confirming the validity and perfection of each transfer of newly originated accounts to the trust if such opinion is not delivered with respect to each interim addition;

(13) The pooling and servicing agreement requires the sponsor and the trustee to receive confirmation from a Rating Agency that no Ratings Effect (i) will result from a proposed transfer of newly originated accounts to the trust, or (ii) will have resulted from the transfer of all newly originated accounts added to the trust during the preceding three-month period (beginning at quarterly intervals specified in the pooling and servicing agreement and ending in the calendar month prior to the date such confirmation is issued), provided that a Rating Agency confirmation shall not be required under clause (ii) for any three-month period in which any additions of newly originated accounts occurred only after receipt of prior Rating Agency confirmation pursuant to clause (i);

(14) If a particular series of certificates held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the trust, then each particular swap transaction relating to such certificates:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall include as an early payout event, as specified in the pooling and servicing agreement, the withdrawal or reduction by any Rating Agency of the swap counterparty's credit rating below a level specified by the Rating Agency where the servicer (as agent for the trustee) has failed, for a specified period after such rating withdrawal or reduction, to meet its obligation under the pooling and servicing agreement to:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular series of certificates will not be withdrawn or reduced;

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the swap counterparty is withdrawn or reduced below the lowest level specified in Section III.II. hereof, the servicer, as agent for the trustee, shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the trust to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from ''Excess Finance Charge Collections'' (as defined below in Section III.LL.) or other amounts that would otherwise be payable to the servicer or the seller; and

(15) Any series of certificates, to which one or more swap agreements entered into by the trust applies, may be acquired or held in reliance upon this proposed exemption only by Qualified Plan Investors.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that:

(1) Such condition is disclosed in the prospectus or private placement memorandum; and

(2) In the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

Section III—Definitions

For purposes of this proposed exemption:

A. *Certificate* means a certificate:

(1) That (i) represents a beneficial ownership interest in the assets of a trust and entitles the holder to payments denominated as principal, interest and/or other payments made as described in the applicable prospectus or private placement memorandum and in accordance with the pooling and servicing agreement in connection with the assets of such trust, to the extent allocable to the series of certificates purchased by a plan, either currently or after a revolving period during which principal payments on assets of the trust are reinvested in new assets, or (ii) is denominated as a debt instrument that represents a regular interest in a financial asset securitization investment trust (FASIT), within the meaning of section 860L(a) of the Code, and is issued by and is an obligation of the trust.

For purposes of this proposed exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust; and

(2) With respect to which (a) MBNA or any of its affiliates is the sponsor, and (b) MBNA, any of its affiliates, or an ''underwriter'' (as defined in Section III.C.) is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Receivables (as defined in Section III.V.); or

(b) Participations in a pool of receivables (as defined in Section III.V.) where such beneficial ownership interests are not subordinated to any other interest in the same pool of receivables; [4]

(2) Property which has secured any of the assets described in Section III.B.(1); [5]

(3) Undistributed cash or permitted investments made therewith maturing no later than the next date on which distributions are to be made to certificate holders, except during a Revolving Period (as defined herein) when permitted investments are made until such cash can be reinvested in additional receivables described in paragraph (a) of this Section III.B.(1);

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any cash collateral accounts, insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any certificates, swap transactions, or under any yield supplement agreements,[6] yield maintenance agreements or similar arrangements; and

(5) Rights to receive interchange fees received by the sponsor as partial compensation for the sponsor's taking credit risk, absorbing fraud losses and funding receivables for a limited period prior to initial billing with respect to accounts designated to the trust.

Notwithstanding the foregoing, the term *trust* does not include any investment pool unless: (i) the investment pool consists only of receivables of the type which have been included in other investment pools; (ii) certificates evidencing interests in such other investment pools have been rated in one of the two highest generic rating categories by at least one of the Rating Agencies for at least one year prior to the plan's acquisition of certificates pursuant to this exemption; and (iii) certificates evidencing an interest in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means an entity which has received from the Department an individual prohibited transaction exemption which provides relief for the operation of asset pool investment trusts that issue asset-backed pass-through securities to plans that is similar in format and substance to this proposed exemption (each, an Underwriter Exemption); [7] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or affiliated person described above is a manager or co-manager with respect to the certificates.

D. *Sponsor* means MBNA, or an affiliate of MBNA that organizes a trust by transferring credit card receivables or interests therein to the trust in exchange for certificates.

E. *Master Servicer* means MBNA or an affiliate that is a party to the pooling and servicing agreement relating to trust receivables and is fully responsible for servicing, directly or through subservicers, the receivables in the trust pursuant to the pooling and servicing agreement.

F. *Subservicer* means MBNA or an affiliate of MBNA, or an entity unaffiliated with MBNA which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means MBNA or an affiliate which services receivables contained in the trust, including the master servicer and any subservicer or their successors pursuant to the pooling and servicing agreement.

H. *Trustee* means an entity which is independent of MBNA and its affiliates and is the trustee of the trust. In the case of certificates which are denominated as debt instruments, ''trustee'' also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, provider of other credit support for, or other contractual counterparty of, a trust. Notwithstanding the foregoing, a swap counterparty is not an insurer, and a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any receivable included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of

[4] The Department notes that no relief would be available under the exemption if the participation interests held by the trust were subordinated to the rights and interests evidenced by other participation interests in the same pool of receivables.

[5] MBNA states that it is possible for credit card receivables to be secured by bank account balances or security interests in merchandise purchased with credit cards. Thus, the proposed exemption should permit foreclosed property to be an eligible trust asset.

[6] In a series involving an accumulation period (as defined in Section III.Z.), a yield supplement agreement may be used by the Trust to make up the difference between (i) the reinvestment yield on permitted investments, and (ii) the interest rate on the certificates of that series.

[7] For a listing of Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97–34 (62 FR 39021, July 21, 1997).

the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Each swap counterparty;

(7) Any obligor with respect to receivables contained in the trust constituting more than 0.5 percent of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, determined on the date of the initial issuance of such series of certificates by the trust; or

(8) Any affiliate of a person described in Section III.L.(1)–(7).

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided that:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward Delivery Commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable Compensation* has the same meaning as that term is defined in 29 CFR section 2550.408c–2.

S. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust and any supplement thereto pertaining to a particular series of certificates. In the case of certificates which are denominated as debt instruments, ''pooling and servicing agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

T. *Series* means an issuance of a class or various classes of certificates by the trust all on the same date pursuant to the same pooling and servicing agreement, and any supplement thereto and restrictions therein.

U. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing with respect to the receivables;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement or described in all material respects in the prospectus or private placement memorandum provided to the plan before it purchases certificates issued by the trust; and

(4) The amount paid to investors in the trust is not reduced by the amount of any such fee waived by the servicer.

V. *Receivables* means secured or unsecured obligations of credit card holders which have arisen or arise in Accounts designated to a trust. Such obligations represent amounts charged by cardholders for merchandise and services and amounts advanced as cash advances, as well as periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and certain other fees (such as bad check fees, cash advance fees, and other fees specified in the cardholder agreements) designated by card issuers (other than a qualified administrative fee as defined in Section III.U.).

W. *Accounts* are revolving credit card accounts serviced by MBNA or an affiliate, which were originated or purchased by MBNA or an affiliate, and are designated to a trust such that receivables arising in such accounts become assets of the trust.

X. Revolving Period means a period of time, as specified in the pooling and servicing agreement, during which principal collections allocated to a series are reinvested in newly generated receivables arising in the accounts.

Y. *Amortization Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will commence to be paid to the certificateholders of such series in installments.

Z. *Accumulation Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will be deposited in an account to be distributed to certificateholders in a lump sum on the expected maturity date.

AA. *Pay Out Event* means any of the events specified in the pooling and servicing agreement or supplement thereto that results (in some instances without further affirmative action by any party) in the early commencement of either an amortization period or an accumulation period, including (1) the failure of the sponsor or the servicer, whichever is subject to the relevant obligation under the pooling and servicing agreement, (i) to make any payment or deposit required under the pooling and servicing agreement within five (5) business days after such payment or deposit was required to be made, or (ii) to observe or perform any of its other covenants or agreements set forth in the pooling and servicing agreement, which failure has a material adverse effect on holders of investor certificates of the relevant series and continues unremedied for 60 days; (2) a breach of any representation or warranty made by the sponsor or the servicer in the pooling and servicing agreement that continues to be incorrect in any material respect for 60 days; (3) the occurrence of certain bankruptcy events relating to the sponsor or the servicer; (4) the failure by the sponsor to convey to the trust additional receivables to maintain the minimum seller interest that is required by the pooling and servicing agreement and the Rating Agencies; (5) if a class of investor certificates is in an Accumulation Period, the amount on deposit in the accumulation account in any month is

less than the amount required to be on deposit therein; (6) the failure to pay in full amounts owing to investors on the expected maturity date; and (7) the Economic Pay Out Event.

BB. An *Economic Pay Out Event* occurs automatically when the portfolio yield for any series of certificates, averaged over three consecutive months (or such other period approved by one of the Rating Agencies) is less than the base rate of the series averaged over the same period. Portfolio yield for a series of certificates for any period is equal to the sum of the finance charge collections and other amounts treated as finance charge collections less total defaults for the series divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies. The base rate for a series of certificates for any period is the sum of (i) amounts payable to certificateholders of the series with respect to interest, (ii) servicing fees allocable to the series payable to the servicer, and (iii) any credit enhancement fee allocable to the series payable to a third party credit enhancer, divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies.

CC. *CCA* or *Cash Collateral Account* means that certain account established in the name of the trustee that serves as credit enhancement with respect to the investor certificates and holds cash and/or permitted investments (as defined below in Section III.KK.) which conform to applicable provisions of the pooling and servicing agreement.

DD. *Group* means a group of any number of series offered by the trust that share finance charge and/or principal collections in the manner described in the applicable prospectus or private placement memorandum.

EE. *Ratings Effect* means the reduction or withdrawal by a Rating Agency of its then current rating of the certificates held by any plan pursuant to this proposed exemption.

FF. *Principal Receivables Discount* means, with respect to any account designated by the sponsor, the portion of the related principal receivables that represents a discount from the face value thereof and that is treated under the pooling and servicing agreement as finance charge receivables.

GG. *Ratings Dependent Swap* means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap contract, that is part of the structure of a series of certificates where the rating assigned by the Rating Agency to any series of certificates held by any plan is dependent on the terms and conditions of the swap and the rating of the swap counterparty, and if such certificate rating is not dependent on the existence of the swap and rating of the swap counterparty, such swap or cap shall be referred to as a ''Non-Ratings Dependent Swap''. With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the certificates must confirm, as of the date of issuance of the certificates by the trust, that entering into an Eligible Swap with such counterparty will not affect the rating of the certificates.

HH. *Eligible Swap* means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. Dollars;

(2) Pursuant to which the trust pays or receives, on or immediately prior to the respective payment or distribution date for the series of certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the swap counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(4) Which is not leveraged (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subparagraph (2) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is the earlier of the date on which the trust terminates or the related class of certificates is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subparagraphs (1) through (4) above without the consent of the trustee.

II. *Eligible Swap Counterparty* means a bank or other financial institution which has a rating, at the date of issuance of the certificates by the trust, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the certificates; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility hereunder, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the series of certificates with which the swap is associated has a final maturity date of more than one year from the date of issuance of the certificates, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

JJ. *Qualified Plan Investor* means a plan investor or group of plan investors on whose behalf the decision to purchase certificates is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of the proposed exemption, such a fiduciary is either:

(1) a ''qualified professional asset manager'' (QPAM),[8] as defined under Part V(a) of PTE 84–14 (49 FR 9494, 9506, March 13, 1984);

(2) an ''in-house asset manager'' (INHAM),[9] as defined under Part IV(a) of PTE 96–23 (61 FR 15975, 15982, April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such certificates.

KK. *Permitted Investments* means investments that either (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the

[8] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g. banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[9] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

United States, or (ii) have been rated (or the obligor thereof has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the relevant Rating Agency(ies).

LL. *Excess Finance Charge Collections* means, as of any day funds are distributed from the trust, the amount by which the finance charge collections allocated to certificates of a series exceed the amount necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term ''Underwriter Exemption'' as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95–60, 60 FR 35925).

Summary of Facts and Representations

1. The applicant is MBNA America Bank, National Association (i.e. MBNA), a national banking association located in Wilmington, Delaware. MBNA conducts nationwide consumer lending programs principally comprised of credit card related activities. MBNA is a wholly-owned subsidiary of MBNA Corporation, a bank holding company organized under the laws of Maryland in 1990.

2. The transactions for which an exemption is requested are investments by employee benefit plans in certain certificates (Certificates) representing the right to receive principal and interest payments from the assets of various Trusts which hold credit card receivables. Each Trust will issue, from time to time, a particular series of Certificates (i.e. a Series) which will be secured by the Trust's assets. A Series may include one or more classes of Certificates, some of which may be subordinate to others. However, only senior certificates issued by such Trusts, which meet the restrictive criteria designed to ensure investor safety discussed herein would be eligible for the exemptive relief to be provided under this proposed exemption.

The Trusts

3. Each Trust is created under a Pooling and Servicing Agreement (PSA) between MBNA, as Seller and Servicer, and an independent and unaffiliated Trustee. Upon creation of a Trust, the Seller transfers to the Trust a pool of interest-bearing credit card receivables which are selected under strict criteria approved by one or more of certain nationally recognized rating agencies,[10] from the portfolio of revolving credit card accounts owned by MBNA. The PSA establishes the general parameters for the Trust, such as the requirements for eligible receivables to be transferred to the Trust, the manner of transferring and administering and servicing the receivables, Seller representations and covenants as to receivable eligibility, Servicer and Trustee duties and eligibility, and other matters.

The applicant represents that any Trust that issues a class of Certificates to be covered by the proposed exemption would include the following investor safeguards:

(a) Restricted selection of receivables;

(b) Periodic reporting and monitoring of accounts;

(c) Minimum receivable requirements;

(d) Restrictions regarding addition and removal of accounts;

(e) Servicer eligibility requirements;

(f) Servicer daily reports, duties and public accounting firm review;

(g) Trustee eligibility and duties;

(h) Restrictions on investments;

(i) Protection from the consequences of unplanned events; and

(j) Limited discretion.

These investor safeguards are discussed in the following paragraphs.

4. Restricted Selection of Receivables. In order for a receivable to be eligible for transfer to the Trust, either on the initial closing date or on any subsequent date, it must have arisen under an eligible account. An eligible account is one that is in existence and owned by and maintained with MBNA (as of the initial selection date or, with respect to additional accounts, as of the relevant addition date), and is payable in U.S. dollars. In addition, an eligible account must have a United States address for its obligor, must not have been classified as counterfeit, canceled, fraudulent, stolen or lost, and must not have been charged off by MBNA under its customary and usual charge-off procedures. The eligible receivable must have been created in compliance with applicable law. All consents, licenses and other approvals necessary for the creation of the receivable and the execution of the credit card agreement must have been obtained and be in full force and effect, and MBNA must have good title to the receivable, free and clear of liens. Finally, an eligible receivable must constitute the legal valid and binding payment obligation of the obligor, and constitute an ''account'' under Article 9 of the Uniform Commercial Code (the ''UCC''), as in effect in the State of Delaware, so as to grant the Trust a first priority security interest in the event of bankruptcy. Once the pool of eligible accounts has been identified, accounts are selected at random for the transfer of their receivables to the Trust so as to provide a combination of receivables that is representative of the entire pool of eligible receivables.

MBNA represents and warrants that the receivables transferred to the Trust, and the accounts related to those receivables, meet the above-described standards for eligible receivables and accounts, and that no selection procedures adverse to the Certificateholders have been employed in selecting accounts. These restrictions on account selection are in place to prevent the concentration of high risk accounts. Each relevant Rating Agency requires that all of these safeguards be in place before a superior rating is given.

5. Periodic Reporting and Monitoring of Accounts. In connection with the transfer of the receivables to the Trust, MBNA must record and file a UCC financing statement (including any continuation statements, when applicable) in order to perfect the assignment of the receivables, and must deliver a file-stamped copy of such financing or continuation statement to the Trustee. MBNA must also indicate in its computer system file of credit card accounts the receivables transferred to the Trust by identifying the accounts with a unique designation, as described in the PSA. MBNA must deliver a complete list of all accounts in the Trust to the Trustee on or prior to the initial closing date and thereafter on a periodic basis as required by the PSA.

The Trustee is able to continually monitor the Trust's assets by reviewing the monthly reports regarding pool performance which are prepared for the Trustee and investors by MBNA, as Servicer. In addition, MBNA provides the Trustee with a complete list of accounts on a periodic basis, as required by the PSA. Each relevant Rating Agency requires significant monitoring procedures for the servicing of receivables to ensure investor safety before a superior rating is granted.

6. Minimum Receivable Requirements. The aggregate principal amount of the receivables held by the Trust must be at least equal to the sum of the principal amount of the

[10] As noted in Section I.C.(3) above, these rating agencies are: (i) Standard & Poors Ratings Services, a division of McGraw-Hill Companies Inc.; (ii) Moody's Investors Service, Inc.; (iii) Duff & Phelps Credit Rating Co.; and (iv) Fitch Investors Service, L.P., or their successors (collectively, the Rating Agencies).

Certificates (prior to the commencement of any related amortization or accumulation) for all Series then outstanding (other than a Series which is backed in full by accumulated cash or permitted investments (see Paragraph 11 below)). If, on the last business day of any month, the aggregate amount of principal receivables is less than the required minimum, MBNA must designate additional accounts (or may convey participations in other credit card receivable pools sponsored by MBNA) to be transferred to the Trust so that the aggregate principal receivables will meet the minimum requirement.

Interests in the assets of each Trust are allocated among the Certificate holders of each Series and the Seller (i.e., MBNA). The interest in the Trust assets allocated to the Seller is referred to as the ''Seller Interest.'' To protect against fraud, chargebacks or other dilution of receivables in the Trust, the PSA and the Rating Agencies will require MBNA, as the Trust's sponsor, to maintain a seller interest of not less than 2 percent of the principal balance of the receivables contained in the Trust (referred to as the ''Minimum Seller Interest''). If, during any period of 30 consecutive days, the Seller Interest averages less than the Minimum Seller Interest, MBNA must designate additional accounts (or participations in other MBNA credit card receivable pools) to be transferred by MBNA to the Trust in order to satisfy the minimum requirement. When account payments exceed account purchases, the total pool of receivables in the relevant Trust contracts. As a result, the Seller Interest declines, thus providing a buffer to prevent a decline in the principal balance of the Certificates prior to the scheduled payment of principal. Thus, when the receivable balances in the accounts that secure the Certificates decline, the Seller Interest decreases, not the principal balance of the Certificates. When the account balances again increase, the Seller Interest is increased. The Seller Interest will also decline as a result of dilution of the receivable portfolio resulting from noncash reductions such as merchandise returns or servicer errors.

The minimum receivable requirement and Minimum Seller Interest requirement imposed on MBNA by the PSA (as described above) cause the Trustee, Servicer or Seller to have limited discretion regarding the minimum size of the Trust. Each relevant Rating Agency gains comfort from these minimum receivable levels that the Trust will be maintained so as not to adversely affect the ability of the Trust assets to support the promised interest and/or principal payments to Certificate holders.

7. Restrictions Regarding Addition and Removal of Accounts. In addition to the limitations discussed above regarding the selection of accounts and minimum receivable requirements, the following restrictions apply to the addition of accounts subsequent to the initial transfer to the Trust. Any transfer of receivables from additional accounts must be preceded by written notice to the Trustee, each relevant Rating Agency and the Servicer specifying the approximate aggregate amount of receivables to be transferred. In connection with the transfer, MBNA will warrant that the additional accounts are eligible accounts and that each receivable is an eligible receivable, and that no selection procedures believed by MBNA to be materially adverse to the interest of the Certificateholders were utilized in selecting the accounts. MBNA must deliver an opinion of counsel with respect to the added receivables to the Trustee, with a copy to each relevant Rating Agency, that such addition is enforceable and that the Trust has either a valid transfer of, or a grant of security interest in, the additional accounts. The PSA requires that the Servicer and the Trustee receive confirmation from a Rating Agency that no Ratings Effect (i.e., a downgrade or withdrawal of the then current rating of any outstanding Series of Certificates) either (i) will result from a proposed transfer of receivables from additional accounts to the Trust, or (ii) will have resulted from the transfer of all receivables from additional accounts added to the Trust during the preceding three-month period (beginning at quarterly intervals specified in the PSA and ending in the calendar month prior to the date such confirmation is issued). However, a Rating Agency confirmation will not be required for any three-month period in which any additions of newly originated accounts occurred only after receipt of a prior Rating Agency confirmation.

MBNA may remove receivables, subject to the minimum receivable requirements discussed above, not more than once in a monthly period. MBNA must give the Trustee and the Servicer written notice stating the approximate aggregate principal balance of the removal, and certifying that such removal must not result in a Pay Out Event. MBNA must warrant that no selection procedures believed by it to be materially adverse to the Certificateholders were utilized in selecting the removed receivables. Each relevant Rating Agency must have confirmed that such proposed removal will not result in a Ratings Effect. MBNA states further that the amount of any receivables that are removed must be less than 5 percent of the aggregate amount of principal receivables or, if any Series is paid in full, the amount of receivables removed must approximate the initial investor interest of such Series.

Each Rating Agency has determined that the number of additional accounts from which receivables may be added is generally limited to: (i) with respect to any three-month period, 15 percent of the number of existing accounts designated to the Trust as of the first day of such period, and (ii) with respect to any twelve-month period, 20 percent of the number of accounts designated to the Trust as of the first day of such 12-month period. However, if this maximum amount is greater than a similar test (specified in the PSA) based on the calendar year, then the calendar year test serves as the maximum addition. MBNA may be able to exceed the maximum addition amount if approval is received from each relevant Rating Agency.

By informing the relevant Rating Agencies of all details regarding additions and removals, the Trust is effectively reexamined each time these events occur in order to assure that the changes to the Trust assets will not adversely affect the rating of any outstanding Series. Each relevant Rating Agency scrutinizes the receivables from the additional accounts, or the relative strength of the pool of receivables designated to the Trust both before and after the removal, as the case may be, in making any such re-examinations.

8. Servicer Eligibility Requirements. The Servicer of the receivables must be either the Seller (MBNA), an affiliate of MBNA, or an entity unaffiliated with MBNA acting as a ''Subservicer'' which is qualified to service a portfolio of consumer revolving credit card accounts and meets certain requirements. Under such requirements, the entity acting as either a Servicer or Subservicer must be legally qualified and have the capacity to service the accounts, must be qualified to use the software used to service the accounts, must have demonstrated the ability to professionally and competently service a portfolio of similar accounts in accordance with customary standards of skill and care, and must have a certain net worth (e.g. at least $50,000,000). These requirements are in line with the Rating Agencies' standards for servicers.

Regardless of whether the Servicer is MBNA, an affiliate, or a third party meeting the eligibility requirements discussed above, the Servicer's duties

are largely ministerial and are provided in detail in the PSA. The Servicer administers the receivables, collects payments due thereunder, makes withdrawals from the various accounts created under the PSA which are forwarded to the Trustee on the dates and in the manner provided under the PSA, commences enforcement proceedings with respect to delinquent receivables and makes filings and other necessary reports with the SEC and any state securities authorities as necessary to comply with the law. The Servicer must maintain fidelity bond coverage insuring against losses through its own wrongdoing, and is entitled to receive a reasonable servicing fee which is specifically enumerated in each PSA supplement.

9. Servicer Daily Reports, Duties and Public Accounting Firm Review. On each business day the Servicer must prepare and make available to the Trustee a record of the collections processed on the preceding day and the aggregate amount of receivables as of the close of business on the preceding day. The Servicer must prepare monthly for the Trustee, the paying agent, any credit enhancement provider, and each relevant Rating Agency, a certificate setting forth the aggregate collections processed during the preceding month with respect to each Series outstanding, the aggregate amounts of the investor percentages of collections of finance charge receivables and principal receivables processed during the preceding month with respect to each Series outstanding, the balances in the finance charge account, the principal account or any Series account during the preceding month, and other detailed information.

The Servicer will provide annually a certificate from an officer indicating that the Servicer's activities over a 12-month period were reviewed and the officer believed such obligations were fully performed under the PSA. Every year, a nationally recognized firm of independent certified public accountants will review the internal accounting controls and their relation to the servicing of the receivables as well as the mathematical accuracy of the Servicer's monthly reports, and the results will be provided to the Trustee, any credit enhancement provider, and each relevant Rating Agency. These additional reviews of the Servicer are designed to prevent Servicer fraud and limit Servicer discretion. These safeguards protect investors and are a positive factor in a Rating Agency's evaluation.

10. Trustee Eligibility and Duties. The Trustee must be a financial institution organized, doing business and regulated under the laws of the United States, any State and/or the District of Columbia and have a long-term unsecured debt rating as specified in the PSA. The Trustee must be independent of MBNA and its affiliates and meet the same requirements that would be necessary for an eligible Servicer (as discussed under ''Servicer Eligibility Requirements'' above). Any successor Trustee must also meet these requirements and be approved by each relevant Rating Agency.

The Trustee is responsible for receiving collections from receivables as provided in the PSA, investing any moneys as directed in the PSA, and directing payments to Certificateholders according to the plan of allocation and payment detailed in the PSA. In performing these functions, the Trustee has little, if any, discretion. The Trustee is also responsible for examining any resolutions, statements, certificates, opinions, reports or other instruments in order to determine whether they substantially conform to the requirements of the PSA. The Trustee has no power to vary the corpus of the Trust and must perform the duties of other parties should they fail to perform under the PSA. Like the Servicer restrictions, the restrictions on the Trustee limit discretion, enhance investor protection, and are a positive influence on a Rating Agency's evaluation.

11. Restrictions on Investments. The collections of principal receivables and finance charge receivables held in the Trust may be invested by the Trustee only in ''permitted investments'' during the interim periods between collection and payout to the Certificateholders. Such permitted investments are detailed in the PSA and represent what each relevant Rating Agency considers to be secure investments that sufficiently protect investors. Under the proposed exemption, permitted investments would be investments that either (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the United States, or (ii) have been rated (or the obligor thereof has been rated) in one of the three highest generic rating categories by a Rating Agency. In addition, all permitted investments must be described in the PSA and permitted by the relevant Rating Agencies.

12. Protection From the Consequences of Unplanned Events. If MBNA should desire to merge or consolidate with, or assume the obligations of, another entity, certain provisions of the PSA ensure that the Trust assets remain secure. The new entity involved in the merger or consolidation must be a national banking association, a state banking corporation or another entity not subject to bankruptcy laws and must be organized and regulated under the laws of the United States, any State and/or the District of Columbia. The new entity must expressly assume the performance of every covenant and obligation of MBNA, and MBNA must provide the Trustee with an opinion of counsel that such assumption is legal, valid and binding. Finally, each relevant Rating Agency must be notified in advance of the change. Similarly, a merger, consolidation or assumption of the obligations of the Servicer also requires the same protections of a full assumption of liabilities, an opinion of counsel and Rating Agency notification.

The Certificateholders of each Series receive protection from certain unplanned events (called ''Pay Out Events''). If a ''Pay Out Event'' occurs with respect to a Series, either (i) a rapid amortization period will commence during which the Certificates of such Series will be paid down periodically, as provided in the PSA Supplement, with the principal collections allocable to such Series or with principal collections allocable to other Series which are shared within the same Group (as discussed in Paragraph 15 below), or (ii) a rapid accumulation period will commence during which the Series' principal collections will be accumulated until a designated payment date. Pay Out Events include ''Trust Pay Out Events,'' which apply to all Series, and ''Series Pay Out Events,'' which apply to particular Series. ''Trust Pay Out Events'' include: (i) certain events of insolvency, conservatorship or receivership relating to MBNA; (ii) the Trust becomes an ''investment company'' within the meaning of the Investment Company Act of 1940, as amended; and (iii) MBNA becomes unable for any reason to transfer receivables to the Trust as required by the PSA.

Series Pay Out Events generally include:

(a) Failure of MBNA to make required payments or observe its other covenants to the extent there is a material adverse effect on the Certificateholders of that Series;

(b) Breach by MBNA of its representations and warranties to the extent there is a material adverse effect on the Certificateholders of that Series;

(c) A default by the Servicer that would have a material adverse effect on the Certificateholders of that Series; and

(d) The portfolio yield for any three consecutive monthly periods is less than the average base rate for such period (an ''Economic Pay Out Event'').

With respect to item (d) above, MBNA states that an ''Economic Pay Out Event'' will occur automatically when the portfolio yield for any series of certificates, averaged over three consecutive months (or such other period approved by one of the Rating Agencies) is less than the base rate of the series averaged over the same period. Portfolio yield for a series of certificates for any period is equal to the sum of the finance charge collections and other amounts treated as finance charge collections less total defaults for the series divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies. The base rate for a series of certificates for any period is the sum of (i) amounts payable to certificateholders of the series with respect to interest, (ii) servicing fees allocable to the series payable to the servicer, and (iii) any credit enhancement fee allocable to the series payable to a third party credit enhancer, divided by the outstanding principal balance of the investor certificates of the series, or such other measure approved by one of the Rating Agencies.

MBNA states that an ''Economic Pay Out Event'' should not occur because the amount of receivables included within the Trust has been designed to create ''excess spread'' between the yield on the receivables and the certificate rates. *Excess spread* is the amount by which the yield on the receivables held by the Trust exceeds, at any point in time, the amounts necessary to pay certificate interest, principal (if such payments are due to certificateholders), servicing fees and expenses, and to satisfy cardholder defaults or charge-offs. The Rating Agencies examine the expected amount of ''excess spread'' very closely before providing a high credit rating for the certificates.

A ''Pay Out Event'' accelerates the scheduled payments or accumulation of principal on the Certificates as specified within each PSA Supplement, and eliminates shared allocations from such Series, thus increasing the probability of full payment to senior Certificateholders, including plan investors. During a rapid amortization period, which is triggered by a ''Pay Out Event'', all collections are distributed periodically (instead of being distributed on the originally scheduled principal payment dates), as provided in the PSA Supplement, until the senior Certificateholders are paid in full. During a rapid accumulation period, also triggered by a ''Pay Out Event'', all principal collections allocated to the senior Certificates are accumulated and invested by the Trustee until the senior Certificateholders' interest is backed in full by cash and/or permitted investments which will be distributed on the originally scheduled payment date. Payments or accumulations are then directed to the next level of Certificates below the senior Certificates, until all Certificates have been paid or accumulated, or the Trust terminates. Because this accelerated pay out or accumulation schedule is triggered as a result of poor performance, senior Certificateholders are protected from a loss which might result from long-term yield reduction, and are, to a level of certainty necessary to support a rating of ''AA'' (or better), likely to receive their entire investment return. The timing or amount of the payments or accumulations is specifically defined in each PSA Supplement, further protecting investors from mismanagement. This automatic pay out trigger is important to each relevant Rating Agency as well, because it strictly limits the potential losses to investors.

Investors are also protected from the negative consequences of an event of Seller insolvency. If one or more of a number of indications of insolvency are present, a ''Pay Out Event'' occurs and a rapid amortization or a rapid accumulation period is triggered. As discussed above, this event accelerates payments or accumulation of collections to maximize the probability that senior Certificateholders will be paid promptly and in full. In addition, the Trustee also liquidates the receivables (unless otherwise instructed by Certificateholders representing undivided interests aggregating more than 50 percent of each outstanding Series) in order to further accelerate the pay out or accumulation process. The proceeds of the liquidation are distributed or accumulated in the tiered manner discussed above in the low-yield scenario.

13. Limited Discretion. Inherent in all of the restrictions surrounding creation and management of the Trust, discussed above, is the limited ability of any party to the transaction to make discretionary decisions that would have a major impact on the Trust assets. The PSA addresses every possible important decision and provides the exact course of action required. Each detail is designed to ensure maximum investor security, and minimum Trustee and Servicer discretion.

The Series

14. Once a Trust is established, a Series of Certificates may be issued pursuant to a PSA Supplement. One Trust typically supports multiple Series of Certificates over time. Each Series issued under a Trust is secured, along with other outstanding Series, by the assets of the issuing Trust. The PSA Supplement builds on the PSA by specifying the parameters for the Series, such as the number and type of Certificates, subordination and payment structuring, and other credit enhancement features.

The life of a Series consists of a revolving period and an amortization or accumulation period. During both periods, daily collections are allocated to the Trust accounts in the manner specified in the PSA Supplement. Interest payments are made periodically to the Certificateholders as provided in the PSA Supplement, and principal is paid in a lump sum on the date designated in the PSA Supplement (in the case of an accumulation period), or periodically pursuant to a schedule in the PSA Supplement (in the case of an amortization period), for each class of Certificates. The allocation of collections and the priority of payments differs slightly during the revolving period and the amortization or accumulation period.

15. During a Series' revolving period, periodic interest payments are made to Certificateholders. Principal payments, however, are not made until the amortization period or at the end of the accumulation period. Principal collections during the revolving period typically are shared among the Series that are members of the same Group. If one Series has principal receipts greater than needed to pay principal for that period, the excess may be used to pay principal for another Series in the Group which may have a need for such principal collections. In such instances, the minimum principal receivable balances required by the Rating Agencies for all Series must be maintained. The process of sharing within the Group spreads payment risk over a broader base of collections and effectively allows concentration of principal collections supporting a particular Series, resulting in increased reliability of the payment streams.

Principal collections received during the amortization or accumulation period are also potentially shared, but are first applied to the principal funding for the Series to which they relate. The

amortization or accumulation period ends on the earliest of: (i) when the investors interests are paid in full; (ii) the Series termination date provided in the PSA Supplement; or (iii) the commencement of a rapid amortization or rapid accumulation period. Finance charges and fees collected during the revolving period and the accumulation or amortization period are applied to the related Series, and are not generally shared within the Group.

16. Every Trust will have a variety of credit enhancement features, as described in the PSA and specified in the applicable PSA Supplement. In addition to the Group sharing of collections discussed above, other credit enhancements may include subordination and letters of credit or other third party arrangements. The type and value of credit enhancement for a particular Series is designed to compliment the underlying Trust receivables so that, as a whole, the Trust assets satisfy the relevant Rating Agency's requirements for the superior rating desired. In this regard, MBNA represents that the particular class of certificates for each series to which this proposed exemption would apply (an Exempt Class) will have credit support provided to the Exempt Class through either a senior-subordinated series structure or other form of third party credit support which, at a minimum, will represent five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss.

Each Series with an Exempt Class covered by the proposed exemption will include one or more of the following credit enhancing investor safeguards (as discussed further below): (i) Subordination; (ii) Third Party Credit Enhancement; and (iii) Allocation of Collections and Payments to Certificateholders Allows No Variation.

17. Subordination. Typically, a Series will have some form of subordination incorporated within the payment schedule detailed in the PSA Supplement. Such a Series will consist of at least one class of senior Certificates (typically designated as ''Class A Certificates'') which will be allocated collections in a more favorable manner than, and/or prior to, another class (or other classes) of Certificates (i.e., the next lower level, typically designated as ''Class B Certificates'') and often will include an uncertificated class subordinate to the Class B Certificates (typically designated as the ''Collateral Interest'' or ''Class C Interest''). The subordination process generally will involve both the receipt of collections and the effect of losses. Thus, such collections will be applied to the senior (or Class A) Certificates first and then the second tier (or Class B) Certificates, and will be applied last to the lowest level class of Certificates (or the Collateral Interest). Conversely, the losses will first reduce the lowest class of Certificates (or the Collateral Interest), only affecting the senior (or Class A) Certificates after all other classes have been reduced to zero. The result of this tiered structure is that the senior (or Class A) Certificates are protected from nonpayment by the lower classes. If the certainty of payment provided by the subordination or other credit support mechanism is insufficient to allow each relevant Rating Agency to bestow one of its two highest ratings on the senior Certificates, the senior Certificates would not be eligible for the relief provided under the proposed exemption.

18. Third Party Credit Enhancement. A Series may include a form of credit enhancement provided by an outside party, such as a letter of credit, a cash collateral account, insurance or a guaranty or other extension of credit. This arrangement will be documented by a separate contract outlining the terms of the enhancement. A holder of the Collateral Interest (described in the preceding paragraph) or other subordinate interest holder may be a loan provider or an investor in the Class C Interest, and the PSA Supplement typically requires that a minimum Collateral Interest (or subordinate interest) be a feature of each Series. As with all the forms of credit enhancement, the terms and the amount of the Collateral Interest will be dependent upon an evaluation of the other Trust assets and the additional support needed to satisfy each relevant Rating Agency that the Certificates are sufficiently protected from default.

19. Allocation of Collections and Payments to Certificateholders Allows No Variation. The PSA Supplement provides instructions to the Servicer regarding each day's collections and the allocation of those collections to the various accounts created by the PSA. These instructions indicate how to make the payments and allocations during the revolving period, the amortization or accumulation period and the rapid amortization or rapid accumulation period, if any. The instructions also cover the treatment of other moneys from loans or other credit enhancement features, and carefully describe how to accommodate any excess collections, or how to compensate for any shortfalls. In following these detailed instructions, the Servicer does not make any discretionary decisions. The tasks are predetermined and largely ministerial. These explicit instructions, in concert with the Servicer reporting and review requirements, are designed to permit each relevant Rating Agency to conclude that mismanagement risks are minimal.

The Certificates

20. Each Series may include a class or various classes of Certificates, some of which may be subordinate to others.

Certificateholders will be entitled to receive periodic payments of interest based upon a fixed or variable interest rate which is set forth in the PSA Supplement and applied to the Certificateholder's unpaid principal balance. Certificateholders will also be entitled to receive a lump sum principal payment on the scheduled payment date, or a series of periodic payments beginning on the scheduled payment commencement date, as specified in the PSA Supplement, to the extent of the Certificateholder's investor interest.

As noted earlier, only Certificates that are not subordinate to any other class or classes of Certificates (the ''Senior Certificates'') would be eligible for exemptive relief under the proposed exemption.

21. MBNA represents that a plan would invest in the Certificates for the same reasons any investor would invest in a highly secure, ''AA'' (or better) rated investment with attractive yields. The Senior Certificates represent an investment alternative which offers all the benefits of a highly rated fixed-income security, such as fixed payment streams, investment diversity and market rates of return. Permitting plans to invest in Senior Certificates in reliance on the proposed exemption would provide plans with additional and safe investment opportunities.

22. With respect to the credit ratings of the Certificates, MBNA states that the rating reflects a Rating Agency's opinion as to the relative amount of protection that investors have against loss of principal and interest during the life of the security. A high rating comports with a low risk of loss. In order to achieve this rating, each relevant Rating Agency requires the credit card securitizations effected through the Trust to include a variety of safeguards—such as subordination or other forms of credit enhancement, limitations on the Seller's discretion, and Rating Agency approval of certain actions taken with respect to the Trust or a Series of Certificates. Each relevant Rating Agency typically requires legal opinions regarding the credit card securitization's structure and performs

stress tests on the portfolio of selected receivables in order to evaluate the securitization's anticipated performance within a range of significant market fluctuations. In addition, each relevant Rating Agency performs a comprehensive review of all documents related to the credit card securitization before the formal rating is given. Each relevant Rating Agency must provide confirmations that additions of receivables from accounts to a Trust, or withdrawals of existing accounts from a trust, will not result in a Ratings Effect on the Certificates.

After its rating is assigned, the Rating Agency monitors the performance of the credit card receivables included in a Trust in order to assess whether the performance remains consistent with the rating. Although variations in portfolio performance are expected during a Certificate's duration and are factored into a Rating Agency's analysis, extreme and unexpected performance results may result in a revision of the rating. MBNA makes its Trust performance information available to each relevant Rating Agency in a variety of ways, in order to ensure that the Rating Agency receives all the information it deems necessary to make its evaluation. For example, MBNA provides information on portfolio performance broken down by account balance, credit limit, account age, delinquency period and geographic distribution.

MBNA states that the receipt of one of the two highest generic ratings from a Rating Agency represents the result of an exhaustive analysis of the many risk factors involved with a Series of Certificates, and provides a comfort level to investors that the potential reduction in yield as a result of credit losses is minimal.[11]

23. MBNA represents that the statistics on Certificates backed by credit card trusts indicate that they are sound investments. In this regard, MBNA states that public credit card securitization transactions have been in existence since 1987 and issuers have successfully sold over $230 billion in Certificates backed by credit card receivables since then with a zero investor loss rate. MBNA states further that plans have invested during this time in such Certificates, despite the prohibited transaction provisions of the Act, in reliance upon the Department's regulation defining ''plan assets'' and, specifically, the ''100-Holder Exception'' for ''publicly-offered'' securities (see 29 CFR 2510.3–101).[12]

MBNA maintains that the proposed exemption offers a number of safeguards in the form of concentration restrictions that are designed to provide additional protections for plan investors which are not included in the typical 100-holder exception transactions. For example, for purposes of the relief from the prohibitions of section 406(b) of the Act[13] provided under Section I.B. herein (relating to certain obligors of the Trust who may have discretionary authority for a plan investing in certificates of the Trust), the proposed exemption limits such plan's investment in any class of Certificates of any Series to not more than 25 percent of the principal amount of the Certificates of that class outstanding at the time of acquisition. In addition, immediately after the acquisition of the certificates, not more than 25 percent of the assets of such a plan may be invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. Further, the proposed exemption requires that at least 50 percent of the outstanding principal amount of each class of Certificates in which plans have invested, and at least 50 percent of the outstanding aggregate interest of the Trust, in connection with the initial issuance of the Certificates, must be acquired by persons independent of the Sponsor, the Servicer and other related parties. These restrictions are designed to protect plan investors from the risks inherent in excessive ownership concentration and related party transactions.

24. MBNA represents that the requested exemption is similar to the Underwriter Exemptions.[14] The Underwriter Exemptions are a series of exemptions granted by the Department to various underwriters or trust sponsors for transactions relating to the acquisition by plans of certificates representing interests in trusts holding various types of assets (e.g. single and multi-family residential or commercial mortgages, motor vehicle leases and related vehicles, equipment leases or other secured obligations), as provided in Section III.B. of the Underwriter Exemptions.

The Trusts described under the proposed exemption for Certificates backed by credit card receivables differ from trusts holding secured obligations in that the Trusts do not contain a fixed pool of assets and the receivables are not secured by real or tangible personal property. However, MBNA states that this difference in structure does not represent a difference in the quality or safety of investments by plans and other investors in the Certificates. Under the proposed exemption, MBNA represents that the other forms of credit enhancement provide at least the same level of security for investors in Trusts holding credit card receivables as exists for investors in trusts holding tangible or real property as collateral for the payment obligations to Certificateholders. In addition, Trusts holding credit card receivables do not involve the expense and administrative complexities of foreclosure procedures relating to tangible and real property.

25. Certificateholders are entitled to receive periodic payments of interest based upon an interest rate, which may be variable or fixed. This interest rate is specified or defined in the PSA Supplement for the particular Series and is applied to the outstanding principal balance of the Certificates. This outstanding balance (net of any charge-offs) is known as the investor

[11] In this regard, the Department was advised by representatives from two of the Rating Agencies (RA Reps) of certain issues concerning the ratings of certificates issued by trusts holding credit card receivables. The RA Reps discussed, among other things, the fact that different banks use different underwriting standards and may offer cardholders different terms on their accounts. Some banks may be willing to accept cardholders with more risky credit histories while other banks may not or may offer better terms to cardholders with superior payment histories. The result may be that some banks have a higher quality portfolio of receivables than other banks. The RA Reps stated that if a bank securitizes a portfolio of receivables which holds a number of riskier accounts, the Rating Agencies will require more credit enhancement measures because different assumptions will have to be made about the performance of the portfolio—e.g. higher charge-off rates will be assumed and greater ''excess spread'' will be necessary to avoid losses—in order to achieve an ''AAA'' rating. Thus, for example, Bank A's certificates may receive an ''AAA'' rating along with MBNA's certificates even though Bank A may experience more charge-offs on the credit card accounts and may have different payment rates on the receivables associated with those accounts.

[12] The Department's regulation defining ''plan assets'' provides that, if a plan invests in a publicly-offered security, the plan's assets will not include, solely by reason of such investment, any of the underlying assets of the entity issuing the security (i.e. the ''look-through rule'' will not apply and the operations of the entity will not be subject to scrutiny under the prohibited transaction provisions of the Act). The regulation defines a ''publicly-offered'' security as one that is freely transferable, widely-held, and registered under the federal securities laws. A class of securities is ''widely held'' if it is owned by 100 or more investors who are independent of the issuer and of one another at the conclusion of the offering (see 29 CFR 2510.3–101(b)(3)).

[13] Section 406(b) of the Act, in pertinent part, prohibits a plan fiduciary from dealing with the assets of the plan in his own interest or for his own account, or from acting on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan and its participants and beneficiaries.

[14] As indicated in Footnote 7 above, PTE 97–34 (which granted an amendment to the Underwriter Exemptions) contains the most comprehensive listing of these exemptions.

interest for the senior class of Certificates. Certificateholders are also entitled to receive principal payments on the scheduled payment dates, or sooner or later under certain limited circumstances, pursuant to the PSA Supplement to the extent of the Certificateholders' investor interest. The payments are funded from collections on the related receivables and allocated to the investor interests as provided in the PSA Supplement.

MBNA states that a Series or class of Certificates may have the benefit of an interest rate swap agreement entered into between the Trustee for a Trust and a bank or other financial institution acting as a swap counterparty. Pursuant to the swap agreement, the swap counterparty would pay a certain rate of interest to the Trust in return for a payment of a rate of interest by the Trust, from collections allocable to the relevant Series or class of Certificates, to the swap counterparty. MBNA represents that the credit rating provided to a particular Series or class of Certificates by the relevant Rating Agency may or may not be dependent upon the existence of a swap agreement. Thus, in some instances, the terms and conditions of the swap agreements will not effect the credit rating of the Series or class of Certificates to which the swap relates (i.e. a ''Non-Ratings Dependent Swap'').

MBNA states that whether or not the credit rating of a particular Series or class of Certificates is dependent upon the terms and conditions of one or more interest rate swap agreements entered into by the Trust (i.e. a ''Ratings Dependent Swap'' or a ''Non-Ratings Dependent Swap''), each particular swap transaction will be an ''Eligible Swap'' as defined in Section III.HH. above.

In this regard, an Eligible Swap will be a swap transaction:

(a) Which is denominated in U.S. Dollars;

(b) Pursuant to which the Trust pays or receives, on or immediately prior to the respective payment or distribution date for the applicable senior class of Certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(c) Which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(d) Which is not leveraged (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in item (b) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(e) Which has a final termination date that is the earlier of the date on which the Trust terminates or the related class of Certificates is fully repaid; and

(f) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in items (a) through (e) above without the consent of the Trustee.

In addition, any Eligible Swap entered into by the Trust will be with an ''Eligible Swap Counterparty'', which will be a bank or other financial institution with a rating at the date of issuance of the Certificates by the Trust which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Certificates (see Section III.II above). However, if a swap counterparty is relying on its short-term rating to establish its eligibility, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency.

With respect to a Ratings Dependent Swap, an Eligible Swap Counterparty will be subject to certain collateralization or other arrangements satisfactory to the Rating Agencies in the event of a rating downgrade of such swap counterparty below a level specified by the Rating Agency, which would be no lower than the level that would make such counterparty ''eligible'' under this proposed exemption (see Section III.II. above). If these arrangements are not established within a specified period, as described in the PSA, there will be an early payout event causing certificateholders to receive an earlier than expected payout of principal on their certificates for the series to which the swap relates. However, with respect to a Non-Ratings Dependent Swap, the PSA will not specify that there be an early payout event for the series to which the swap relates if the credit rating of the swap counterparty falls below the level required for it to be considered an Eligible Swap Counterparty (as described in Section III.II. above). In such instances, in order to protect the interests of the Trust as a swap counterparty, the servicer (as agent for the trustee of the trust) will be required to either:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement will terminate);

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms.

Under any termination of a swap, the Trust will not be required to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from ''excess finance charge collections'' or other amounts that would otherwise be payable to the servicer or the seller (i.e. MBNA). In this regard, ''excess finance charge collections'' will be, as of any day funds are distributed from the Trust, the amounts by which the finance charge collections allocated to certificates of a series exceed the amounts necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

With respect to Non-Ratings Dependent Swaps, each Rating Agency rating the Certificates must confirm, as of the date of issuance of the Certificates by the Trust, that entering into the swap transactions with the Eligible Swap Counterparty will not effect the rating of the Certificates, even if such counterparty is no longer an ''eligible'' counterparty and the swap is terminated.[15]

Any class of senior Certificates to which one or more swap agreements entered into by the trust applies, will be acquired or held only by Qualified Plan

[15] RA Reps have indicated to the Department that certain series of certificates issued by a trust holding credit card receivables will have certificate ratings that are not dependent on the existence of a swap transaction entered into by the trust. Therefore, a downgrade in the swap counterparty's credit rating would not cause a downgrade in the rating established by the Rating Agency for the certificates. RA Reps state that in such instances there will be more credit enhancements (e.g. ''excess spread'', letters of credit, cash collateral accounts) for the series to protect the certificateholders than there would be in a comparable series where the trust enters into a so-called Ratings Dependent Swap. Non-Ratings Dependent Swaps are generally used as a convenience to enable the trust to pay certain fixed interest rates on a series of certificates. However, the receipt of such fixed rates by the trust from the counterparty is not a necessity for the trust to be able to make its fixed rate payments to the certificateholders.

Investors (as defined in Section III.JJ. above). Qualified Plan Investors will be plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction relating to the class of senior Certificates to be purchased and the effect such swap would have upon the credit rating of the senior Certificates to which the swap relates.

For purposes of the proposed exemption, such a qualified independent fiduciary will be either:

(i) A ''qualified professional asset manager'' (i.e. QPAM), as defined under Part V(a) of PTE 84–14; [16]

(ii) an ''in-house asset manager'' (i.e. INHAM), as defined under Part IV(a) of PTE 96–23; [17] or

(iii) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Certificates.

Disclosures Available to Investing Plans

26. In connection with the original issuance of certificates, the prospectus or private offering memorandum will be furnished to investing plans. The prospectus or private offering memorandum will contain information pertinent to a plan's decision to invest in the Certificates, such as:

(a) Information concerning the Certificates, including payment terms, certain tax consequences of owning and selling Certificates, the legal investment status and rating of the Certificates, and any special considerations with respect to the Certificates;

(b) Information about the underlying receivables, including the types of receivables, statistical information relating to the receivables, their payment terms, and the legal aspects of the receivables;

(c) Information about the servicing of the receivables, including the identity of the servicer and servicing compensation;

(d) Information about the Sponsor of the Trust;

(e) A full description of the material terms of the Pooling and Servicing Agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such Certificates.

Certificateholders will be provided with information concerning the amount of principal and interest to be paid on Certificates in connection with each distribution to Certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the status of the Trust.

In the case of a Trust that offers and sells Certificates in a registered public offering, the Trustee, the Servicer or the Sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934 (the '34 Act). Although some Trusts that offer Certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many Trusts (i) obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K; or (ii) are not subject to such requirements for one or more Series of Certificates issued by the Trust. If such an exemption is obtained, these Trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the Trust and the Certificates. While the SEC's interpretation of the periodic reporting requirement is subject to change, periodic reports concerning a Trust will be filed to the extent required under the '34 Act.

MBNA states that at or about the time distributions are made to Certificateholders, reports will be delivered to the Trustee as to the status of the Trust and its assets, including underlying Receivables. Such reports will typically contain information regarding the Trust's assets, payments received or collected by the Servicer, the amount of delinquencies and defaults, the amount of any payments made pursuant to any credit support or credit enhancement feature, and the amount of compensation payable to the Servicer. Such reports will also be delivered or made available to the Rating Agency that currently rates the Certificates. Such reports will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date, Certificateholders will receive a statement summarizing information regarding the Trust and its assets and the applicable Series, including underlying receivables.

28. In summary, MBNA represents that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because, among other things:

(a) The acquisition of senior Certificates by a plan will be on terms (including Certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(b) The rights and interests evidenced by the senior Certificates will not be subordinated to the rights and interests evidenced by other investor Certificates of the Trust;

(c) Any senior Certificates acquired by a plan will have received a rating at the time of such acquisition that is in one of the two highest generic rating categories from any one of the Rating Agencies or, for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies;

(d) The Trustee of the Trust will not be an affiliate of any other member of the Restricted Group;

(e) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of Certificates will represent not more than reasonable compensation for underwriting or placing the Certificates; the consideration received by the Sponsor as a consequence of the assignment of receivables (or interests therein) to the Trust will represent not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the Servicer, which are allocable to the Series or class of certificates purchased by a plan, will represent not more than reasonable compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(f) Any plan investing in such Certificates will be an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the SEC under the Securities Act of 1933;

(g) The terms of each Series or class of Certificates, and the conditions under which MBNA may designate additional accounts to, or remove previously-designated accounts from, the Trust will be described in the prospectus or private placement memorandum provided to investing plans;

(h) The Trustee of the Trust will be a substantial financial institution or trust company experienced in trust activities and would be familiar with its duties, responsibilities and liabilities as a fiduciary under the Act;

(i) The PSA will include ''Economic Pay Out Events'' triggered by a decline in the performance of the receivables in the Trust;

(j) To protect against fraud, chargebacks or other dilution of the receivables in the Trust, the PSA and the Rating Agencies will require MBNA, as the Trust's sponsor, to maintain a seller interest of not less than 2 percent

[16] See Footnote 8 above.

[17] See Footnote 9 above.

of the principal balance of the receivables contained in the Trust;

(k) Each receivable added to a Trust will be an eligible receivable, based on criteria of the relevant Rating Agency(ies) and as specified in the PSA;

(l) The PSA will require that any change in the terms of any cardholder agreements also will be made applicable to the comparable segment of accounts owned or serviced by MBNA which are part of the same program or have the same or substantially similar characteristics;

(m) The addition of new receivables or designation of new accounts, or removal of previously-designated accounts, will meet the terms and conditions for such additions, designations, or removals as described in the prospectus or private placement memorandum for such Certificates, which terms and conditions will have been approved by each relevant Rating Agency, and will not result in the Certificates receiving a lower credit rating from the relevant Rating Agency than the then current rating of the Certificates;

(n) Any swap transaction relating to senior Certificates that are covered by the proposed exemption must satisfy the several investor-protective conditions applicable to Eligible Swaps and must be entered into by the Trust with an Eligible Swap Counterparty; and

(o) Any class of Certificates to which one or more swap agreements entered into by the Trust applies may be acquired or held by plans in reliance upon this proposed exemption only if such plans are represented by ''Qualified Plan Investors.''

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Citibank (South Dakota), N.A., Citibank (Nevada), N.A., and Affiliates
Located in North Sioux Falls, South Dakota
(Application No. D–10313)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. Effective as of the date this proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and an employee benefit plan subject to the Act or section 4975 of the Code (a plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of the Excluded Plan that are invested in certificates.[18]

B. Effective as of the date this proposed exemption is granted, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the trust, the sponsor or an underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to receivables contained in the trust constituting 0.5 percent or less of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate undivided interest in the trust allocated to the certificates of a series is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates of a series does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition;

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing the aggregate undivided interest in a trust allocated to the certificates of a series and containing receivables sold or serviced by the same entity;[19] and

(v) Immediately after the acquisition of the certificates, not more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice is invested in certificates representing an interest in the trust, or trusts containing receivables sold or serviced by the same entity. For purposes of paragraphs B.(1)(iv) and B.(1)(v) only, an entity shall not be considered to service receivables contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in Section I. B.(1)(i), (iii) through (v) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B.(1) or (2).

C. Effective as of the date that the proposed exemption is granted, the restrictions of sections 406(a), 406(b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, including the reassignment to the sponsor of receivables, the removal from the trust of accounts previously designated to the trust, the changing of the underlying terms of accounts designated to the trust, the adding of

[18] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[19] For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

new receivables to the trust, the designation of new accounts to the trust, the retention of a retained interest by the sponsor in the receivables, the exercise of the right to cause the commencement of amortization of the principal amount of the certificates, or the use of any eligible swap transactions, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust; [20]

(3) The addition of new receivables or designation of new accounts, or the removal of receivables or previously-designated accounts, meets the terms and conditions for such additions, designations or removals as are described in the prospectus or private placement memorandum for such certificates, which terms and conditions have been approved by Standard & Poor's Ratings Services, Moody's Investor Service, Inc., Duff & Phelps Credit Rating Co., or Fitch Investors Service, L.P., or their successors (collectively, the Rating Agencies), and does not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating for the Certificates; and

(4) The series of which the certificates are a part will be subject to an Economic Early Amortization Event, which is set forth in the pooling and servicing agreement and described in the prospectus or private placement memorandum associated with the series, the occurrence of which will cause any Revolving Period, Controlled Amortization Period, or Accumulation Period applicable to the certificates to end, and principal collections to be applied to monthly payments of principal to, or accumulated for the account of, the certificateholders of such series until the earlier of: (i) payment in full of the outstanding principal amount of such certificates of such series, or (ii) the series termination date specified in the prospectus or private placement memorandum.

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code, for the receipt of a fee by the servicer of the trust, in connection with the servicing of the receivables and the operation of the trust, from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in Section III.S. below.

D. Effective as of the date that the proposed exemption is granted, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II—General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is either: (i) in one of the two highest generic rating categories from any one of the Rating Agencies; or (ii) for certificates with a duration of one year or less, the highest short-term generic rating category from any one of the Rating Agencies; provided that, notwithstanding such ratings, this exemption (if granted) shall apply to a particular class of certificates only if such class (an Exempt Class) is part of a series in which credit support is provided to the Exempt Class through a senior-subordinated series structure or other form of third-party credit support which, at a minimum, represents five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust represents not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, that are allocable to the series of certificates purchased by a plan, represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) The trustee of the trust is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act (i.e. ERISA). The trustee, as the legal owner of the receivables in the trust, enforces all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act;

(8) Prior to the issuance of any new series in the trust, confirmation must be received from the Rating Agencies that such issuance will not result in the reduction or withdrawal of the then current rating or ratings of the certificates held by any plan pursuant to this exemption;

(9) To protect against fraud, chargebacks or other dilution of receivables in the trust, the pooling and

[20] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this proposed exemption, all references to ''prospectus'' include any related supplement thereto, and any documents incorporated by reference therein, pursuant to which certificates are offered to investors.

servicing agreement and the Rating Agencies require the sponsor to maintain a seller interest of not less than the greater of (i) 2 percent of the initial aggregate principal balance of investor certificates issued by the trust, or (ii) 7 percent of the outstanding aggregate principal balance of investor certificates issued by the trust;

(10) Each receivable added to the trust will be an eligible receivable, based on criteria of the Rating Agency and as specified in the pooling and servicing agreement. The pooling and servicing agreement requires that any change in the terms of any cardholder agreements also be made applicable to the comparable segment of Accounts owned or serviced by the sponsor which are part of the same program or have the same or substantially similar characteristics;

(11) The pooling and servicing agreement limits the number of the sponsor's newly originated accounts to be added to the trust, unless the Rating Agency otherwise affirmatively consents, to the following: (i) with respect to any three month period, 15 percent of the number of existing accounts designated to the trust as of the first day of such period, and (ii) with respect to any calendar year, 20 percent of the number of existing accounts designated to the trust as of the first day of such calendar year;

(12) The pooling and servicing agreement requires the sponsor to deliver an opinion of counsel semi-annually confirming the validity and perfection of each transfer of newly originated accounts to the trust;

(13) The pooling and servicing agreement requires the sponsor and the trustee to receive at specified quarterly intervals during the year, confirmation from a Rating Agency that the addition of all newly originated accounts added to the trust (during the three month period ending in the calendar month prior to such confirmation) will not have resulted in a Ratings Effect;

(14) If a particular series of certificates held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the trust, then each particular swap transaction relating to such certificates:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall include as an early amortization event, as specified in the pooling and servicing agreement, the withdrawal or reduction by any Rating Agency of the swap counterparty's credit rating below a level specified by the Rating Agency where the servicer (as agent for the trustee) has failed, for a specified period after such rating withdrawal or reduction, to meet its obligation under the pooling and servicing agreement to:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular series of certificates will not be withdrawn or reduced;

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the swap counterparty is withdrawn or reduced below the lowest level specified in Section III.II. hereof, the servicer (as agent for the trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the trust to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from ''Excess Finance Charge Collections'' (as defined below in Section III.LL.) or other amounts that would otherwise be payable to the servicer or the seller; and

(15) Any Series of certificates which entails one or more swap agreements entered into by the trust shall be sold only to Qualified Plan Investors.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that:

(1) Such condition is disclosed in the prospectus or private placement memorandum; and

(2) In the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

Section III—Definitions

For purposes of this proposed exemption:

A. *Certificate means*

(1) A certificate:

(a) That represents a beneficial ownership interest in the assets of a trust;

(b) That entitles the holder to payments denominated as principal and interest, and/or other payments made in connection with the assets of such trust, either currently, or after a Revolving Period during which principal payments on assets in the trust are reinvested in new assets; or

(2) A certificate denominated as a debt instrument that represents an interest in a financial asset securitization investment trust (FASIT) within the meaning of section 860L of the Code, and that is issued by and is an obligation of a trust;

which is sold upon initial issuance by an underwriter (as defined in Section III.C.) in an underwriting or private placement.

For purposes of this proposed exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Receivables (as defined in Section III.T.); or

(b) Participations in a pool of receivables (as defined in Section III.T.) where such beneficial ownership interests are not subordinated to any other interest in the same pool of receivables; [21]

[21] The Department notes that no relief would be available under the exemption if the participation interests held by the trust were subordinated to the rights and interests evidenced by other

(2) Property which has secured any of the assets described in Section III.B.(1);[22]

(3) Undistributed cash or permitted investments made therewith maturing no later than the next date on which distributions are to be made to certificate holders, except during a Revolving Period (as defined herein) when permitted investments are made until such cash can be reinvested in additional receivables described in paragraph (a) of this Section III.B.(1);

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any cash collateral accounts, insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any certificates, swap transactions, or under any yield supplement agreements,[23] yield maintenance agreements or similar arrangements; and

(5) Rights to receive interchange fees received by the sponsor as partial compensation for the sponsor's taking credit risk, absorbing fraud losses and funding receivables for a limited period prior to initial billing with respect to accounts designated to the trust.

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of receivables of the type which have been included in other investment pools; (ii) certificates evidencing interests in such other investment pools have been rated in one of the two highest generic rating categories by at least one of the Rating Agencies for at least one year prior to the plan's acquisition of certificates pursuant to this exemption; and (iii) certificates evidencing an interest in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue ''asset-backed'' pass-through securities to plans, that is similar in format and structure to this proposed exemption (the Underwriter Exemptions);[24] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or affiliated person described above is a manager or co-manager with respect to the certificates.

D. *Sponsor* means Citibank or an affiliate of Citibank that organizes a trust by transferring credit card receivables or interests therein to the trust in exchange for certificates.

E. *Master Servicer* means Citibank or an entity affiliated with Citibank that is a party to the pooling and servicing agreement relating to trust receivables and is fully responsible for servicing, directly or through subservicers, the receivables in the trust pursuant to the pooling and servicing agreement.

F. *Subservicer* means Citibank or an affiliate, or an entity unaffiliated with Citibank, which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means Citibank or an affiliate which services receivables contained in the trust, including the master servicer and any subservicer or their successors pursuant to the pooling and servicing agreement.

H. *Trustee* means an entity which is independent of Citibank and its affiliates and is the trustee of the trust. In the case of certificates which are denominated as debt instruments, ''trustee'' also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, provider of other credit support for, or other contractual counterparty of, a trust. Notwithstanding the foregoing, a swap counterparty is not an insurer, and a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any receivable included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Each swap counterparty;

(7) Any obligor with respect to receivables contained in the trust constituting more than 0.5 percent of the fair market value of the aggregate undivided interest in the trust allocated to the certificates of a series, determined on the date of the initial issuance of such series of certificates by the trust; or

(8) Any affiliate of a person described in Section III.L.(1)–(7).

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward Delivery Commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory

participation interests in the same pool of receivables.

[22] Citibank states that it is possible for credit card receivables to be secured by bank account balances or security interests in merchandise purchased with credit cards. Thus, the proposed exemption should permit foreclosed property to be an eligible trust asset.

[23] In a series involving an accumulation period (as defined in Section III.AA), a yield supplement agreement may be used by the Trust to make up the difference between (i) the reinvestment yield on permitted investments, and (ii) the interest rate on the certificates of that series.

[24] For a listing of the Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97–34 (62 FR 39021, July 21, 1997).

contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable Compensation* has the same meaning as that term is defined in 29 CFR section 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing with respect to the receivables;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement or described in all material respects in the prospectus or private placement memorandum provided to the plan before it purchases certificates issued by the trust; and

(4) The amount paid to investors in the trust is not reduced by the amount of any such fee waived by the servicer.

T. *Receivables* means secured or unsecured obligations of credit card holders which have arisen or arise in Accounts designated to a trust. Such obligations represent amounts charged by cardholders for merchandise and services and amounts advanced as cash advances, as well as periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and over-limit fees and fees of a similar nature designated by card issuers (other than a qualified administrative fee as defined in Section III.S. above).

U. *Accounts* are revolving credit card accounts serviced by Citibank or an affiliate, which were originated or purchased by Citibank or an affiliate, and are designated to a trust such that receivables arising in such accounts become assets of the trust.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust and any supplement thereto pertaining to a particular series of certificates. In the case of certificates which are denominated as debt instruments, ''pooling and servicing agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *Early Amortization Event* means the events specified in the pooling and servicing agreement that result (in some instances without further affirmative action by any party) in an early amortization of the certificates, including: (1) the failure of the sponsor or the servicer (i) to make any payment or deposit required under the pooling and servicing agreement or supplement thereto within five (5) business days after such payment or deposit was required to be made, or (ii) to observe or perform any of its other covenants or agreements set forth in the pooling and servicing agreement or supplement thereto, which failure has a material adverse effect on investors and continues unremedied for 60 days; (2) a breach of any representation or warranty made by the sponsor or the servicer in the pooling and servicing agreement or supplement thereto that continues to be incorrect in any material respect for 60 days; (3) the occurrence of certain bankruptcy events relating to the sponsor or the servicer; (4) the failure by the sponsor to convey to the trust additional receivables to maintain the minimum seller interest that is required by the pooling and servicing agreement and the Rating Agencies; (5) if a class of investor certificates is in an Accumulation Period, the amount on deposit in the accumulation account in any month is less than the amount required to be on deposit therein; (6) the failure to pay in full amounts owing to investors on the expected maturity date; and (7) the Economic Early Amortization Event.

X. *Series* means an issuance of a class or various classes of certificates by the trust all on the same date pursuant to the same pooling and servicing agreement and any supplement thereto and restrictions therein.

Y. *Revolving Period* means a period of time, as specified in the pooling and servicing agreement, during which principal collections allocated to a series are reinvested in newly generated receivables.

Z. *Controlled Amortization Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will commence to be paid to the certificateholders of such series in installments.

AA. *Accumulation Period* means a period of time specified in the pooling and servicing agreement during which a portion of the principal collections allocated to a series will be deposited in an account to be distributed to certificateholders in a lump sum on the expected maturity date.

BB. *CCA or Cash Collateral Account* means that certain account, established by the trustee, that serves as credit enhancement with respect to the investor certificates and consists of cash deposits and the proceeds of investments thereon, which investments are permitted investments, as defined below.

CC. *Permitted Investments* means investments which: (1) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligation is backed by the full faith and credit of the United States, or (2) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the Rating Agency.

DD. *Group* means a group of any number of series offered by the trust that share finance charge and/or principal collections in the manner described in the prospectus.

EE. *An Economic Early Amortization Event* occurs automatically when finance charge collections averaged over three consecutive months are less than the total amount payable on the investor certificates, including (i) amounts payable to, or on behalf of, certificateholders, with respect to interest, defaults, and chargeoffs, (ii) servicing fees payable to the servicer, and (iii) any credit enhancement fee payable to the third-party credit enhancer and allocable to the certificateholders. With respect to a series to which an Accumulation Period (as defined above in Section III.AA.) applies, an additional Economic Early Amortization Event occurs when, for any time during the Accumulation Period, the yield on the receivables in the Trust is less than the weighted average of the certificate rates of all series included in a particular Group within the Trust.

FF. *Ratings Effect* means the reduction or withdrawal by a Rating Agency of its then current rating of the investor certificates of any outstanding series.

GG. *Principal Receivables Discount* means, with respect to any account designated by the sponsor, the portion of the related principal receivables that represents a discount from the face value thereof and that is treated under the pooling and servicing agreement as finance charge receivables.

HH. *Eligible Swap* means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap, that is part of the structure of a Series of certificates:

(1) Which is denominated in U.S. Dollars;

(2) Pursuant to which the trust pays or receives on or immediately prior to the respective payment or distribution date for the series of certificates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g. LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the trust receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the swap counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either (i) the certificate balance of the class of certificates to which the swap relates, or (ii) the portion of the certificate balance of such class represented by receivables;

(4) Which is not leveraged, (i.e. payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in (2) above, and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a termination date that is the earlier of the date on which the trust terminates or the related Series of certificates is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in a provision described in clauses (1) through (4) hereof without the consent of the trustee.

II. *Eligible Swap Counterparty* means a bank or other financial institution with a rating at the date of issuance of the certificates by the trust which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the certificates; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility hereunder, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the series of certificates with which the swap is associated has a final maturity date of more than one year from the date of issuance of the certificates, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap to establish any collateralization or other arrangement satisfactory to the Rating Agency in the event of a ratings downgrade of the swap counterparty.

JJ. *Qualified Plan Investor* means a plan investor or group of plan investors on whose behalf the decision to purchase certificates is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of the proposed exemption, such a fiduciary is either:

(1) A ''qualified professional asset manager'' (QPAM), as defined under Part V(a) of PTE 84–14 (49 FR 9494, 9506, March 13, 1984);[25]

(2) An ''in-house asset manager'' (INHAM), as defined under Part IV(a) of PTE 96–23 (61 FR 15975, 15982, April 10, 1996);[26] or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such certificates.

KK. *Ratings Dependent Swap* means an interest rate swap, or (if purchased by or on behalf of the trust) an interest rate cap contract, that is part of the structure of a series of certificates where the rating assigned by the Rating Agency to any series of certificates held by any plan is dependent on the terms and conditions of the swap and the rating of the swap counterparty, and if such certificate rating is not dependent on the existence of such swap and rating of the swap counterparty, such swap or cap shall be referred to as a ''Non-Ratings Dependent Swap''. With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the certificates must confirm, as of the date of issuance of the certificates by the trust, that entering into an Eligible Swap with such counterparty will not affect the rating of the certificates.

LL. *Excess Finance Charge Collections* means, as of any day funds are distributed from the trust, the amount by which the finance charge collections allocated to certificates of a series exceed the amount necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term ''Underwriter Exemption'' as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95–60, 60 FR 35925).

Summary of Facts and Representations

1. The applicants are Citibank (South Dakota), N.A., Citibank (Nevada), N.A. (together referred to herein as either ''the Banks'' or ''Citibank''), and their Affiliates (collectively, the Applicants). Each of the Banks is a national banking association and an indirect wholly-owned subsidiary of Citicorp.

2. The Banks are, collectively, through their securitization trust vehicles, the largest issuers of credit card receivable asset-backed securities (ABS) in the United States. As of May 26, 1996, such vehicles had issued over $46 billion of credit card receivable ABS. The Banks created Citibank Credit Card Master Trust I (the Trust), formerly known as Standard Credit Card Master Trust I, in May 1991 by entering into a pooling and servicing agreement (a Pooling Agreement) with Yasuda Bank and Trust Company (U.S.A.), as trustee (the Trustee), for the purpose of securitizing a portion of each Bank's portfolio of credit card receivables.

Although the Banks, the Trust and the Pooling Agreement are described herein, the Applicants request an exemption for any master trust similar to the Trust (a Similar Master Trust)[27] established by either of the Banks or an Affiliate pursuant to a pooling and servicing agreement or other contractual arrangement similar to the Pooling

[25] PTE 84–14 provides a class exemption for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including either a single customer or pooled separate account) in which the plan has an interest, and which is managed by a QPAM, provided certain conditions are met. QPAMs (e.g. banks, insurance companies, registered investment advisers with total client assets under management in excess of $50 million) are considered to be experienced investment managers for plan investors that are aware of their fiduciary duties under ERISA.

[26] PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by an INHAM, an entity which is generally a subsidiary of an employer sponsoring the plan which is a registered investment adviser with management and control of total assets attributable to plans maintained by the employer and its affiliates which are in excess of $50 million.

[27] With respect to such Similar Master Trusts, Citibank states that the Small Business Act of 1996 created a new form of statutory entity called a ''financial asset securitization investment trust'' (FASIT) which may be used to securitize debt obligations such as credit card receivables, home equity loans, and automobile loans. The Applicants state that a FASIT is equitably owned by a single taxable corporation and issues asset-backed securities that are treated as debt for Federal Income Tax purposes. Activities of a FASIT are generally limited to holding a portfolio of qualified loans. For local law purposes, a FASIT might be a trust, a corporation, or a designated subset of the assets of a trust or a corporation. The Applicants represent that some certificates covered by the proposed exemption may be issued by a FASIT, assuming all of the conditions of the exemption are met including the requirement that the certificates be issued by a Trust (as defined herein).

Agreement and satisfying the conditions set forth in this proposed exemption. In addition, although Citibank (South Dakota) is described as the owner of Accounts and the servicer and a seller with respect to the Trust, the Applicants request an exemption for any Similar Master Trust established by the Banks or one or more Affiliates of the Banks, regardless of the identity or affiliation of the servicer, for which Citibank or an Affiliate acts as the Master Servicer.

The Series

3. The Pooling Agreement allows the Trust to issue multiple series of investor certificates (each, a Series) with different coupons, interest payment dates, maturities and other terms. The assets of the Trust consist primarily of receivables (the Receivables) from a portfolio of revolving credit card accounts (the Accounts) and collections thereon. The Banks are required to provide sufficient Receivables to allow the reinvestment of principal collections during the Revolving Period (as discussed below) for a Series. The Banks retain an ownership interest in the Trust in the form of a seller certificate. By maintaining this interest, the Banks share with the certificateholders of each Series a pro rata mutual interest in the overall credit quality of the Receivables in the Trust.

Investor certificates of a Series may be sold by the Banks directly to purchasers, through underwriting syndicates led by one or more managing underwriters, through an underwriter acting alone or through agents designated from time to time. As of June 25, 1997, investors in the Trust owned approximately $24.5 billion in certificates issued by the Trust, comprising 33 outstanding Series. The Banks expect to issue additional Series evidencing interests in the Trust from time to time. The Banks may offer additional Series with terms similar to or significantly different from an outstanding Series. Before issuance of any new Series, the Banks must receive confirmation from Standard & Poor's Ratings Group, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch Investors Service, L.P. (a Rating Agency) that the ratings on any outstanding Series will not be reduced or withdrawn (a Ratings Effect) as a result of such new issuance. The particular terms of each Series are determined at the time of sale and are contained in a supplement to the Pooling Agreement (a Series Supplement).

The investor certificates of each Series represent beneficial interests in the assets of the Trust and evidence the right to receive distributions of principal and interest therefrom. Although representing beneficial interests in the Trust assets, the investor certificates have a structure similar to debt instruments, with a principal amount and a coupon. The investor certificates are treated as debt for federal income tax purposes, and are also issued in authorized denominations like debt. Each Series has an expected maturity date (the Expected Final Payment Date) and a legal final maturity date (the Series Termination Date). Citibank states that the Expected Final Payment Date is not the date on which the payment of the security is legally obligated to be paid. Rather, the Expected Final Payment Date is the date on which, to a high degree of certainty, collections on the Receivables are expected to be sufficient to repay the investors. However, the investors must be repaid by the Series Termination Date and, if necessary, any interest in the Receivables represented by the investor certificates of such Series will be sold and the proceeds distributed to investors to make such repayment.

All Series issued by the Trust to date are subdivided into a senior class of investor certificates and a junior or subordinated class of investor certificates, or have the benefit of third-party credit support such that a person other than an investor in senior certificates bears the initial risk of loss. In this regard, Citibank represents that the particular class of certificates for each series to which this proposed exemption would apply (an Exempt Class) will have credit support provided to the Exempt Class through either a senior-subordinated series structure or other form of third party credit support which, at a minimum, will represent five (5) percent of the outstanding principal balance of certificates issued for the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss.

The subdivision of a Series into two classes, along with the credit enhancement discussed herein, permits the senior or Class A certificates to receive an ''AAA'' rating, the highest possible investment grade rating. The subordinate or Class B certificates also receive an investment grade rating, typically ''A''. The ratings address the likelihood that investors will receive all interest when due and principal by the legal final maturity date. As discussed in more detail below, these ratings are based upon, among other things, (i) the historical performance of the Receivables arising in the Accounts, (ii) a loan made by a third party financial institution to a cash collateral account (CCA) established by the Trustee to serve as credit enhancement for the Class A and Class B Certificates or other credit enhancement, and (iii) in the case of the Class A Certificates, the subordination of the Class B Certificates.

The Applicants state that if a CCA is used as credit enhancement for a Series, only cash in the form of a loan will be contributed or deposited in a CCA. The loans made to a CCA will be made by third-party financial institutions, unrelated to Citibank. The Trustee will have the right to draw on the CCA under the terms of the Series supplement to the Pooling Agreement and the related loan agreement for the CCA. Cash deposits held in a CCA will be invested in certain permitted investments, as described in the Pooling Agreement, and such investments will be either highly rated or otherwise approved by a Rating Agency. The Applicants state further that not all Series will have the benefit of a CCA. Some Series will have other forms of credit enhancement (such as a letter of credit or a reserve fund) as set forth in the applicable prospectus supplement for the Series.

In general, under current Rating Agency guidelines for the Master Trust, the Class A Certificates comprise 94 percent of the principal amount of a Series and the Class B Certificates comprise 6 percent of the principal amount of a Series. Citibank states that where a CCA is used as enhancement for a Series, the CCA will be funded at closing in an amount generally equal to 7 percent of the principal amount of the Series. The CCA is often further divided into a 5 percent shared CCA, which is shared by the Class A and Class B Certificateholders, but with the Class A Certificateholders having priority, and a 2% Class B CCA, which is for the exclusive benefit of the Class B Certificateholders. The CCA provider receives a monthly fee for providing the loan. This fee is deducted from the monthly finance charge collections allocated to the Series, but only after first deducting amounts payable to, or on behalf of, the investor certificateholders of such Series, as described below.

Citibank represents that the Trust may commence a new program (the ''MTC Program'') for the issuance of a new Series of investor certificates to be comprised of senior certificates (Series A Certificates) and subordinate certificates (Series B Certificates). Under the MTC Program, the Series B Certificates will be subordinated to each Series of Series A Certificates, in accordance with the current Rating Agency guidelines. The Series issued under the MTC Program will also have the benefit of a common CCA which

will be funded in an amount sufficient to permit each of the Series A Certificates to receive an ''AAA'' rating and each of the Series B Certificates to receive at least an ''A'' rating.

The Receivables and the Accounts

4. The Receivables conveyed by the Banks to the Trust consist of all amounts charged by cardholders for merchandise and services and amounts advanced as cash advances (Principal Receivables), and all periodic finance charges, annual membership fees, cash advance fees, late charges on amounts charged for merchandise and services and certain other fees designated by the Banks (Finance Charge Receivables). Citibank states that as of April 21, 1997, the Trust had $35,677,604,475 in Receivables, of which $35,175,269,487 were Principal Receivables and $502,335,488 were Finance Charge Receivables. The Receivables conveyed to the Trust to date were generated under the VISA or MasterCard [28] programs and were either originated by Citibank or purchased by Citibank from other credit card issuers. Citibank states that other credit card receivables may be included in the Trust so long as the eligibility criteria discussed herein are met.

The Accounts are owned by Citibank (South Dakota), but a participation in the Receivables in certain of the Accounts was sold to Citibank (Nevada) prior to their conveyance to the Trust. The Accounts have been selected from substantially all of the Eligible Accounts (as defined under ''Eligibility Criteria'' below) in the credit card portfolio of Citibank (South Dakota) (referred to herein as ''the Portfolio''). Citibank (South Dakota) believes that the Accounts are representative of the Eligible Accounts in the Portfolio. Citibank represents in the Pooling Agreement that the inclusion of the Accounts, as a whole, does not represent an adverse selection from among the Eligible Accounts.

The Pooling Agreement designates Citibank (South Dakota) to service the Accounts on behalf of the Trust, including collecting payments due under the Receivables. Citibank, as the servicer of the Trust, receives fees for its services from the Trustee or sponsor of the Trust. Citibank states that the sum of all payments made to and retained by Citibank, as the servicer of the Trust, which are allocable to the series of certificates purchased by a plan, will represent not more than reasonable compensation for such services and reimbursement of any reasonable expenses in connection therewith. Citibank, in its role as servicer of the Receivables in the Trust, does not receive fees from other persons other than the Trustee or sponsor. Citibank may receive fees from others for activities unrelated to the Trust, and may receive payments from obligors on Receivables in the Trust because it has some other relationship to the obligors, such as the provider of credit card insurance. In this regard, Citibank states that the proposed exemption would permit it to receive a ''qualified administrative fee'' (as defined in Section III.S) from a person other than the Trustee or sponsor of the Trust under circumstances which are similar to those which were permitted in the Underwriter Exemptions.

Principal receivables are sold to the Trust at par (or, as discussed below, at a discount to par) in exchange for a seller certificate or to maintain investor certificates during the Revolving Period. Each dollar of investor certificates entitles an investor to a dollar of principal receivables. Prior to transferring principal receivables to the Trust, Citibank may redesignate a portion of principal receivables to be classified as finance charge receivables (a/k/a the Principal Receivables Discount). This allows Citibank to transfer lower yielding receivables to the Trust at a discount from their par value and to treat the discounted portion of the principal receivables collected as finance charge receivables (a Discount Option). The Discount Option enables Citibank to add receivables relating to credit card accounts with relatively low finance charge rates without adversely effecting the ''excess spread'' between the certificate rate and the overall net yield on the receivables held in the Trust. The discounted portion of the principal receivables is not counted toward any requirements for maintaining the ''required minimum principal balance'' (as discussed below). Citibank states that the redesignation of principal receivables as finance charge receivables will not disadvantage investors as each dollar of investor certificates will always be entitled to a dollar of principal receivables held in the Trust.

Upon the sale of investor certificates, the transaction between Citibank and the Trust is characterized as a sale for generally accepted accounting principals. However, legal opinions issued in connection with such a sale may conclude that the transaction is either an absolute transfer of the receivables to the Trust or, in the alternative, a grant of a perfected security interest in the Receivables for the benefit of certificateholders in the Trust.

The Pooling Agreement sets forth the various requirements governing the quantity and quality of Receivables that may be included in the Trust. In connection with any conveyance to the Trust, Citibank must make certain representations and warranties regarding the Receivables, including that the Receivables to be conveyed meet eligibility criteria described below and specified in the Pooling Agreement. Citibank also must maintain the level of Principal Receivables at or above a certain minimum amount specified by the Rating Agencies (see discussion of additions of accounts in Paragraph 7 below).

Notwithstanding such requirements, the Pooling Agreement contains provisions analogous to the collateral substitution provisions in a loan agreement or indenture relating to a secured loan, which permit Citibank, subject to certain conditions imposed by the Rating Agencies, to designate new Accounts or remove certain Accounts, to cause the reassignment to Citibank of previously conveyed Receivables and, subject to certain limitations, to change the underlying terms of the Accounts with cardholders.

5. *Representations and Warranties.* On the issuance date for a Series of investor certificates, Citibank makes representations and warranties to the Trust relating to the Receivables and Accounts to the effect, among other things, that:

(a) Each Account was an Eligible Account (as defined under the ''Eligibility Criteria'' below), generally as of the date the Receivables arising therein were initially conveyed to the Trust;

(b) Each of the Receivables then existing in the Accounts is an Eligible Receivable; and

(c) As of the date of creation of any new Receivable, such Receivable is an Eligible Receivable.

The Pooling Agreement provides that if Citibank breaches any such representation or warranty, and such breach has a material adverse effect on the investor certificateholders' interest, as determined by the Trustee, the Receivables with respect to the affected Account will be reassigned to Citibank if the breach remains uncured after a specified period of time.

Citibank states that it also represents and warrants to the Trust, among other things, that as of the issuance date for a Series of investor certificates the Pooling Agreement and Series

[28] VISA and MasterCard are registered trademarks of VISA U.S.A., Inc. and MasterCard International Incorporated, respectively.

Supplement thereto creates a valid sale, transfer and assignment to the Trust of all right, title and interest of Citibank in the Receivables or the grant of a first priority perfected security interest under the Uniform Commercial Code as in effect in South Dakota and Nevada in such Receivables. If Citibank breaches such representation or warranty, and such breach has a material adverse effect on the investor certificateholders' interest, the Trustee or the holders of the investor certificates may direct Citibank to accept the reassignment of the Receivables in the Trust and transfer funds to the Trust in an amount equal to the outstanding principal amount of the investor certificates plus accrued interest thereon.

6. *Eligibility Criteria.* An *Eligible Account* is a credit card account owned by Citibank (South Dakota) which: (a) is in existence and maintained by Citibank (South Dakota); (b) is payable in U.S. dollars; (c) in the case of initial Accounts, has a cardholder with a billing address located in the United States or its territories or possessions or a military address; (d) has a cardholder who has not been identified as being involved in a voluntary or involuntary bankruptcy proceeding; (e) has not been identified as an Account with respect to which the related card has been lost or stolen; (f) has not been sold or pledged to any other party; (g) does not have receivables which have been sold or pledged to any other party; and (h) in the case of the Accounts initially assigned to the Trust, is a VISA or MasterCard revolving credit card account.

An *Eligible Receivable* is a Receivable: (a) Which has arisen under an Eligible Account; (b) which was created in compliance in all material respects with all requirements of law and pursuant to a credit card agreement which complies in all material respects with all requirements of law; (c) with respect to which all material consents, licenses, approvals or authorizations of, or registrations with, any governmental authority required to be obtained or given in connection with the creation of such Receivable or the execution, delivery, creation and performance by Citibank (South Dakota) or by the original credit card issuer, if not Citibank (South Dakota), of the related credit card agreement have been duly obtained or given and are in full force and effect; (d) as to which at the time of its transfer to the Trust, the Banks or the Trust have good and marketable title, free and clear of all liens, encumbrances, charges and security interests; (e) which has been the subject of a valid transfer and assignment from the Banks to the Trust of all the Banks' right, title and interest therein or the grant of a first priority perfected security interest therein (and in the proceeds thereof); (f) which will at all times be a legal, valid and binding payment obligation of the cardholder thereof enforceable against such cardholder in accordance with its terms, subject to certain customary exceptions relating to the bankruptcy of the cardholder; (g) which at the time of its transfer to the Trust, has not been waived or modified except as permitted under the Pooling Agreement; (h) which is not at the time of its transfer to the Trust subject to any right of rescission, set off, counterclaim or defense (including the defense of usury), other than certain bankruptcy-related defenses; (i) as to which Citibank has satisfied all obligations to be fulfilled at the time it is transferred to the Trust; (j) as to which Citibank has done nothing, at the time of its transfer to the Trust, to impair the rights of the Trust or investor certificateholders of a Series therein, and (k) which constitutes either an ''account'' or a ''general intangible'' under the Uniform Commercial Code as then in effect under South Dakota or Nevada state law.

7. *Additions of Accounts.* To maintain Citibank's seller interest in the Trust, the Pooling Agreement contains provisions analogous to collateral maintenance requirements under a secured loan that require Citibank to designate new Accounts (the receivables in which will be conveyed to the Trust) if, as of the end of any calendar week, the total amount of Principal Receivables in the Trust is less than the amount required by the Rating Agencies (the Required Minimum Principal Balance).

The Pooling Agreement provides that Citibank will be required to make a Lump Sum Addition to the Trust in the event that the amount of Principal Receivables is not maintained at a minimum level equal to the greater of: (a) 107 percent of the sum of the invested amounts of all outstanding investor certificates of all Series, or (b) 102 percent of the sum of the initial invested amounts of all outstanding investor certificates of all Series (or, if applicable for a particular Series, the highest invested amount during a Due Period,[29] or, during any accumulation period, scheduled amortization period, early amortization period or Class A amortization period, the highest invested amount during the Due Period preceding the first Due Period for such accumulation scheduled amortization period, early amortization period or Class A amortization period). Citibank may, upon 30 days prior notice to the Trustee, the Rating Agency and any provider of Series credit enhancement, reduce the Required Minimum Principal Balance, provided that such reduction will not result in (1) a reduction or withdrawal of any Rating Agency's rating of the investor certificates of any outstanding Series, or (2) an adverse effect, as defined in the Pooling Agreement (an Adverse Effect) on the certificateholders of any Series, and provided further that the Required Minimum Principal Balance may never be less than 102 percent of the sum of the initial invested amounts of all outstanding investor certificates of all Series (or, if applicable for a particular Series, the highest invested amount during a Due Period, or, during any scheduled amortization period, early amortization period or Class A amortization period, the highest invested amount during the Due Period preceding the first Due Period for such scheduled amortization period, early amortization period or Class A amortization period).

As previously noted, the requirement that Citibank maintain Principal Receivables in an amount at least equal to the Required Minimum Principal Balance is one mandated by the Rating Agencies. The purpose of the Required Minimum Principal Balance is to ensure that Citibank's interest in the Trust is large enough to absorb dilution caused by obligors returning merchandise originally charged under their Account (''Returns'') and possible seasonal fluctuations in the Receivables. In assessing the size of the Required Minimum Principal Balance, Rating Agencies generally consider a number of factors including historical portfolio dilution, the timing of Returns, the portfolio composition, rebate programs and the structural provisions designed to ensure that a minimum amount of Principal Receivables is maintained. The Rating Agencies must affirmatively confirm by written notice to the Trustee that any reduction in the Required Minimum Principal Balance will not result in the reduction or withdrawal of the rating assigned to any outstanding Series or class of investor certificates.

Conveyance of additional receivables (i.e. a Lump Sum Addition) may consist of:

(a) Receivables arising in additional Eligible Accounts from the Portfolio;

(b) Receivables arising in portfolios of revolving credit card accounts acquired

[29] A *Due Period* refers to the monthly period beginning at the close of business on the fourth-to-last business day of each month and ending at the close of business on the fourth-to-last business day of the immediately following month.

by the Banks from other credit card issuers;

(c) Receivables arising from certain non-premium and premium MasterCard and VISA credit card accounts previously transferred by Citibank to certain trusts in securitization transactions that have matured or terminated;

(d) Receivables arising in any other revolving credit card accounts of a type which have not been previously included in the Accounts;[30] and/or

(e) Participations in a pool of receivables.

After giving effect to a Lump Sum Addition, the total amount of Principal Receivables in the Trust will at least equal the Required Minimum Principal Balance. In addition, subject to the conditions contained in the Pooling Agreement, Citibank may from time to time, at its sole discretion, voluntarily make a Lump Sum Addition to the Trust.

Subject to limitations and conditions in the Pooling Agreement, Citibank from time to time may also designate, at its sole discretion, Receivables in newly originated Eligible Accounts to be included as Accounts (New Accounts). By adding Receivables in New Accounts, the Seller's interest will be increased, but the Seller and the investors will share interests in all of the Receivables, including all those arising in New Accounts and in Accounts previously assigned to the Trust. Citibank has designated New Accounts (the Receivables in which have been added to the Trust) since the creation of the Trust, and Citibank may continue to do so in the future. To protect the Trust from dramatic changes in composition, the number of New Accounts Citibank may designate with respect to any specified three month period may not exceed 15 percent of the number of Accounts as of the first day of such period, and the number of New Accounts designated during any calendar year may not exceed 20 percent of the number of Accounts as of the first day of such calendar year. The Pooling Agreement also requires Citibank to deliver an opinion of counsel semi-annually with respect to the New Accounts included as Accounts, confirming the validity of each transfer of Receivables in such New Accounts.

8. *Reassignment of Receivables.* Citibank has the right to require the reassignment to Citibank of the Receivables with respect to certain Accounts. Citibank represents that it may desire such a reassignment, for example, to set up a new master trust or other securitization vehicle. However, such a reassignment may only occur upon satisfaction of certain conditions in the Pooling Agreement under guidelines established by the Rating Agencies, which are described in the Series prospectus. Citibank states that in order to satisfy such conditions, the Rating Agencies must confirm in advance that such reassignment will not cause the rating assigned to any outstanding Series or class of investor certificates to be withdrawn or reduced. In addition, Citibank must deliver an officers' certificate to the effect that Citibank reasonably believes that such reassignment will not, at the time of its occurrence or a future date: (a) Cause an early amortization event; (b) cause a reduction of the amounts of surplus finance charge collections with respect to any Series of investor certificates below the level required by the Rating Agencies; or (c) adversely affect the amount or timing of payments to investor certificateholders of any Series.

Only after satisfaction of these and other conditions set forth in the Series prospectus[31] for the removal of Accounts from the Trust will the Trustee execute and deliver to Citibank a written reassignment to reconvey to Citibank, without recourse, the Receivables arising in Removed Accounts (Removed Accounts).

9. *Modification to the Underlying Terms of the Accounts.* Each cardholder is subject to an agreement governing the terms and conditions of such cardholder's Account. Pursuant to such agreement, Citibank (South Dakota), as owner of the Accounts, has the right to change or terminate any terms, conditions, services or features of the Accounts (including increasing or decreasing periodic finance charges or minimum payments). Citibank has covenanted in the Pooling Agreement that, except as otherwise required by any requirement of law or as is deemed necessary by Citibank to maintain its credit card business on a competitive basis, it will not take actions which would reduce the net portfolio yield on the Receivables (after subtracting therefrom the amount of Principal Receivables that were written off as uncollectible) to be less than the sum of: (a) the weighted average certificate rate of each class of investor certificates of each Series; and (b) the weighted average of the net servicing fee rate allocable to each class of investor certificates of each Series. In addition, Citibank has agreed in the Pooling Agreement that, unless required by law, it will not reduce such net portfolio yield to less than the highest certificate rate for any outstanding Series or class. Citibank also has covenanted in the Pooling Agreement that it will change

[30] Because additional Accounts may not be accounts of the same type as previously included in the Trust, Citibank states that there can be no assurance that such additional Accounts will be of the same credit quality as the initial Accounts or the additional Accounts currently included in the Trust. In addition, such additional Accounts may consist of credit card accounts which have different terms than the initial Accounts, including lower periodic finance charges, which may have the effect of reducing the average yield on the portfolio of Accounts. However, as with any removal of any Accounts, the designation of additional Accounts will be subject to the satisfaction of certain conditions required by the Rating Agencies, including that (i) such addition will not result in a Ratings Effect (i.e. a lower credit rating for the certificates), and (ii) Citibank must deliver to the Trustee and any provider of credit enhancement for the Series a certificate of an authorized officer to the effect that, in the reasonable belief of Citibank, such addition will not at the time of such addition or at a future date cause an early amortization event or adversely affect the timing or amount of payments to certificateholders (referred to in the Series prospectus as an ''Adverse Effect''—see Paragraph 8 regarding the Reassignment of Receivables for further discussion of an Adverse Effect).

[31] The complete conditions specified by the Series prospectus for the removal of Accounts from the Trust are as follows:

(a) on or before the fifth business day immediately preceding the date upon which such Accounts are to be removed, Citibank will give the Trustee, the Servicer, the Rating Agency and any provider of credit support (i.e., Series Enhancement) written notice of such removal specifying the date for removal of the Removed Accounts (the Removal Date);

(b) on or prior to the date that is five business days after the Removal Date, Citibank will deliver to the Trustee a list of the Removed Accounts specifying for each such Account, as of the removal notice date, its account number, the aggregate amount outstanding in such Account and the aggregate amount of Principal Receivables outstanding in such Account;

(c) Citibank will represent and warrant as of each Removal Date that the list of Removed Accounts delivered pursuant to (b) above, as of the Removal Date, is true and complete in all material respects;

(d) the Trustee shall have received advance confirmation from the Rating Agency that such removal will not result in a Ratings Effect;

(e) Citibank will deliver to the Trustee and any provider of Series Enhancement a certificate of an authorized officer, dated as of the Removal Date, to the effect that Citibank reasonably believes that such removal will not at the time of its occurrence or at a future date cause an Adverse Effect (i.e., the occurrence of an early amortization event for any Series or a reduction of the amount of surplus finance charge collections below the level required by the Rating Agencies, or an event which adversely affects in any manner the timing or amount of payments to investor certificateholders of any Series or any enhancement invested amounts); and

(f) Citibank will deliver to the Trustee, the Rating Agency and any provider of Series Enhancement an opinion of counsel acceptable to the Trustee that for federal and state tax law purposes: (i) Following such removal the Trust will not be an association (or publicly traded partnership) taxable as a corporation, and (ii) such removal will not adversely affect the characterization of the investor certificates of any Series as debt and will not cause a taxable event to holders of any such investor certificates.

the terms relating to the Accounts designated to the Trust only if such change is made applicable to the comparable segment of the portfolio of Accounts owned or serviced by Citibank which are part of the same program or which have the same or substantially similar characteristics. The ability of Citibank to change the terms of the Accounts is necessary to meet the competitive demands of the marketplace.

Citibank states that it offers a variety of different underwriting standards and terms on its credit card accounts. For example, Citibank offers Gold Visa cards and Regular Classic Visa cards. Citibank also offers ''co-branded'' cardholder programs, in conjunction with, among others, American Airlines, under which cardholders can earn frequent flyer miles or credits to be applied to the purchase price of goods or services. With respect to such programs, some Accounts are designated to the Trust and some are not. If Citibank determines to change an underwriting standard or cardholder agreement terms under one of these programs, Citibank does so without distinguishing those affected Accounts designated to the Trust from those affected Accounts which are not designated to the Trust. This failure to distinguish is mandated by the Pooling Agreement and the Rating Agencies. Citibank's decisions are fundamentally decisions with respect to how to operate its business in a competitive manner and will not treat Accounts designated to a Trust any differently than other Accounts.

Citibank states that if changes to underwriting standards or cardholder agreement terms were to adversely affect the performance of the Receivables in the Trust (e.g. cause an increase in charge-offs or defaults, or a lower yield on the Receivables), investors are protected by the early amortization event triggers (as discussed further in Paragraphs 13 and 14 below) and credit enhancement. In order for certificates issued by the Trust to obtain a high credit rating, there must be sufficient credit enhancement to meet the Rating Agency's ''high stress'' scenarios to ensure full and timely payment of principal and interest. In this regard, an ''economic early amortization event'' occurs immediately upon the occurrence of either of the two events specified in Paragraph 14 below, without any notice or other action on the part of the Trustee or the certificateholders.

Pass-Through of Cardholder Payments

10. Cardholder payments for each month are separated into principal collections and finance charge collections, both of which, as well as defaults on Principal Receivables, are allocated to each Series and to Citibank pro rata based on the relative interest of each in the Trust. Investors will, however, receive a fixed allocation of principal collections during the Accumulation or Amortization Period. Citibank's interest in the Trust represents the portion of the Principal Receivables in the Trust that is not represented by investor certificates. Finance charge collections are used to pay the coupon on the investor certificates of each Series, as well as to pay the servicing costs and cover defaults on principal payments due from cardholders. Principal collections are typically reinvested in new Receivables and/or allowed to accumulate for a period of time, rather than distributed immediately to investors, so that the investor certificates' payment characteristics will mirror those of comparable long-term debt instruments. However, the Pooling Agreement specifies Early Amortization Events following the occurrence of which all principal collections will commence being distributed to investors.

11. *Principal Collections.* If principal collections that were allocated to a Series were immediately distributed to the investors, the investors would be quickly repaid. For example, Citibank states that in 1996 the average monthly cardholder principal payment rate was 18.46 percent, which means all investors would be repaid over a six-month period assuming all Series in the Trust simultaneously amortize. To structure the investor certificates so as to perform as if they were long-term debt instruments, principal collections allocated to a Series are reinvested in newly generated Receivables arising in the Accounts for a period of time specified in the Series Supplement (i.e., the Revolving Period). Reinvestment in Receivables during the Revolving Period maintains the principal amount of the Series invested in the Trust for such period. At the end of the Revolving Period, shortly before the expected maturity date, a portion of the principal collections allocated to a Series either will commence to be paid to the investor certificateholders of such Series in monthly installments (a Controlled Amortization Period) or will be deposited in an account to be distributed to such certificateholders in a lump sum on the expected maturity date (an Accumulation Period), depending on the terms specified in the related Series Supplement. Generally, each of the recently issued Series has: (i) an eleven-month Accumulation Period for the Class A Certificates, which may be shortened (and the Revolving Period extended) according to an objective formula used to project the level of principal collections in the Trust; and (ii) a one-month accumulation period for the Class B Certificates.

12. *Finance Charge Collections.* Finance charge collections that are allocated to Series belonging to the same Group are pooled together and then shared among all Series in the Group based on the amount of total expenses of each Series for coupon, losses and servicing fees.[32] All Series issued to date have been designated as belonging to Group One. As a result of this reallocation of finance charges, those Series that have higher coupons will receive a proportionately larger share of the finance charge income and thus may avoid suffering a shortfall which might occur if finance charge income were allocated based on the relative interest (based on aggregate principal amounts) of such Series in the Trust. However, if finance charge income is not sufficient to cover total expenses in Group One, all Series within Group One will share proportionately in the shortfall regardless of the interest rate of the investor certificates of an individual Series. Finance charge collections allocable to a Series belonging to one Group will not impact finance charge collections allocable to any Series belonging to a different Group.

All Series issued under the MTC Program will be designated as belonging to Group Two. Finance charge collections that are allocated to Series belonging to Group Two will be pooled together and then shared the same way as the Series which are included in Group One.

Early Amortization Events

13. Citibank represents that an earlier than scheduled payout of principal to investor certificateholders of a Series will occur under certain circumstances specified in the Pooling Agreement (each condition is described as an Early Amortization Event).

Generally, Early Amortization Events include:

[32] In addition, Citibank states that in some instances principal collections on receivables allocated to a particular Series may be shared with other Series within the same Group, provided that the minimum principal receivable balances required by the Rating Agencies for all Series within the Group are maintained. However, Citibank states further that under its current payment structure, principal collections on receivables allocated to a particular Series are usually not shared.

(a) The failure of the Bank to either (i) make any payment or deposit required under the Pooling Agreement or any Series Supplement within five (5) business days after such payment or deposit was required to be made, or (ii) observe or perform any of its other covenants or agreements set forth in the Pooling Agreement or any Series Supplement, which failure has a material adverse effect on investors and continues unremedied for 60 days;

(b) A breach of any representation or warranty made by Citibank in the Pooling Agreement or any Series Supplement which continues to be uncorrected in any material respect for 60 days;

(c) The occurrence of certain bankruptcy events relating to either Bank (an Insolvency Event);

(d) The failure by the Banks to make a Lump Sum Addition;

(e) The occurrence of any servicer default by Citibank;

(f) If a class of investor certificates is in an Accumulation Period, the amount on deposit in the accumulation account in any month is less than the amount required to be on deposit therein;

(g) The failure to pay in full amounts owing to investors on the expected maturity date; and

(h) The Economic Early Amortization Event described below.

Each Series Supplement may contain other Early Amortization Events for the related Series in addition to those specified in the Pooling Agreement. To date, no Early Amortization Event has occurred with respect to any Series of investor certificates issued by the Trust.

Citibank has no discretion with respect to the determination whether an Early Amortization Event has occurred. However, certain Early Amortization Events, such as the breach of a representation or warranty, are qualified by materiality and may be declared at the option of the Trustee. Citibank states that in light of the complexity of these securitization transactions, such flexibility is intended to permit the Trustee to act in the best interests of investor certificateholders, which may be to forego early amortization by reason of a mere technical violation. Other Early Amortization Events, such as the Economic Early Amortization Event, are not qualified by materiality and operate automatically. In effect, such events are always material.

The occurrence of an Early Amortization Event will cause the Revolving Period, Controlled Amortization Period or Accumulation Period, as may be applicable, to end and principal collections will be used thereafter to make monthly payments of principal to the investor certificateholders of such Series (i.e. an Early Amortization Period) until the earlier of payment in full of the outstanding principal amount of the certificates of such Series or the legal final maturity date for such Series specified in the related Series Supplement. If an Accumulation Period has already begun for a Series, then all monies that have been previously deposited in an accumulation account for such Series will be withdrawn upon the occurrence of an Early Amortization Event and paid to the investor certificateholders of such Series.

In addition to the foregoing consequences of an Early Amortization Event described above, if an Insolvency Event occurs, Citibank will immediately cease to transfer Receivables to the Trust. Thereafter, unless the requisite number of investor certificateholders instruct otherwise, the Trustee will sell or otherwise liquidate the Receivables in the Trust in a commercially reasonable manner and on commercially reasonable terms. The proceeds of such sale or liquidation will be applied first to payments on the Class A Certificates, then to the Class B Certificates.

14. *Economic Early Amortization Events.* Citibank represents that all outstanding Series include an Economic Early Amortization Event, which is triggered if finance charge collections averaged over three consecutive months are less than the total amounts payable with respect to the Class A and Class B Certificates (including amounts payable with respect to interest, servicing fees, defaults, charge-offs and any credit enhancement fee).[33] Upon the occurrence of an Economic Early Amortization Event, monies on deposit in the CCA will be used to make payments of principal to the Class A Certificateholders and Class B Certificateholders. However, Citibank states that because the amount on deposit in a CCA is likely to be insufficient to pay outstanding principal amounts in full, additional collections with respect to the Receivables will be required to fully pay down the certificates. Thus, the Trust generally will depend on several forms of credit enhancement [e.g. ''excess spread'' between the Receivables and the certificate rate, subordination of the Class B Certificates, letters of credit or other third party credit enhancement], as well as any interest rate swap transactions (as discussed in Paragraph 16 below) and the maintenance of the ''required minimum principal balance'' for the Receivables under guidelines set by the Rating Agencies, to ensure timely repayment of principal and interest to the certificateholders.

Utilization of Credit Support—The Role of the Master Servicer and the Role of the Trustee

15. The servicer of Citibank's credit card ABS does not supply credit support. Further, if the servicer fails to call upon a credit support mechanism to produce needed funds, the Trustee may exercise its rights as beneficiary of the credit support to obtain the funds under the credit support mechanism. Therefore, in all cases, the Trustee will be ultimately responsible for deciding when to exercise its rights as beneficiary of the credit support.

In some cases, the servicer or an affiliate will be required under the terms of the Pooling Agreement to provide liquidity (but not credit) advances to the Trust. In these cases, the servicer will advance funds to cover shortfalls and will be reimbursed on the following distribution date from collections on the Receivables or Series credit support. The servicer will not be required to make any such liquidity advance unless there is sufficient Series credit support available to ensure repayment of the liquidity advance on the following distribution date. If the servicer fails to advance funds in respect of a shortfall when obligated to do so, the Trustee will exercise its rights under any available credit support on the following distribution date to obtain the necessary funds under the credit support mechanism.

The servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which Receivables ordinarily are deemed uncollectible. The Pooling Agreement requires the servicer to follow its normal servicing guidelines and also sets forth in the definition of Defaulted Receivables the servicer's general policy as to the period of time after which delinquent Receivables will be considered uncollectible.

On a monthly basis the servicer is required to report to the Trustee the amount of all past-due payments along with other current information as to collections on the Receivables and draws upon, or payments to be made from, the credit support. Further, the servicer is required to deliver to the Trustee annually a certificate of an officer of the servicer stating that a review of the servicing activities has been made under such officer's

[33] The Series to which an Accumulation Period applies contain an additional Economic Early Amortization Event which is triggered if, during the Accumulation Period, the yield on the Receivables in the Trust is less than the weighted average of the certificate rates of all Series included in the Group.

supervision, and either stating that the servicer has fulfilled all of its obligations under the Pooling Agreement or, if the servicer has defaulted under any of its obligations, specifying any such default. The servicer's reports are reviewed annually by independent accountants to ensure that the servicer is following its normal servicing standards and that the servicer's reports conform to the servicer's internal accounting records. The results of the independent accountant's review are delivered to the Trustee.

Interest Rate Swap Agreements by the Trust

16. For certain Series of certificates, the Trust will have the benefit of interest rate swap agreements for the exclusive benefit of the Class A Certificateholders (the Class A Interest Rate Swap) and/or interest rate swap agreements for the exclusive benefit of the Class B Certificateholders (the Class B Interest Rate Swap). Citibank (South Dakota) and Citibank (Nevada) may be the counterparties to the Trust for these Interest Rate Swaps.[34]

Pursuant to the terms and conditions of the Interest Rate Swaps, the Trust will be obligated to make certain payments periodically to the swap counterparty based on either a fixed or floating interest rate. In turn, the swap counterparty will be obligated to make payments periodically to the Trust based on either a fixed or floating interest rate. Payments received by the Trust pursuant to the Class A Interest Rate Swaps will be available to pay interest due on the Class A Certificates on each Class A interest payment date and payments received by the Trust pursuant to the Class B Interest Rate Swaps will be available to pay interest due on the Class B Certificates on each Class B interest payment date. The Trust will also have the benefit of funds on deposit in a CCA or other applicable credit support.

As an example, Citibank has submitted information for the Series of certificates issued by the Trust on August 29, 1996 (known as $750,000,000 Floating Rate Class A Credit Card Participation Certificates, Series 1996–5 and $48,000,000 Floating Rate Class B Credit Card Participation Certificates, Series 1996–5). On the Series issuance date (August 29, 1996), the Trustee of the Trust, for the exclusive benefit of the Class A Certificateholders, entered into two Class A Interest Rate Swaps with Citibank (South Dakota) and Citibank (Nevada), respectively, which together had a combined notional amount as of any swap payment date equal to the outstanding principal amount of the Class A Certificates as of the close of business on the preceding distribution date.

Interest with respect to the investor certificates accrues from August 29, 1996 and is payable quarterly on the fifteenth day of March, June, September and December, commencing December 15, 1996. Pursuant to the Class A Interest Rate Swaps, on the business day preceding each distribution date, payments are made by the Trust to Citibank (if the following is a positive number), or by Citibank to the Trust (if the following is a negative number) of an amount in the aggregate equal to:[35]

(i) one quarter of the product of

(A) the Class A Notional Amount; and

(B) 6.8691 percent (the Class A Swap Rate); minus

(ii) the product of

(A) a fraction, the numerator of which is the actual number of days from and including the prior distribution date (excluding the related distribution date), and the denominator of which is 360;[36]

(B) the Class A Notional Amount; and

(C) The Class A Certificate Rate.

The Class A Certificate Rate for each interest period is a per annum rate equal to the arithmetic mean of London interbank offered quotations for United States dollar deposits (i.e. LIBOR) for the applicable three month period, plus .105 percent.[37]

The principal on the Class A and Class B Certificates issued on August 29, 1996, is scheduled to be paid on the September 2003 payment date, but principal and interest for such certificates may be paid earlier under the circumstances described herein (e.g. an economic early amortization event). Principal payments will not be made to Class B Certificateholders until the final principal payment has been made for the Class A Certificates. Unless an early amortization event has occurred, the Revolving Period will end and the Accumulation Period (i.e. for principal payments to certificateholders) will commence at the close of business on the fourth-to-last business day of August 2002. However, Citibank, as Servicer, may shorten the length of the Accumulation Period and extend by an equivalent period the length of the Revolving Period based on the amount of principal available to the investor certificates of all Series determined based on the principal payment rate on the Receivables and the amount of principal distributable to certificateholders of all outstanding Series.

The Series prospectus for these certificates indicates that the CCA was funded by an initial deposit of $55,860,000, of which $39,900,000 was for the benefit of both the Class A and Class B Certificates, and $15,960,000 was for the exclusive benefit of the Class B Certificates. In the event of an economic early amortization event, the available shared enhancement amount (after giving affect to other withdrawals from the CCA on the distribution date) will be applied to pay principal of the Class A Certificates and the remainder of the available CCA will be applied to pay principal of the Class B Certificates.

The Series prospectus states that it was a condition to the issuance of the Class A Certificates on August 29, 1996, that they be rated in the highest rating category by at least one Rating Agency. Under this proposed exemption, employee benefit plan investors are able

[34] Banks or financial institutions other than Citibank may be swap counterparties to the Trust on other interest rate swaps. In addition, an interest rate ''cap'' could be used where the Trust issues floating rate certificates. In such instances, a counterparty would be paid a premium in advance by Citibank (from its own funds). Under the interest rate cap agreement, if the floating rate on the certificates were to rise above a specified rate (i.e. the cap rate), the counterparty would be required to provide the Trust with the amounts in excess of the cap rate necessary to pay the balance of the interest on the certificates.

[35] If such amount is positive, it will be referred to as the ''Class A Net Swap Payment'', and if such amount is negative, it will be referred to as the ''Class A Net Swap Receipt'.

[36] The day count fraction used in any swap would correspond to the day count fraction used in the related Series of certificates. For example, industry convention is that fixed rate securities bear interest on a 30/360 day count fraction while floating rate securities often bear interest on an actual/360 day count fraction. Accordingly, any floating payments made by a swap counterparty to the Trust which relate to a floating rate Series of certificates with an actual/360 day count fraction would also have an actual/360 day count fraction and any fixed payments made by a swap counterparty to a Trust which relate to a fixed rate Series of certificates with a 30/360 day count fraction would also have a 30/360 day count fraction.

[37] It should be noted that a substantial portion of the Receivables in the Trust bear interest at the prime rate plus a margin, while the investor certificates will bear interest at one or more fixed or floating rates specified in the related prospectus. If there is a decline in the prime rate, the amount of Finance Charge Receivables in the Trust may be reduced and, even if there is a similar reduction in any floating rate or other rates applicable to the investor certificates, there will not be a similar reduction in the other amounts (e.g. servicing fees or expenses for operating the Trust) required to be funded out of such Receivables. The subject Series prospectus notes that this mismatch between the various cashflows into and out of the Trust results in ''basis risk'' which is partially mitigated by the presence of the Interest Rate Swaps. Thus, as noted in more detail above, payment of the Class A Certificate Rate and the credit rating for such certificates may be dependent, in part, on the swap agreements and the creditworthiness of the swap counterparty.

to acquire only the Class A Certificates. The rating of the Class A Certificates was based primarily on the value of the Receivables (see Rating Agency Analysis in Paragraph 17 below), the extent of the initial shared enhancement amount (i.e. the CCA, etc.), the circumstances in which funds may be withdrawn from the CCA for the benefit of the investor certificateholders, the terms of the Class B Certificates and the Interest Rate Swaps and the credit ratings of the swap counterparties [e.g., Citibank (South Dakota) and Citibank (Nevada)]. In the event the short-term debt rating of either swap counterparty is withdrawn or reduced below A–1+ by Standard & Poor's Ratings Group or its long-term debt rating is withdrawn or reduced below Aa3 by Moody's Investors Service, the Servicer will (as agent for the Trustee),[38] within 30 days after such rating withdrawal or reduction, use reasonable efforts to (i) obtain a replacement interest rate swap agreement with terms substantially the same as the respective Interest Rate Swap, or (ii) establish any other arrangement satisfactory to the applicable Rating Agency, such that the ratings of the investor certificates by the applicable Rating Agency will not be withdrawn or reduced. In the event no such replacement interest rate swap agreement is obtained, or no other arrangement satisfactory to the Rating Agency is established within such period, an early amortization event will occur. The Series prospectus states that there can be no assurance that the ratings of the investor certificates will remain for any given period of time or that such ratings will not be lowered or withdrawn entirely by the Rating Agency if in its judgment circumstances in the future so warrant.[39]

The Series prospectus states that delivery of these investor certificates was made in book-entry form through the facilities of the Depository Trust Company (DTC), Cedel Bank and the Euroclear System on August 29, 1996. The underwriters for the Class A Certificates were Citibank, Goldman, Sachs & Co., Merrill Lynch & Co. and Salomon Brothers Inc. An application was made by Citibank to list the certificates on the Luxembourg Stock Exchange. The Trust had previously issued thirty (30) other Series of investor certificates which evidence undivided interests in the Trust which were still outstanding at that time.[40] The Series prospectus states that additional Series are expected to be issued from time to time by the Trust and that additional credit enhancement will be provided for each additional Series issued.

Citibank represents that the credit rating provided to a particular Series or class of certificates by the relevant Rating Agency may or may not be dependent upon the existence of a swap agreement. Thus, in some instances, the terms and conditions of a swap agreement entered into by the Trust will not effect the credit rating of the Series or class of certificates to which the swap relates (i.e. a ''Non-Ratings Dependent'' Swap). Citibank states that typically when a swap agreement is entered into by the Trust, the credit rating established by the Rating Agency for the particular Series of certificates to which the swap relates will be dependent upon the existence of the swap (i.e. a ''Ratings Dependent'' Swap).

Citibank represents further that each particular swap transaction entered into by the Trust will be an ''Eligible Swap'' (as defined in Section III.HH. above). In addition, each swap transaction will be with an ''Eligible Swap Counterparty'', which shall be a bank or other financial institution with a rating at the date of issuance of the certificates by the trust which is in one of the three highest long-term credit rating categories, and/or one of the two highest short-term credit rating categories, utilized by the Rating Agencies rating the certificates. However, if a swap counterparty is relying on its short-term rating to establish its eligibility, such counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency. If the rating of a particular Series or class of certificates is dependent upon the terms and conditions of an Eligible Swap entered into by the Trust (i.e., a ''Ratings Dependent'' Swap), the swap counterparty will be subject to certain collateralization or other arrangements satisfactory to the Rating Agencies in the event of a rating downgrade of the swap counterparty below a level specified by the Rating Agency, which would be no lower than the level that would make such counterparty ''eligible'' under this proposed exemption (see Section III.II above). If these arrangements are not established within a specified period, as described in the Pooling Agreement, there will be an early amortization event causing certificateholders to receive an earlier than expected payout of principal on their certificates for the series to which the swap relates. However, with respect to a Non-Ratings Dependent Swap, the Pooling Agreement will not specify that there be an early amortization event for the series to which the swap relates if the credit rating of the swap counterparty falls below the level required for it to be considered an Eligible Swap Counterparty (as described in Section III.II. above). In such instances, in order to protect the interests of the trust as a swap counterparty, the servicer (as agent for the trustee of the trust) will be required to either:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement will terminate);

(ii) Cause the swap counterparty to post collateral with the trustee of the trust in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms.

Under any termination of a swap, the trust will not be required to make any termination payments to the swap counterparty (other than a currently scheduled payment under the swap agreement) except from ''excess finance charge collections'' or other amounts that would otherwise be payable to the servicer or the seller (i.e. Citibank). In this regard, ''excess finance charge collections'' will be, as of any day funds are distributed from the trust, the amounts by which finance charge collections allocated to certificates of a

[38] In this regard, the Department notes that the Trustee would be obligated, as a fiduciary for ''plan assets'' held by the Trust, to ensure that the Servicer uses reasonable efforts to take whatever actions are necessary to satisfy the Rating Agency so as to avoid a reduction or withdrawal of the current rating for certificates of a particular Series following any reduction or withdrawal of the swap counterparty's rating.

[39] The Department cautions plan fiduciaries to fully understand the risks and benefits associated with investments made in asset-backed securities, such as credit card receivable ABS, or any other fixed-income security. In this regard, section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently when making investment decisions on behalf of a plan. The Department also cautions plan fiduciaries that if the assets of a trust which issues certificates is deemed to be ''plan assets'' under the Department's regulations (see 29 CFR 2510.3–101), the plan's assets would include not only the certificates purchased but also an undivided interest in each of the underlying assets of the trust, including any interest rate swap agreement between the trust and a bank. For a current statement of the Department's views on the use of ''derivatives'' by pension plans, see DOL Letter from Olena Berg, Assistant Secretary for Pension and Welfare Benefits, to The Honorable Eugene A. Ludwig, Comptroller of the Currency, dated March 21, 1996.

[40] The Series prospectus states that the aggregate amount of Receivables in the Accounts included in the Trust as of July 7, 1996 was $31,796,288,366, of which $31,414,439,867 were Principal Receivables and $381,848,499 were Finance Charge Receivables.

series exceed the amounts necessary to pay certificate interest, servicing fees and expenses, to satisfy cardholder defaults or charge-offs, and to reinstate credit support.

With respect to Non-Ratings Dependent Swaps, each Rating Agency rating the Certificates must confirm, as of the date of issuance of the Certificates by the Trust, that entering into the swap transactions with the Eligible Swap Counterparty will not affect the rating of the Certificates, even if such counterparty is no longer an ''eligible'' counterparty and the swap is terminated.[41]

Any Series of certificates which conveys rights with respect to an Eligible Swap would only be sold to a Qualified Plan Investor (as defined in Section III.JJ. above). Qualified Plan Investors will be plan investors represented by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Trust and the effect such swap would have upon the credit ratings of the certificates. For purposes of the proposed exemption, such a qualified independent fiduciary would be either: (i) A ''qualified professional asset manager'' (i.e. QPAM), as defined under Part V(a) of PTE 84–14; (ii) an ''in-house asset manager'' (i.e. INHAM), as defined under Part IV(a) of PTE 96–23; or (iii) a plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such certificates.

Rating Agency Analysis

17. The Applicants state that the rating guidelines and stress scenarios used by the Rating Agencies in assigning a rating to a credit card receivable ABS take into consideration many factors and are determined on a case-by-case basis. The Rating Agencies review three principal areas in arriving at a credit enhancement level to support a rating for a credit card receivable ABS:

(i) Quantitative performance of the portfolio, including historical yield, loss, delinquency and monthly payment rates, as well as credit exposure caused by factors such as geographic concentration of risk;

(ii) Qualitative portfolio factors, such as the originator's underwriting standards, audit and control procedures, collection process and marketing strategy; and

(iii) Legal and structural issues raised by the securitization structure, such as priority of security interests, timeliness of cash flow and exposures to third party bankruptcy risk (e.g. seller, guarantor, obligor, servicer), etc.

The Applicants represent that each Rating Agency adopts a slightly different approach to the determination of credit enhancement levels. For example, Moody's Investors Service, Inc. (Moody's) generally uses a Monte Carlo simulation model utilizing various possible cases with subjectively assigned probabilities. This model then enables Moody's to arrive at an estimate of potential lifetime losses which must be covered by the credit support for the securitization. Standard and Poor's Ratings Group (S&P) looks at a ''worst case'' loss scenario based on subjectively assigned multiples of historical loss, portfolio yield and payment rates to reflect a severe economic downturn over the life of the securities. As with Moody's, this process produces an estimate of potential lifetime losses which must be covered by the credit support.

The Applicants state that because the credit card receivables in a master trust are unsecured revolving debt obligations, the Rating Agencies assume no recoveries on defaulted credit card accounts in determining credit enhancement levels for each Series. Stress scenarios are run reducing both the portfolio yield (total yield on the receivables minus the sum of certificate interest, the servicing fee and amounts necessary to satisfy cardholder defaults) and the monthly payment rate, in order to test the level of defaults that credit enhancement can withstand. Such stress tests assume no recoveries on defaulted credit card accounts in the master trust. For example, for ''AAA'' rated certificates, available enhancement levels are structured to enable a Series to withstand the worst case ''AAA'' scenarios, just as would be the case with similarly rated transactions involving collateralized assets such as mortgage loans or automobile loans or leases. The first level of enhancement is typically ''excess spread'' (i.e. the amount by which the yield on the credit card receivables exceeds amounts necessary to pay certificate interest and servicing fees and to satisfy cardholder defaults).[42] Additional forms of enhancement for a Series may include cash collateral accounts (i.e. a CCA), reserve funds, letters of credit, the use of a senior-subordinated structure or a combination thereof.

Citibank represents that, in addition to the enhancement described above, certificates have the benefit of one or more ''economic early amortization event'' triggers relating to the receivables performance. Breach of such a trigger will cause an early amortization event and an early payout of principal to certificateholders, thereby protecting certificateholders from any potential future deterioration of credit quality of receivables in the master trust portfolio. Citibank states that the combination of credit enhancement (sized to satisfy Rating Agency ''high stress'' scenarios) and early amortization event triggers assures that certificateholders will receive payment in full of interest and principal.

Citibank represents that its credit cards are marketed nationally and are held by millions of individuals. The consequent size and diversity of Citibank's credit card accounts provide balanced risk distribution. For example, as of June 25, 1997, the largest Citibank master trust held in excess of $35 billion of receivables, generated by more than 28 million accounts, and each individual cardholder had a principal balance that averaged approximately $1221. Similarly, Citibank states that its portfolios are geographically diverse with no more than 15 percent of the receivables in Citibank's largest master trust being concentrated in a single state and in only four states did the percentage exceed 5 percent. Citibank notes that the loss experience for a geographically well diversified portfolio

[41] Representatives from two of the Rating Agencies (RA Reps) have indicated to the Department that certain series of certificates issued by a trust holding credit card receivables will have certificate ratings that are not dependent on the existence of a swap transaction entered into by the trust. Therefore, a downgrade in the swap counterparty's credit rating would not cause a downgrade in the rating established by the Rating Agency for the certificates. RA Reps state that in such instances there will be more credit enhancements (e.g. ''excess spread'', letters of credit, cash collateral accounts) for the series to protect the certificateholders than there would be in a comparable series where the trust enters into a so-called Ratings Dependent Swap. Non-Ratings Dependent Swaps are generally used as a convenience to enable the trust to pay certain fixed interest rates on a series of certificates. However, the receipt of such fixed rates by the trust from the counterparty is not a necessity for the trust to be able to make its fixed rate payments to the certificateholders.

[42] For example, the annual portfolio yield for the Trust in 1995 was 18.11 percent. The annual certificate rates for each Series outstanding at that time varied between approximately 5.50 and 8.8 percent, depending upon the date of issuance, the expected duration, whether the particular Series certificates were Class A or Class B, etc. The Series servicing rates (including interchange fees) varied between 0.37 and 1.87 percent of the outstanding receivables. The annual loss rate for the receivables in the Trust, as a percentage of the average principal receivables outstanding was approximately 3.8 percent during this period. Under the Rating Agencies hypothetical ''stress'' scenarios submitted by Citibank, the annual loss rate could have been increased to approximately 27.5 percent during this period without resulting in a failure of the Trust to pay any interest or principal on the AAA rated certificates.

of a large number of relatively small obligations is more stable and predictable than a portfolio of fewer, large individual obligations, and/or high geographic concentrations. Citibank represents that because of this diversification, a Citibank master trust should be able to withstand a recession or similar economic downturn which might affect different industries or geographic regions at different times.

Citibank states that a combination of credit enhancement, early amortization triggers and portfolio characteristics are among the reasons why no investor has failed to receive payment in full of all principal and interest on the over $51 billion of Citibank credit card receivable ABS issued from 1988 to the present. Citibank states further that no Citibank credit card securitization has ever gone into early amortization.[43]

Disclosures Available to Investing Plans

18. In connection with the original issuance of certificates, the prospectus or private offering memorandum will be furnished to investing plans. The prospectus or private offering memorandum will contain information pertinent to a plan's decision to invest in the certificates, such as:

(a) Information concerning the certificates, including payment terms, certain tax consequences of owning and selling certificates, the legal investment status and rating of the certificates, and any special considerations with respect to the certificates;

(b) Information about the underlying Receivables, including the types of Receivables, statistical information relating to the Receivables, their payment terms, and the legal aspects of the Receivables;

(c) Information about the servicing of the Receivables, including the identity of the servicer and servicing compensation;

(d) Information about the sponsor of the Trust;

(e) A full description of the material terms of the Pooling Agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such certificates.

Certificateholders will be provided with information concerning the amount of principal and interest to be paid on certificates at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the status of the Trust.

In the case of a Trust that offers and sells certificates in a registered public offering, the Trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934 (the '34 Act). Although some Trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many Trusts obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these Trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the Trust and the certificates. While the SEC's interpretation of the periodic reporting requirement is subject to change, periodic reports concerning a Trust will be filed to the extent required under the '34 Act.

The applicant states that at or about the time distributions are made to certificateholders, a report will be delivered to the Trustee as to the status of the Trust and its assets, including underlying Receivables. Such report will typically contain information regarding the Trust's assets, payments received or collected by the servicer, the amount of delinquencies and defaults, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report will also be delivered or made available to the Rating Agencies or Agency that rated the Trust's certificates. Such report will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date, certificateholders will receive a statement summarizing information regarding the Trust and its assets, including underlying Receivables.

Reasons for Plans To Enter Into the Exemption Transactions

19. Citibank states that a plan would choose to purchase the investor certificates offered by a master trust to diversify its portfolio and enhance investment return. During the past 10 years, asset-backed securities (including Citibank credit card receivable backed certificates) have developed into a very significant sector of the U.S. capital markets. Citibank represents that in 1996, public issuance of asset-backed securities (i.e. ABS) totaled approximately $151.7 billion and almost equaled public issuance of corporate debt, which totaled approximately $161.8 billion. Further, Citibank states that the vast majority of public ABS issuances is AAA/Aaa-rated and, as a result, public issuance of investment grade ABS was greater than the public issuance of investment grade rated corporate debt, which totaled $135.1 billion.

Thus, Citibank represents that for many fixed income investors who have traditionally invested a significant portion of their portfolios in corporate bonds, credit card receivable ABS have become a corporate bond substitute. Citibank states that there are several primary attributes of credit card receivable ABS that make them corporate bond substitutes, including: (i) Very high credit quality (most are AAA/Aaa rated); (ii) basic payment terms which can be structured to replicate corporate bonds (*e.g.* bullet maturities or semiannual coupon payments); (iii) healthy yield spreads in comparison to U.S. Treasuries; and (iv) the issuance of large, liquid transactions that are characterized by relatively narrow bid/offer spreads in the secondary market. Citibank states that for these reasons, the investor base for credit card receivable ABS has expanded in recent years and today includes the entire range of institutional investors. Further, given the performance to date of the ABS market, the Applicants expect that these institutional investors will continue to increase the proportion of their portfolio devoted to ABS. The Applicants note that on the supply side of the market, given projections of continued growth in the credit card business and the growing importance of securitization as a funding source for the credit card industry, market participants predict further growth in credit card ABS issuance in the near term.

As a result of these developments, the Applicants believe that fixed income

[43] When the Department was advised by the Rating Agencies concerning the ratings of certificates issued by trusts holding credit card receivables, the RA Reps noted, among other things, that different banks use different underwriting standards and may offer cardholders different terms on their accounts. Some banks may be willing to accept cardholders with riskier credit histories while other banks may not or may offer better terms to cardholders with superior payment histories. The result may be that some banks have a higher quality portfolio of receivables than other banks. The RA Reps stated that if a bank securitizes a portfolio of receivables which holds a number of riskier accounts, the Rating Agencies will require more credit enhancement measures because different assumptions will have to be made about the performance of the portfolio—e.g. higher charge-off rates will be assumed and greater ''excess spread'' will be necessary to avoid losses—in order to achieve a Triple A rating. Thus, for example, Bank A's certificates may receive a Triple A rating along with Citibank's certificates even though Bank A may experience more charge-offs on the credit card accounts and may have different payment rates on the receivables associated with those accounts.

investment managers seeking liquid, high credit quality fixed income securities which provide a fair yield to U.S. Treasuries at relatively low risk, are interested in or are already participating in the credit card ABS market. The requested exemption would facilitate more investment by plans in this market, and would enable the Applicants to better structure offerings which plan asset managers would find attractive.

Citibank credit card receivable ABS have been sold to employee benefit plans covered by the Act (ERISA plans) without concern regarding possible prohibited transactions involving the assets of the master trusts, as ''publicly-offered'' securities described in the Department's regulations defining ''plan assets'' (see 29 CFR 2510.3–101(b)(2)). However, Citibank has requested the proposed exemption in order to be able to sell such securities to ERISA plans without having to sell to one hundred independent investors. Thus, if the proposed exemption is granted, the Applicants would have the ability to sell credit card receivable ABS which are designed to meet the investment prerequisites of more limited groups of investors, including ERISA plans.

20. In summary, the Applicants represent that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because, among other things:

(a) The acquisition of investor certificates by a plan will be on terms (including certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(b) The rights and interests evidenced by the investor certificates will not be subordinated to the rights and interests evidenced by other investor certificates of the trust;

(c) Any investor certificates acquired by a plan will have received a rating at the time of such acquisition that is in one of two highest generic rating categories from either of the Rating Agencies, and/or the highest short-term generic rating category from any one of the Rating Agencies;

(d) The particular class of certificates for each series to which this proposed exemption will apply (an Exempt Class) will have credit support provided to the Exempt Class through a senior-subordinated series structure or other form of third party credit support which, at a minimum, will represent five (5) percent of the outstanding principal balance of certificates issued by the Exempt Class, so that an investor in the Exempt Class will not bear the initial risk of loss;

(e) The trustee of the trust will not be an affiliate of any other member of the Restricted Group;

(f) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates will represent not more than reasonable compensation for underwriting or placing the certificates; the consideration received by the sponsor as a consequence of the assignment of receivables (or interests therein) to the trust will represent not more than the fair market value of such receivables (or interests); and the sum of all payments made to and retained by the servicer, that are allocable to the series of certificates purchased by a plan, will represent not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(g) Any plan investing in such certificates will be an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the SEC under the Securities Act of 1933;

(h) The Revolving Period for a Series of investor certificates, and the conditions under which Citibank may designate additional Accounts or remove previously-designated Accounts, will be described in the prospectus or private placement memorandum provided to investing plans;

(i) The Trustee of the Trust will be a substantial financial institution or trust company experienced in trust activities and would be familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act;

(j) The Pooling Agreement will include an Economic Early Amortization Event triggered by a decline in the performance of the Receivables in the Trust;

(k) The Pooling Agreement will require Citibank to maintain a seller interest of not less than the greater of (i) 2 percent of the initial aggregate principal balance of investor certificates issued by the trust, or (ii) 7 percent of the outstanding aggregate principal balance of investor certificates issued by the trust;

(l) The Pooling Agreement will require that any change in the terms of any cardholder agreements also will be made applicable to the comparable segment of Accounts owned or serviced by Citibank which are part of the same program or which have the same or substantially similar characteristics;

(m) The addition of new Receivables or designation of new Accounts, or removal of Receivables or previously-designated Accounts, will meet the terms and conditions for such additions, designations, or removals as described in the Pooling Agreement as well as the prospectus or private placement memorandum for such certificates, which terms and conditions will have been affirmatively approved by the Rating Agencies, and will not result in the certificates receiving a lower credit rating from the Rating Agencies than the then current rating for the certificates;

(n) Any swap transaction relating to senior Certificates that are covered by the proposed exemption must satisfy the several investor-protective conditions applicable to Eligible Swaps and must be entered into by the Trust with an Eligible Swap Counterparty; and

(o) Any Series of certificates which entails one or more swap agreements entered into by the Trust will be sold only to Qualified Plan Investors.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Massachusetts Mutual Life Insurance Company (MassMutual), Located in Springfield, Massachusetts

[Application No. D–10436]

Proposed Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed mergers of the following Connecticut Mutual Life Insurance Company (CML) separate investment accounts (SIAs), the assets of which include assets of employee benefit plans (the Plans), into the following Massachusetts Mutual Life Insurance Company (MassMutual) SIAs: CML Select into MassMutual SIA–A, CML Fixed Income into MassMutual SIA–E, CML Basis into MassMutual SIA–F, CML Money Market into MassMutual SIA–G, and CML Overseas into MassMutual SIA–I (the Merger Transactions); (2) the proposed transfer of Plan assets from CML Dimensions and CML Converts, after termination of those SIAs, into MassMutual SIA–E and MassMutual SIA–A, respectively (the Termination Transfers); and (3) the proposed transfer of Plan assets from CML Life Style Funds designated as CML Asset Allocation A, CML Asset Allocation B, and CML Asset Allocation C, after termination of those funds, into MassMutual SIA–BC, MassMutual SIA–BP, and MassMutual SIA–BA, respectively (the Life Style Transfers;

the Termination Transfers and the Life Style Transfers are referred to collectively as the Transfer Transactions); provided the following conditions are met:

(A) At least 30 days prior to the effective date of each Merger and Transfer Transaction, MassMutual provides to a fiduciary of each Plan participating in the CML SIAs (the Plan Fiduciary) affected by the Transaction full written disclosure of information concerning the proposed Transaction and the affected MassMutual SIAs, including a current prospectus and a full and detailed written description of the fees charged by the affected MassMutual SIA's and the funds in which they invest, the differential between that fee level and the fee level applicable to the affected CML SIAs and the reasons why MassMutual believes that the investment is appropriate for the Plans. The notice will also inform the Plan Fiduciary of the proposed effective date of the Transaction;

(B) As part of the disclosure required under paragraph (A) of this exemption, MassMutual notifies the Plan Fiduciary in writing that instead of participating in the particular Merger or Transfer Transaction proposed by MassMutual, the Plan Fiduciary may direct that the assets of the Plan in the affected CML SIA may be transferred, without penalty, charge or adjustment, to any other available MassMutual SIA or liquidated, without penalty, charge or adjustment, for a cash payment to the Plan equal to the fair market value of the Plan's interest in the affected SIA in lieu of the Plan's participation in the proposed transaction;

(C) Upon completion of the Merger Transactions, the fair market value of the interests of each Plan participating in the MassMutual SIAs immediately following such Merger Transactions equals the fair market value of such Plan's interest in the affected CML SIAs immediately before the transactions;

(D) Upon completion of the Transfer Transactions, the fair market value of the interests of each Plan participating in the MassMutual SIAs immediately following such Transfer Transactions equals the fair market value of such Plan's interest in the affected CML SIAs immediately before the transaction;

(E) The assets of each of the Plans are invested in the same or similar investment type or asset class before and after the Merger and Transfer Transactions;

(F) The assets of the CML SIAs will be valued for purposes of the Merger and Transfer Transactions at the ''independent current market price'' within the meaning of Rule 17a–7 of the Securities and Exchange Commission under the Investment Company Act of 1940. The assets of the CML SIAs being merged or transferred and the assets of the MassMutual SIAs affected by the merger or transfer will be valued in a single valuation using the same methodology by the same custodian at the close of the same business day that the Merger and Transfer Transactions are effected;

(G) No later than forty five (45) days after the Merger and Transfer Transactions, each Plan Fiduciary will be provided a written confirmation of the Transactions which will include a statement of the number of units held by each Plan in each affected CML SIA, the unit value of each such CML SIA unit and the aggregate dollar value of such Plan's CML SIA units, determined immediately prior to the Transactions, as well as the number of units held by each Plan in each affected MassMutual SIA, the unit value of each such MassMutual SIA unit, and the aggregate dollar value of such Plan's MassMutual SIA units, determined immediately after the Transactions.

(H) Neither MassMutual nor any of its affiliates receives any fees or commissions in connection with the Merger and Transfer Transactions;

(I) The Plans pay no sales commissions or fees in connection with the Merger and Transfer Transactions;

(J) The Plans participating in the CML SIAs are not employee benefit plans sponsored or maintained by MassMutual or CML; and

(K) All assets involved in the transactions are securities for which market quotations are readily available, or cash.

Summary of Facts and Representations

1. The Plans involved in this proposed exemption are pension, profit sharing and stock bonus plans which are exempt from Federal income taxation under section 501(a) of the Code by reason of qualifying under section 401(a) of the Code.

2. The proposed exemption is requested on behalf of the Massachusetts Mutual Life Insurance Company (MassMutual), a mutual life insurance company organized under Massachusetts law. Another previously-unrelated mutual life insurance company, Connecticut Mutual Life Insurance Company (CML), merged into MassMutual on February 29, 1996 (the Company Merger).

3. MassMutual represents that it performs a wide variety of services for employee benefit plans, including opportunities for the Plans to invest in group annuity contracts (the GACs), which are popular funding vehicles for Plans. The funds invested in the GACs are allocated by the Plans' fiduciaries or by individual participants among separate investment accounts (SIAs) maintained by MassMutual for investment in various types and classes of assets, including the MassMutual Institutional Funds and other mutual fund companies affiliated with Mass Mutual. For example, funds invested by a Plan in a GAC might be allocated among several SIAs, which in turn invest in various MassMutual mutual funds. MassMutual represents that prior to the Company Merger MassMutual maintained twenty-five SIAs (the MassMutual SIAs) and CML maintained twelve SIAs (the CML SIAs). The assets of the MassMutual SIAs involved in this proposed exemption are invested solely in mutual funds affiliated with MassMutual, whereas the assets of the CML SIAs involved in this proposed exemption are invested in various marketable equity and debt securities.

4. MassMutual represents that five of the CML SIAs have investment objectives and strategies which are substantially similar to those of five MassMutual SIAs, holding assets which are of the same or similar class and type. Since the Company Merger, these five CML SIAs have been maintained by MassMutual with the same investment advisors and portfolio managers as the corresponding MassMutual SIAs. In order to eliminate duplicative administrative expenses and take greater advantage of economies of scale, and to avoid the adverse consequences of declining asset pools in the CML SIAs, MassMutual proposes to merge the five CML SIAs (the Merging CML SIAs) into the corresponding MassMutual SIAs (the Merger Transactions).

5. In addition to the Merger Transactions, MassMutual also proposes to effect transfer transactions with respect to (a) two other CML SIAs (the Terminating CML SIAs) which MassMutual has determined to have investment objectives and asset types which are not widely utilized by Plans covered by the Act, and, consequently, will not maintain sufficient assets to provide an appropriate investment portfolio, and (b) three CML master funds, called Life Style Funds.

The Terminating CML SIAs: MassMutual states that upon the Company Merger, it was determined that MassMutual GAC funds would not be invested in the Terminating CML SIAs, and that CML GAC investors would be allowed to convert their investments to GACs issued by MassMutual. Since the Company Merger, the assets in the Terminating

CML SIAs have declined steadily due to Plan transfers and withdrawals. As a result of these developments, MassMutual represents that it will be increasingly difficult for the Terminating CML SIAs to maintain well-diversified portfolios and risk and return profiles that are appropriate for the remaining Plan investors in the Terminating CML SIAs. Accordingly, MassMutual proposes to liquidate the Terminating CML SIAs by liquidation of the securities held in the SIAs and transfer of the proceeds into the two designated MassMutual SIAs to take greater advantage of economies of scale and to avoid the adverse consequences of declining asset pools. Thus, Plans previously invested in the Terminating CML SIAs would own units in the corresponding transferee MassMutual SIAs of an equal value to their units in the Terminating CML SIAs immediately prior to the transfer.

The Life Style Funds: The Life Style Funds are master funds, maintained by both CML and MassMutual, which distribute Plans' investments in GACs among various SIAs. Each of these Life Style Funds offers to Plan asset investors a particular approach to asset mix, investment philosophy and overall management, and a Plan asset investor is able to designate a Life Style Fund with an approach which is most consistent and responsive to the particular needs of the individual Plan. After designation of one of the Life Style Funds, those Plan assets invested in the GACs of the insurance company are directed into the designated Life Style Fund, where such monies are then directed to the particular SIAs in which the selected Life Style Fund invests. The CML Life Style Funds are designated as CML Asset Allocation A, CML Asset Allocation B, and CML Asset Allocation C. The MassMutual Life Style Funds are designated as MassMutual SIA-BC, MassMutual SIA-BP, and MassMutual SIA-BA.

MassMutual proposes to transfer the assets from the CML Life Style Funds into the three MassMutual Life Style Funds, as follows: The CML Life Style Funds are invested in (a) different combinations of the Merging CML SIAs, (b) the Terminating CML SIAs, and (c) two other CML SIAs (the Unaffected CML SIAs) which will continue to be maintained by MassMutual and will not be merged or terminated. Therefore, to the extent the CML Life Style Funds include investments in Merging CML SIAs, the Life Style Transfers will be accomplished in the same manner as the merger of the Merging CML SIAs with the corresponding MassMutual SIAs. However, any investments of the CML Life Style Funds which are held in one of the Terminating CML SIAs or an Unaffected CML SIA will be sold [44] and the proceeds from the sale will be transferred to the corresponding MassMutual Life Style Fund.

MassMutual is unable to conclude that the transactions described herein do not constitute prohibited transactions under the Act. Accordingly, MassMutual is requesting an administrative exemption from the prohibitions of sections 406(a) and 406(b)(1) and (b)(2) of the Act for the Merger and Transfer Transactions.

6. No less than thirty days in advance of each Merger and Transfer Transaction, MassMutual will provide to a fiduciary of each Plan participating in the CML SIA affected by the Transaction (the Plan Fiduciary) a written notice of the proposed Transaction (the Notice). The Notice will consist of a full written disclosure of information concerning the proposed Transaction, the affected MassMutual SIAs, and the proposed effective date of the Transaction. The Notice will include a current prospectus for each of the mutual funds in which the affected MassMutual SIAs invest and will describe the fees charged by the affected MassMutual SIAs and the funds in which they invest and the differential between that fee level and the fee level applicable to the affected CML SIAs. The proposed exemption requires that the Notice advise the Plan Fiduciary that in lieu of participating in the proposed Transaction, the Plan Fiduciary may direct that the assets of the Plan in the affected CML SIA may instead be transferred to any other available MassMutual SIA or liquidated for a cash payment to the Plan.[45] In addition, the Plan Fiduciary will be provided with a written confirmation of the subject Transaction.

7. In accordance with the procedures to be utilized by MassMutual in effecting the Merger and Transfer Transactions, the fair market value of the interests of the Plans participating in the MassMutual SIAs immediately following the Transactions will equal the fair market value of each participating Plan's interest in the affected CML SIAs immediately before the Transactions. MassMutual represents that the fair market value of the CML SIAs involved in the Transactions are readily ascertainable by reference to external markets, and that each underlying security involved in the subject transactions will be valued only at the ''independent current market price'' within the meaning of Rule 17a–7 of the Securities and Exchange Commission under the Investment Company Act of 1940 (the 1940 Act). MassMutual represents that Rule 17a–7 constitutes a set of standards for the determination of the independently verifiable prices for securities in transactions between registered investment companies and their affiliates.[46] The Merger and Transfer Transactions will be effected without payment of commissions or sales charges by the Plans, including fees payable in accordance with Rule 12b–1 under the 1940 Act.

8. In addition to notification of each Plan Fiduciary in advance of the Merger and Transfer Transactions, as discussed above, MassMutual will also provide to each Plan Fiduciary a written confirmation of the Transactions after they have been completed. No later than forty five days after the Merger and Transfer Transactions, each Plan Fiduciary will be provided a written confirmation of the Transactions which will include a statement of the number of units held by each Plan in each affected CML SIA, the unit value of each such CML SIA unit and the aggregate dollar value of such Plan's CML SIA units, determined immediately prior to the Transactions, as well as the number of units held by each Plan in each affected MassMutual SIA, the unit value of each such MassMutual SIA unit, and the aggregate dollar value of such Plan's MassMutual SIA units, determined immediately after the Transactions.

[44] The Unaffected CML SIAs will continue to be maintained by MassMutual on behalf of investors other than the Life Style Funds, and only the Life Style Funds' investments in the Unaffected CML SIAs will be liquidated for transfer to the MassMutual Life Style Funds. MassMutual chooses not to transfer the CML Life Style Funds' interests in the Unaffected CML SIAs to the MassMutual Life Style Funds because the Unaffected CML SIAs do not have corresponding counterpart MassMutual SIAs.

[45] MassMutual represents that such a transfer would be accomplished first by accessing available cash reserves in the affected CML SIA and then, to the extent cash reserves are depleted, by liquidating assets in the affected CML SIA.

[46] Rule 17a–7 under the 1940 Act provides a general exception from Section 17(a) of the Act for certain securities transactions between registered investment companies and certain of their affiliates. As a general matter, Section 17(a) of the 1940 Act prohibits any ''affiliated person'' of a registered investment company from selling any security to the registered investment company. Rule 17a–7 permits certain types of affiliate transactions if, among other things, the transaction is effected at an independently verifiable price, the ''current independent market price'' within the meaning of Rule 17a–7. MassMutual states that this standard of valuation is appropriate for the proposed exemption for purposes of valuing the assets held in the affected CML SIAs, which are not investments in registered investment companies, that will be merged or transferred into the affected MassMutual SIAs, which are solely invested in registered investment companies.

9. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons:

(a) Upon completion of the Merger and Transfer Transactions, the fair market value of the interests of each Plan participating in the MassMutual SIAs immediately following the Transactions will equal the fair market value of such Plan's interest in the affected CML SIA immediately before the Transaction;

(b) The assets of each participating Plan will be invested in the same or similar investment type or asset class before and after the Merger and Transfer Transactions;

(c) The Plans will not pay, and MassMutual and its affiliates will not receive, any fees or commissions in connection with the Merger and Transfer Transactions; and

(d) A fiduciary on behalf of each Plan, who is independent of and unrelated to MassMutual or any of its affiliates, will receive advance written disclosure of the Merger and Transfer Transactions, including notification that the assets of the Plan in the affected CML SIA may instead be transferred, without penalty, charge or adjustment, to any other available MassMutual SIA or liquidated, without penalty, charge or adjustment, for a cash payment to the Plan equal to the fair market value of the Plan's interest in the affected SIA in lieu of the Plan's participation in the proposed transaction.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 21st day of January, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–1790 Filed 1–26–98; 8:45 am]

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federal register

Tuesday
January 27, 1998

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 52

Federal Acquisition Regulation; Evidence of Shipment in Electronic Data Interchange (EDI) Transactions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 97–011]

RIN 9000–AH73

Federal Acquisition Regulation; Evidence of Shipment in Electronic Data Interchange (EDI) Transactions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to facilitate the use of electronic data interchange (EDI) transactions and to streamline the payment process when supplies are purchased free on board (f.o.b.) destination with inspection and acceptance at origin. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before March 30, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405. E-mail comments submitted over Internet should be addressed to: farcase.97–011@gsa.gov. Please cite FAR case 97–011 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 97–011.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the clause at FAR 52.247–48 to eliminate the current barriers to full implementation of electronic data interchange (EDI) in certain contracts awarded on an f.o.b. destination basis. Presently, if a contract is awarded on an f.o.b. destination basis, and if transportation is accomplished by a common carrier, the contractor is required to provide, with the invoice, a signed copy of the commercial bill of lading indicating the carriers receipt of the supplies or to furnish the information electronically as evidence of shipment. Additionally, if transportation is accomplished by other than a common carrier or parcel post, the contractor is required to provide, with the invoice, a copy of the appropriate delivery document showing receipt at the destination specified in the contract. To eliminate current barriers to transmission of signed bills of lading, or other required delivery documentation through EDI, this rule eliminates any requirement for contractors to provide evidence of shipment. However, contractors will be required to retain, and to make available to the Government for review as necessary, the evidence of shipment documentation for a period of 4 years after contract completion.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies to a limited number of EDI transactions, *e.g.*, when supplies are purchased f.o.b. destination, but inspection and acceptance will be at origin. Therefore, the rule is estimated to affect only a small number of entities, both large and small. For DoD, less than 1 percent (129) of all f.o.b. destination supply contracts over $25,000 (14,664) are likely to be affected by this rule. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–011), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the proposed rule contains information collection requirements. It is estimated that the revision to the FAR clause at 52.247–48 will slightly increase, by 45 hours, to 74,795 hours, the annual paperwork burden associated with FAR Part 47 and related provisions and clauses approved by the Office of Management and Budget (OMB) under OMB Control Number 9000–0061.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: January 21, 1998.

Jeremy F. Olson,

Acting Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.247–48 is revised to read as follows:

52.247–48 F.o.b. Destination—Evidence of Shipment.

As prescribed in 47.305–4(c), insert the following clause:

F.O.B. Destination—Evidence of Shipment (Date)

(a) If this contract is awarded on a free on board (f.o.b.) destination basis, the Contractor—

(1) Shall not submit an invoice for payment until the supplies covered by the invoice have been shipped; and

(2) Shall retain, and make available to the Government for review as necessary, the following evidence of shipment documentation for a period of 4 years after completion of the contract:

(i) If transportation is accomplished by common carrier, a signed copy of the commercial bill of lading for the supplies covered by the Contractor's invoice, indicating the carrier's intent to ship the supplies to the destination specified in the contract.

(ii) If transportation is accomplished by parcel post, a copy of the certificate of mailing.

(iii) If transportation is accomplished by other than common carrier or parcel post, a copy of the delivery document showing receipt at the destination specified in the contract.

(b) The Contractor is not required to submit evidence of shipment documentation with its invoice.

(End of clause)

[FR Doc. 98–1909 Filed 1–26–98; 8:45 am]

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federal register

Tuesday
January 27, 1998

Part V

Department of Housing and Urban Development

Indian Housing Block Grant Program—Revised Notice of Transition Requirements; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4170–N–11]

RIN: 2577–AB74

Indian Housing Block Grant Program—Revised Notice of Transition Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Revised notice of transition requirements.

SUMMARY: On January 27, 1997 (62 FR 3972), HUD published for public comment a notice to implement that part of section 106 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) which requires HUD to establish the requirements necessary to provide for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 and other related provisions of law to the provision of assistance in accordance with NAHASDA. The January 27, 1997 notice also provided notice of the negotiated rulemaking process for the development of regulations necessary to implement NAHASDA, and requested nominations for membership on the negotiated rulemaking committee. This notice addresses the public comments received on the January 27, 1997 transition requirements, and provides additional transition guidance and requirements.

DATES: The revised transition requirements are effective upon publication.

IHP submission date: No earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998.

Effective date of NAHASDA section 701(c): November 3, 1998.

FOR FURTHER INFORMATION CONTACT: Deborah Lalancette, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

Indian tribes or tribally designated housing entities with specific questions relating to the preparation of Indian Housing Plans as required by this notice may call their Area Office of Native American Programs for assistance in resolving their questions. The telephone numbers and addresses for these Offices appear in Question 7 of this notice.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104–330, approved October 26,1996) (NAHASDA) reorganizes the system of Federal housing assistance to Native Americans by eliminating several separate programs of assistance and replacing them with a single block grant program. Beginning on October 1, 1997, the first day of the 1998 fiscal year (FY), a single block grant program replaced assistance previously authorized under:

1. The United States Housing Act of 1937 (1937 Act);
2. The Indian Housing Child Development Program under Section 518 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701z-6 note);
3. The Youthbuild Program under subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12899 *et seq.*);
4. The Public Housing Youth Sports Program under section 520 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 11903a);
5. The HOME Investment Partnerships Program under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 *et seq.*); and
6. Housing assistance for the homeless under title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361 *et seq.*) and the Innovative Homeless Demonstration Program under section 2(b) of the HUD Demonstration Act of 1993 (42 U.S.C. 11301 note).

In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide Federal assistance for Indian tribes in a manner that recognizes the right of tribal self-governance.

Section 106 of NAHASDA sets out the general procedure for the implementation of the new Indian housing block grant (IHBG) program. The procedure described is a two-step process. First, section 106(a) requires the publication of a notice in the **Federal Register** not later than 90 days from enactment of NAHASDA. The purpose of the notice is to establish any requirements necessary for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the 1937 Act and other related provisions of law to the provision of assistance in accordance with NAHASDA.

Secondly, section 106(b) requires that HUD issue final regulations implementing NAHASDA no later than September 1, 1997. Further, section 106(b)(2)(A) of NAHASDA provides that all regulations required under NAHASDA be issued in accordance with the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). Accordingly, the Secretary of HUD established the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee to negotiate and develop a proposed rule implementing NAHASDA. This proposed rule was published on July 2, 1997 (62 FR 35718).

II. The January 27, 1997 Transition Notice and the July 2, 1997 Proposed Rule

On January 27, 1997 (62 FR 3972), HUD published the transition notice required by section 106(a) of NAHASDA. As directed by section 106(a), the January 27, 1997 notice requested public comment on the transition requirements and invited nominations for membership on the negotiated rulemaking committee. The January 27, 1997 notice described in detail the transition requirements and the establishment of the negotiated rulemaking committee.

The public comment period on the transition notice expired on February 27, 1997. Twelve comments were submitted on the transition requirements. Additionally, sixteen nominations for negotiated rulemaking committee membership were received. In several cases, the public comments raised issues more appropriately addressed in the proposed rule implementing NAHASDA, rather than in the transition requirements. Accordingly, the proposed rule addresses many of the public comments received on the January 27, 1997 transition notice.

Section III. of this notice presents a summary of the significant issues raised by the public commenters on the January 27, 1997 transition requirements and HUD's responses to these comments. Where appropriate, readers are referred to the provisions of the July 2, 1997 proposed rule that address the issue raised by the commenter.

The July 2, 1997 rule contains a detailed description of the proposed regulatory requirements and the negotiated rulemaking process. The public comment deadline on the proposed rule was August 18, 1997. All comments will be considered in the development of the final rule.

III. Discussion of Public Comments on the January 27, 1997 Transition Requirements

Indian Housing Plan Submission Date of June 1, 1997 Is Not Reasonable

Comment. Eight of the commenters objected to the June 1, 1997 IHP submission deadline established by the January 27, 1997 notice. The commenters believed that this date would not provide sufficient time for relevant tribal input in the development of the IHP. Specifically, it would not have allowed housing authorities (HAs) to adequately compile local and regional data and develop a quality, comprehensive housing plan.

Several of these commenters suggested alternate IHP submission dates. For example, five commenters objected to the submission of an IHP prior to the development of regulations implementing NAHASDA. Three of the commenters suggested that HUD extend the IHP submission deadline to August 1, 1997. This date is based on section 103 of NAHASDA, which provides HUD with a 60-day period to review an IHP submitted by a tribe or its TDHE. Since NAHASDA becomes effective on October 1, 1997, this alternate August date would provide HUD with a 60-day review period prior to the statute's effective date.

Response. HUD has addressed the concerns raised by these commenters. On February 24, 1997 (62 FR 8258), HUD published a notice in the **Federal Register** extending the IHP submission deadline to November 3, 1997. With the publication of the proposed rule, many commenters indicated that the deadline did not provide sufficient time to prepare an IHP. Also, it is not expected the regulations implementing NAHASDA will be effective by November 3, 1997. Therefore, it is unreasonable to expect a recipient to submit a plan prior to publication date of the program regulations.

Based on the above, this transition notice is establishing new IHP submission dates for Fiscal Year 1998 only. An IHP can be submitted no earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998. The July 1, 1998, date is necessary in order to provide for a 60-day review period by the Office of Native American Program (ONAP) field staff and reservation of funds prior to September 30, 1998. The final regulations will establish IHP submission dates for all future years.

October 1, 1997 Implementation Date is Premature

Section 107 of NAHASDA states that ''[e]xcept as otherwise expressly provided in this Act, this Act * * * shall take effect on October 1, 1997.'' Four of the commenters expressed concern about the short statutory deadline for the implementation of NAHASDA. The commenters believe that additional time is necessary for the successful implementation of this new program.

One of these commenters suggested that HUD use the waiver authority granted in section 101(b)(2) of NAHASDA to waive the requirement for an IHP submission in FY 1998, in order to permit HUD and affected Indian tribes adequate time to develop comprehensive final regulations implementing NAHASDA. This commenter also suggested that the Negotiated Rulemaking Committee develop interim regulations to put in place for FY 1998 to guide tribes in the administration of block grants during this interim period, rather than racing to complete regulations by October 1, 1997.

Response. The Negotiated Rulemaking Committee has developed a work schedule which it believes provides for the effective implementation of NAHASDA in a timely manner.

IHP Should Be Format Driven Rather Than Forms Driven

Comment. One commenter urged that HUD not implement the IHP requirement by prescribing a series of forms. The commenter believes that a forms driven approach will stifle innovation and increase administrative burden. This commenter fears that beneficial information might be omitted from the IHP if the tribe or its TDHE is unable to make it fit into a prescribed HUD form. Further, each planning innovation could potentially require an updated or new form. Accordingly, the commenter suggested that HUD maximize the flexibility available to tribes and their TDHEs by merely requiring that the IHP follow a certain format.

Response. The Negotiated Rulemaking Committee has considered this comment in the development of the proposed regulations. Interested readers should refer to the proposed requirements of 24 CFR part 1000, subpart C, which would govern IHP submission requirements.

Cooperation Agreement Requirement May Prevent the Receipt of Funding

Comment. The January 27, 1997 notice requires that the IHP include a certification that the tribe or its TDHE has entered into, or has begun negotiations to enter into, a local cooperation agreement with the governing body of the locality within which any affordable housing to be assisted with grant amounts will be situated (62 FR 3974). One commenter expressed concern that this requirement may prevent a tribe or its TDHE from receiving funding in situations where, through no fault of the housing entity or the affected tribal members, such an agreement cannot be negotiated before grant funds are needed to maintain existing housing. The commenter noted that the cooperation agreement requirement is set forth in NAHASDA section 101(b). The commenter supported amendments to NAHASDA which would permit HUD to waive the requirement for a cooperation agreement.

Response. The Negotiated Rulemaking Committee considered this public comment in the development of the proposed rule. Interested readers should consult the preamble to the July 2, 1997 proposed rule, which discusses the requirement for a local cooperation agreement and highlights this issue for public comment (See 62 FR 35728).

Concerns Regarding Tax Exemption and Reimbursement Requirements

Comment. The January 27, 1997 notice requires that the cooperation agreement discussed above provide that the tribe or its TDHE is exempt from all real or personal property taxes. The tribe or TDHE, however, must compensate the relevant political subdivision for the costs of providing governmental services (such as police and fire protection). Alternatively, if the tribe or its TDHE is not tax exempt, the cooperation agreement must provide for the reimbursement of the tribe or TDHE. The reimbursement amount will be equal to the difference between the tax amount and the costs of providing governmental services. (62 FR 3974.)

One commenter expressed reservations about this requirement. The commenter noted that a tribe or its TDHE may initiate a program to provide off-reservation housing within its area of operation. In these cases, a city council or board of supervisors may have to approve a cooperation agreement. The commenter wrote that under State law the council or board may lack the statutory authority to exempt a particular housing unit from real or personal property taxes imposed by state statute. If the combination of those taxes exceed the cost of providing governmental services, the affected city or county may be unable or unwilling to

remit the difference in cash or tax remission.

The commenter suggested that HUD address this concern by keeping the requirement for a cooperation agreement separate from the tax exemption requirement. The commenter wrote that NAHASDA treats the local cooperation agreement requirement and the tax exemption requirement in separate subsections (See NAHASDA sections 101(c) and (d).) The certification required in the January 27, 1997 notice folds these requirements together, making the tax exemption requirements the contents of the cooperation agreements. The commenter noted that a cooperation agreement could address subjects other than tax exemptions and a tribe could comply with the tax exemption requirements without necessarily having an agreement with a local jurisdiction.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the July 2, 1997 proposed rule. Interested readers should consult the preamble to the proposed rule, which discusses the tax exemption requirement and requests additional public comment on this issue (See 62 FR 35728).

Negotiated Rulemaking Committee Should Develop Budget Scenarios

Comment. Section 102 of NAHASDA requires that the IHP include an operating budget. One commenter questioned the ability of a tribe or its TDHE to develop a budget prior to FY 1998 appropriations. This commenter recommended that the Negotiated Rulemaking Committee develop budget information to assist tribes and their TDHEs in the preparation of the IHPs. The commenter noted that IHAs have an advantage in estimating probable allocation amounts based on historical allocations and awards. However, some tribes (especially those currently served by an umbrella housing authority) considering whether or not to submit an IHP may have very little to work from.

Response. The Negotiated Rulemaking Committee considered this issue in the development of the proposed rule. Interested readers should refer to the July 2, 1997 proposed regulatory requirements. Further, section 302(d) of NAHASDA speaks to funding levels under the Act.

Transition Notice Should Establish Streamlined IHP Requirements for Small Tribes and Small TDHEs

Comment. Section 102(f)(1) of NAHASDA permits the Secretary to ''waive any [IHP] requirements * * * that the Secretary determines are burdensome or unnecessary for'' small tribes and small TDHEs. One commenter questioned why the transition notice had not established such streamlined IHP requirements for these tribes and housing entities.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the proposed rule. The proposed rule provides that there are no separate IHP requirements for small Indian tribes. The IHP requirements set forth in proposed 24 CFR part 1000, subpart C are minimal. Further, HUD has general authority under section 101 of NAHASDA to waive IHP requirements when an Indian tribe cannot comply with IHP requirements due to circumstances beyond its control. The waiver authority under section 101 provides flexibility to address the needs of every Indian tribe, including small Indian tribes.

Transition Requirements Should Reference Statutory Review Criteria

Comment. Section 103 of NAHASDA provides that the Secretary of HUD shall conduct a limited review of each Indian housing plan to ensure that the plan complies with the NAHASDA submission requirements for IHPs. One commenter believes that the January 27, 1997 notice should have provided an interpretation of the phrase ''limited review.'' Section 103 of NAHASDA also establishes a 60-day deadline for review of an IHP. Further, this section requires that the Secretary of HUD provide an explanation to the tribe or TDHE if the Secretary finds the IHP deficient. The commenter believes these statutory review requirements should also have been referenced in the January 27, 1997 notice.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the proposed rule. Interested readers should refer to proposed 24 CFR part 1000, subpart C, which would govern IHP submission procedures (including the process for HUD review of IHPs and IHP amendments).

Concerns Regarding TDHE Designation

Comment. Section 102 of NAHASDA provides that an IHP may be submitted by an Indian tribe or, if specifically empowered by the recognized tribal government, by the TDHE. The January 27, 1997 notice provided that if ''a tribe does not specifically authorize an entity to act as its tribally designated housing entity, the tribe's * * * HA under the United States Housing Act of 1937, if there is one on the date of NAHASDA's enactment, is the tribe's [default] TDHE'' (62 FR 3973).

One of the commenters believes that this provision violates the principle of tribal self-governance. First, the provision would delegate to the HA the authority to administer the block grant even if the tribe has not taken any affirmative step to designate the HA as its TDHE. Secondly, the January 27, 1997 notice fails to specify the timeframe in which a tribe would lose the important right to designate the TDHE. Further, the provision is unclear as to whether the IHP developed by an HA acting as the default TDHE must still be reviewed and approved by the tribe.

Response. HUD agrees with the commenter that the transition requirements must reflect the right of tribal self-governance and the unique relationship between the government of the United States and the governments of Indian tribes. This notice makes the appropriate revisions to the January 27, 1997 transition notice. The notice clarifies that NAHASDA section 102(d) requires that a tribe identify its TDHE, if any, in its IHP. Specifically, when an IHP is submitted on behalf of a tribe by its TDHE, the IHP must contain a certification by the recognized tribal government that either (1) the tribe has had an opportunity to review the IHP and has authorized its submission by the TDHE, or (2) the tribe has delegated to the TDHE the authority to submit an IHP without prior review by the tribe. This certification must be included in the IHP, even in those cases where the tribe's HA under the United States Housing Act of 1937 is serving as the tribe's default TDHE.

''Broad Discretion'' of Section 204 of NAHASDA Should Be Referenced

Comment. Section 204(a) of NAHASDA provides:

(a) Subject to * * * [program requirements] and the Indian housing plan for an Indian tribe, the recipient for that tribe shall have—

(1) the discretion to use grant amounts for affordable housing activities through equity investments, interest-bearing loans or advances, noninterest bearing loans or advances, interest subsidies, leveraging of private investments, or any other form of assistance that the Secretary has determined to be consistent with the purposes of this Act; and

(2) the right to establish the terms of assistance.

One commenter interprets section 204(a) very broadly and recommended that the January 27, 1997 notice be amended to reference the ample discretion it believes this statutory provision grants to a tribe or its TDHE.

Specifically, the commenter requested that HUD clarify that grant recipients have the discretion to use grant amounts for affordable housing activities using the alternatives expressly set out in NAHASDA (e.g., equity investments, interest-bearing loans or advances, etc.). The commenter believes that only in the case of ''any other form of assistance'' not expressly enumerated in section 204 does NAHASDA authorize the Secretary to determine whether the assistance is consistent with the purposes of the Act.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the July 2, 1997 proposed rule. Interested readers should refer to proposed 24 CFR part 1000, subpart B, which would govern eligible affordable housing activities.

Exceptions to Low-Income Eligibility Requirements Should Be Identified

Comment. Section 201 of NAHASDA provides that, except under certain specified circumstances, ''eligible housing activities under this Act shall be limited to low-income Indian families on Indian reservations and other Indian areas.'' One of the commenters suggested that the January 27, 1997 notice should be amended to identify the exceptions to this general rule.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the proposed regulations. Interested readers are referred to proposed 24 CFR part 1000, subpart B, which would govern eligible affordable housing activities (including the provision of assistance to non low-income families).

Grant Agreement Process Should Be Identified

Comment. One commenter believes that the January 27, 1997 notice does not seem to anticipate or require the development of a grant agreement with the tribes. The commenter worried that the notice did not provide sufficient information regarding the grant agreements and the block grant process. For example, the IHP must contain goals and objectives to be accomplished during 1998. The commenter wondered whether these activities would be binding on the tribe through the grant agreement. The commenter recommended that HUD identify the grant agreement document or the process of developing the grant agreement as early as possible.

Response. The Negotiated Rulemaking Committee considered this comment in the development of the proposed rule. Interested readers should consult the proposed regulatory requirements for additional detail.

IV. Revised Effective Date for Section 701(c) of NAHASDA

Section 701(c) of NAHASDA establishes a new requirement for the Indian Housing Loan Guarantee Program (also called the Section 184 Program) under section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z–13a). Specifically, section 701(c) provides that Indian tribes wishing to participate in the Section 184 program must submit an IHP that provides for the use of Section 184 loan guarantees.

In order to prevent any interruption in the processing of Section 184 loan guarantees, HUD must establish an effective date for section 701(c) that takes into account the timeframes for submission and HUD review of IHPs. The January 27, 1997 transition notice established an effective date of October 1, 1997 for section 701(c), based on an IHP submission deadline of June 1, 1997. As described above, HUD is extending the IHP deadline date to no earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998. This notice conforms the effective date for section 701(c) to the IHP deadline extension. Specifically, this notice amends the January 27, 1997 notice by establishing an effective date of November 3, 1998 for purposes of NAHASDA section 701(c).

V. Technical Correction to the January 27, 1997 Notice

The January 27, 1997 notice incorrectly designated the paragraph listing the certifications as paragraph (d) of Question and Answer 3. The paragraph should have been designated as paragraph (e). This notice makes the necessary correction.

VI. Additional Transition Requirements

The January 27, 1997 notice stated that HUD may also issue a supplemental notice with additional transition guidance and requirements. Accordingly, additional guidance and requirements for the treatment of housing, activities and funding under programs repealed by NAHASDA are included in this notice. For the convenience of all parties involved with NAHASDA, this notice presents the requirements of the January 27, 1997 notice, amended as discussed in sections IV. and V. of this notice, above, and the additional transition requirements in a single, consolidated document. The additional requirements follow the same Question and Answer format established in the January 27, 1997 notice and begin with Question 10 in this notice. If there are any inconsistencies between the requirements in this notice and any final rule issued under NAHASDA, the requirements of the rule shall govern.

VII. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 and assigned control number 2577–0218. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

Regulatory Planning and Review

This notice has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the notice resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The notice only establishes temporary transition requirements for the initial participation by Indian tribes in a new statutory program

Environmental Review

A Finding of No Significant Impact with respect to the environment was made at the time of development of the January 27, 1997 notice in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. That Finding of No Significant Impact remains applicable to this notice and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel,

Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Transition Requirements for the Native American Housing Block Grant Program

Question 1. How is funding made available under NAHASDA?

Answer 1. Under NAHASDA, funding is made available for affordable housing activities on an annual basis, and is distributed each fiscal year according to an allocation formula on behalf of Indian tribes who submit an Indian Housing Plan (IHP) that is reviewed and approved by HUD. Unlike other programs, NAHASDA funds are not awarded on a competitive basis in which applications are given scores and are then funded in rank order so that only the highest scoring applications are funded. Every tribe, or entity designated by a tribe, that submits an IHP which complies with the necessary requirements is awarded a block grant which is a share of the available funds. The size of the share is determined by the allocation formula. The award is called a *block grant* because the recipient receives a single ''block'' of funds that may be used for any eligible affordable housing activities in accordance with the tribe's IHP.

Question 2. Who may submit an IHP to apply for a block grant?

Answer 2. An IHP may be submitted by an Indian tribe or, if specifically empowered by the recognized tribal government, by the tribally designated housing entity for the tribe. A tribally designated housing entity (TDHE) is an entity other than the tribal government which is authorized by the Indian tribe to receive the block grant amounts and provide assistance according to the requirements of NAHASDA.

NAHASDA section 102(d) requires that a tribe identify its TDHE, if any, in its IHP. Specifically, when an IHP is submitted on behalf of a tribe by its TDHE, the IHP must contain a certification by the recognized tribal government that either: (1) the tribe has had an opportunity to review the IHP and has authorized its submission by the TDHE; or (2) the tribe has delegated to the TDHE the authority to submit an IHP without prior review by the tribe. This certification must be included in the IHP, even in those cases where the tribe's HA under the United States Housing Act of 1937 is serving as the tribe's default TDHE.

An IHP submitted by a TDHE may cover more than one Indian tribe, but only if the IHP contains the certification described in the paragraph above from each tribe covered by the IHP. This option provides additional flexibility by permitting several tribes to agree to have their affordable housing activities administered by a single TDHE for reasons of greater economy or increased efficiency, or for any other reason.

Question 3. What information must be included in an IHP?

Answer 3. Each IHP shall be in a form prescribed by HUD and every IHP consists of two parts, a 5-year plan and a 1-year plan, each of which is discussed separately below. The NAHASDA final rule may also contain additional plan requirements.

The 5-year plan must contain the following information for the 5-year period beginning with the fiscal year (FY) for which the plan is submitted (for the first IHP submission under the transition requirements of this notice, the five fiscal years covered are 1998, 1999, 2000, 2001 and 2002):

(a) *Mission Statement*—A general statement of the mission of the Indian tribe to serve the housing needs of the low-income families in the jurisdiction of the Indian tribe during the 5-year period.

(b) *Goals and Objectives*—A statement of the goals and objectives of the Indian tribe to enable the tribe to serve the needs identified in the Mission Statement during the 5-year period.

(c) *Activities Plan*—An overview of the housing activities, including the NAHASDA-eligible affordable housing activities, planned during the 5-year period with an analysis of the manner in which the activities will enable the tribe to meet its mission, goals, and objectives.

The 1-year plan must contain the following information relating to the upcoming fiscal year (FY 1998 for purposes of the first IHP submission under the transition requirements of this notice):

(a) *Goals and Objectives*—A statement of the goals and objectives to be accomplished during FY 1998, including the NAHASDA-eligible affordable housing activities.

(b) *Statement of Needs*—A statement of the housing needs of the low-income Indian families residing in the jurisdiction of the Indian tribe and the means by which such needs will be addressed during FY 1998, including:

(1) A description of the estimated housing needs and the need for assistance for the low-income Indian families in the jurisdiction, including a description of the manner in which the geographical distribution of assistance is consistent with the geographical needs and needs for various categories of housing assistance; and

(2) A description of the estimated housing needs for all Indian families in the jurisdiction.

(c) *Financial Resources*—An operating budget for the recipient that includes:

(1) An identification and a description of the financial resources reasonably available to the recipient to carry out the NAHASDA-eligible affordable housing activities described in the IHP, including an explanation of the manner in which amounts made available will leverage additional resources; and

(2) The uses to which such resources will be committed, including eligible affordable housing activities and administrative expenses. (Section 101(h) of NAHASDA requires HUD, by regulation, to authorize each recipient to use a percentage of any grant amounts received for any reasonable administrative and planning expenses of the recipient relating to carrying out NAHASDA and activities assisted with such amounts, which may include costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts and expenses of preparing an IHP. This regulation will be developed by the negotiated rulemaking committee who will be proposing to HUD the percentage of grant amounts to be used for planning and administrative expenses.

(d) *Affordable Housing Resources*—A statement of the affordable housing resources currently available and to be made available during FY 1998, including:

(1) A description of the significant characteristics of the housing market in the tribe's jurisdiction, including the availability of housing from other public sources, private market housing, and the manner in which such characteristics influence the decision of the recipient to use grant amounts for rental assistance, production of new units, acquisition of existing units, or rehabilitation of units;

(2) A description of the structure, coordination, and means of cooperation between the recipient and any other governmental entities in the development, submission, or implementation of housing plans, including a description of the involvement of private, public, and nonprofit organizations and institutions, and the use of loan guarantees under section 184 of the Housing and Community Development Act of 1992, and other housing assistance provided by the Federal Government for Indian tribes, including loans, grants, and mortgage insurance;

(3) A description of the manner in which the plan will address the needs

identified in the Statement of Needs in the 1-year plan required by paragraph (b), above;

(4) A description of the manner in which the recipient will protect and maintain the viability of housing owned and operated by the recipient that was developed under a contract between HUD and an Indian housing authority pursuant to the United States Housing Act of 1937;

(5) A description of any existing and anticipated homeownership programs and rental programs to be carried out during FY 1998, and the requirements and assistance available under such programs;

(6) A description of any existing and anticipated housing rehabilitation programs necessary to ensure the long-term viability of the housing to be carried out during FY 1998, and the requirements and assistance available under such programs;

(7) A description of all other existing or anticipated housing assistance provided by the recipient during FY 1998, including transitional housing, homeless housing, college housing, supportive services housing, and the requirements and assistance available under such programs;

(8) A description of any housing to be demolished or disposed of, and a timetable for such demolition or disposition;

(9) A description of the manner in which the recipient will coordinate with tribal and State welfare agencies to ensure that residents of such housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

(10) A description of the requirements established by the recipient to promote the safety of residents of such housing, facilitate the undertaking of crime prevention measures, allow resident input and involvement, including the establishment of resident organizations, and allow for the coordination of crime prevention activities between the recipient and tribal and local law enforcement officials; and

(11) A description of the entity that will carry out the activities under the IHP, including the organizational capacity and key personnel of the entity.

(e) *Certifications of compliance*—The IHP must include the following certifications:

(1) A certification that the recipient will comply with title II of the Civil Rights Act of 1968 in carrying out activities funded by NAHASDA, to the extent that such title is applicable, and other applicable Federal statutes, including Section 504 of the Rehabilitation Act of 1973;

(2) A certification that the recipient will maintain adequate insurance coverage for housing units that are owned and operated or assisted with grant amounts;

(3) A certification that policies are in effect and are available for review by HUD and the public governing:

(i) The eligibility, admission, and occupancy of families for housing assisted with grant amounts;

(ii) Rents charged, including the methods by which rents or homebuyer payments are determined, for housing assisted with grant amounts;

(iii) The management and maintenance of housing assisted with grant amounts provided under this Act;

(4) If an IHP is submitted on behalf of a tribe by its tribally designated housing entity (TDHE), the IHP must contain a certification by the recognized tribal government that either:

(i) The tribe has had an opportunity to review the IHP and has authorized its submission by the TDHE, or

(ii) The tribe has delegated to the TDHE the authority to submit an IHP without prior review by the tribe;

(5) If an IHP that covers more than one Indian tribe is submitted by a TDHE, each tribe covered by the IHP must submit as part of the IHP the certification described in paragraph (4), immediately above;

(6) A certification that the governing body of the locality within which any affordable housing to be assisted with the grant amounts will be situated has entered into, or has begun negotiations, which must be completed before any award of NAHASDA funds can be made, to enter into, a local cooperation agreement with the recipient for the tribe providing that:

(i) The affordable housing assisted with grant amounts received by the recipient (exclusive of any portions not assisted with amounts provided under NAHASDA) is exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision; and

(ii) The recipient makes annual payments of user fees to compensate such governments for the costs of providing governmental services, including police and fire protection, roads, water and sewerage systems, utilities systems and related facilities, or payments in lieu of taxes to such taxing authority, in an amount equal to the greater of $150 per dwelling unit or 10 percent of the difference between the shelter rent and the utility cost, or such lesser amount as:

(A) Is prescribed by State, tribal, or local law;

(B) Is agreed to by the local governing body in the local cooperation agreement; or

(C) The recipient and the local governing body agree in the local cooperation agreement that such user fees or payments in lieu of taxes shall not be made; or

(iii) If the affordable housing assisted with grant amounts received by the recipient (exclusive of any portions not assisted with amounts provided under NAHASDA) is not exempt from all real and personal property taxes levied or imposed by any State, tribe, city, county, or other political subdivision, that the tribe, State, city, county, or other political subdivision in which the affordable housing development is located contributes, in the form of cash or tax remission, the amount by which the taxes paid with respect to the development exceed the amounts prescribed in section (6)(ii) of the 1-year plan requirements, above.

Question 4. What are the affordable housing activities that are eligible for funding under NAHASDA?

Answer 4. Affordable housing activities are activities to develop or to support affordable housing for rental or homeownership, or to provide housing services with respect to affordable housing, for the benefit of low-income Indian families on Indian reservations and other Indian areas. In the case of a low-income family residing in a dwelling unit assisted with NAHASDA grant amounts, affordable housing is housing for which the monthly rent or homebuyer payment (as applicable) does not exceed 30 percent of the family's monthly adjusted income. Eligible affordable housing activities are described below in sections (a) through (k) of this answer:

(a) *Indian Housing Assistance*—The provision of modernization or operating assistance for housing previously developed or operated pursuant to a contract between HUD and an Indian housing authority.

(b) *Development*—The acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing, which may include real property acquisition, site improvement, development of utilities and utility services, conversion, demolition, financing, administration and planning, and other related activities. Affordable housing includes permanent housing for homeless persons who are persons with disabilities, transitional housing, and single room occupancy housing.

(c) *Housing Services*—The provision of housing-related services for affordable housing, such as housing counseling in connection with rental or homeownership assistance, establishment and support of resident organizations and resident management corporations, energy auditing, activities related to the provision of self-sufficiency and other services, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in other housing activities assisted with grant amounts.

(d) *Housing Management Services*—The provision of management services for affordable housing, including preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and management of affordable housing projects.

(e) *Crime Prevention and Safety Activities*—The provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime.

(f) *Rental Assistance*—The provision of tenant-based rental assistance.

(g) *Model Activities*—Housing activities under model programs that are designed to carry out the purposes of NAHASDA and are specifically approved by HUD as appropriate for such purpose.

(h) *Administrative Expenses*—A percent of grant amounts, to be determined in the final rule, may be used for any reasonable administrative and planning expenses of a recipient relating to carrying out NAHASDA and activities assisted with such amounts, including costs for salaries of individuals engaged in administering and managing affordable housing activities assisted with grant amounts and the expenses of preparing an IHP.

Question 5. How may grant amounts be used to carry out eligible activities?

Answer 5. In addition to being used to directly pay for eligible activities, grant amounts may be used for affordable housing activities through equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies, leveraging of private investments, or any other form of assistance that HUD determines to be consistent with the purposes of NAHASDA. This answer is provided from section 204—''Types of Investments''—of NAHASDA. Guidance on the types of investments permissible under section 204 of NAHASDA will be provided in the final regulations.

Question 6. When must the IHP required by these transition requirements be submitted?

Answer 6. An IHP must be received by HUD no earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998 in order to be considered for FY 1998 funding. Question 53, below, also addresses this issue.

Question 7. Where must an IHP be submitted?

Answer 7. All IHPs must be submitted to the local Area Office of Native American Programs as follows:

Tribes and IHAs located	ONAP address
East of the Mississippi River (including all of Minnesota) and Iowa.	Eastern/Woodlands Office of Native American Programs, 5P, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–1282 or (800) 735–3239, TTY Numbers: 1–800–927–9275 or 312–886–3741.
Louisiana, Missouri, Kansas, Oklahoma, and Texas except for Yseleta del Sur.	Southern Plains Office of Native American Programs, 6.IPI, 500 West Main Street, Suite 400, Oklahoma City, Oklahoma 73012, (405) 553–7520, 553–7480.
Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.	Northern Plains Office of Native American Programs, 8P, First Interstate Tower North, 633 17th Street, Denver, Colorado 80202–3607, (303) 672–5462, TTY Number: 303–844–6158.
Arizona, California, New Mexico, Nevada, and Yseleta del Sur in Texas.	Southwest Office of Native American Programs, 9EPI, Two Arizona Center, 400 North Fifth Street, Suite 1650, Phoenix, Arizona 85004–2361, (602) 379–4156, TTY Number: 602–379–4461, or Albuquerque Division of Native American Programs, 9EPIQ, Albuquerque Plaza, 201 3rd Street, NW, Suite 1830, Albuquerque, New Mexico 87102–3368, (505) 766–1372, TTY Number: None.
Idaho, Oregon, and Washington	Northwest Office of Native American Programs, 10PI, 909 First Avenue, Suite 300, Seattle, Washington 98104–1000, (206) 220–5270, TTY Number: (206) 220–5185.
Alaska	Alaska Office of Native American Programs, 10.1PI, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4633, TTY Number: (907) 271–4328.

Question 8. May an IHA continue to remain subject to the 1937 Act, and convert to a PHA?

Answer 8. No, because the purpose and result of NAHASDA is the exclusion of IHAs from the definition of a PHA as of September 30, 1997. After September 30, 1997, there may be IHAs that want to remain subject to the 1937 Act, but the consequence of NAHASDA section 501 is to make it impossible, after September 30, 1997, for an IHA to be considered a PHA. Further, section 502(b) provides that any IHA housing developed or operated under the 1937 Act must be considered and maintained as affordable housing for purposes of NAHASDA, and precludes the continued application of title I of the 1937 Act to IHAs after September 30, 1997. Question 30, below, also addresses this issue.

Question 9. What happens to grants already made under the homeless, Youthbuild and Indian HOME programs?

Answer 9. These grants continue to be governed by the statutes authorizing the programs as those statutes read on September 30, 1997 and by the grant agreements. After completion of the funded activities, the grants will be closed out in accordance with their program requirements and grant agreements. Questions 37 and 38, below, also address this issue.

General Impact on Housing and Funding

Question 10. On October 1, 1997, the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) legislation becomes effective. How does this impact the provision of housing assistance to Native Americans?

Answer 10. NAHASDA terminates provision of housing assistance under the United States Housing Act of 1937, as amended, (1937 Act) and creates a new program of grants made directly to Indian tribes. The new Indian Housing Block Grant (IHBG) is intended to provide greater flexibility to tribes in determining how to address their housing needs for low-income individuals within their jurisdiction.

Tribes assume a responsibility to maintain current housing stocks developed under the 1937 Act.

Question 11. Does the change in governing legislation affect who owns housing developed or assets and funds held by IHAs?

Answer 11. No. While IHA funds and assets become subject to the requirements of NAHASDA on October 1, 1997, the ownership of the housing funds and assets are not affected. Grants made to IHAs and the assets of IHAs continue to belong to the IHA. IHAs that are created by tribal ordinance are subject to the authority of the tribe. Tribes must review their existing ordinances and other documents affecting the organization and legal commitments of the tribe and its IHA to determine how to transfer funds and assets of the IHA to the tribe or its newly established tribally designated housing entity (TDHE).

Effect on 1937 Act Housing

Question 12. What happens to public housing units owned and operated by IHAs?

Answer 12. All units owned by IHAs become ineligible for assistance under the 1937 Act as of October 1, 1997. Public housing units owned and operated by IHAs are considered Indian housing units and become subject to NAHASDA on October 1, 1997.

Question 13. What happens to existing 1937 Act units if tribes in those jurisdictions do not or cannot submit an IHP?

Answer 13. NAHASDA does not provide the statutory authority for HUD to grant NAHASDA grant funds to an IHA, tribe or to a default TDHE which cannot obtain a tribal certification, if the requisite IHP is not submitted by a tribe or is determined to be out of compliance by HUD. There may be circumstances where this may happen, and in those cases, other methods of tribal, federal or private market support may have to be sought to maintain and operate those 1937 Act units.

Question 14. Should the public housing stock owned by IHAs be reflected in the current assisted stock element of the IHBG formula under NAHASDA?

Answer 14. Yes.

Question 15. Will the housing units in the current development pipeline be allowed to increase the 1937 Act count for NAHASDA formula purposes?

Answer 15. Yes. Upon completion of housing units currently in the development pipeline, HUD should be notified to adjust the information reflected in the formula for existing 1937 Act units operated by the IHA or recipient. The notification should take the same form as the current notification for Date of Full Availability under the Indian Housing program.

Question 16. What process would a tribe or TDHE follow in order to admit over-income families to a vacant unit developed under the 1937 Act or for new units developed under the 1937 Act which will be counted as Current Assisted Stock under the IHBG Formula?

Answer 16. Since the 1937 Act no longer applies to these units and the NAHASDA final rule will only address the procedures for admitting over-income families when using the recipient's annual grant amount, there is a need to develop procedures for these units.

For units to be developed after September 30, 1997, with funds provided under the 1937 Act, a recipient may use up to 10% of its funds available from 1937 Act programs to admit families whose income fall within 80 to 100% of median income without HUD approval. HUD approval is required if a recipient plans to use more than 10% of its 1937 Act funds for such assistance or to provide housing for families over 100% of median income.

For vacancies in homeownership programs where the units were under management as of September 30, 1997, occupancy by families whose income falls within 80 to 100% of median income may not exceed 10% of the dwelling units in the project or 5 dwelling units, whichever is greater, without HUD approval. HUD approval is required if a recipient plans to admit more than this amount in a project or to provide housing for families over 100% of median income.

Question 17. Can an IHA or recipient develop additional units with funds provided through the 1937 Act and have the extra units included in the IHBG formula?

Answer 17. No. While developing the maximum number of affordable housing units is encouraged, housing units over the number specified in the original grant approval will not be included in the total number of units developed with 1937 Act funds.

Question 18. Can an IHA be a NAHASDA sub-grantee of the tribe or TDHE for the purpose of maintaining housing developed under the 1937 Act?

Answer 18. Yes. Additionally, an IHA could be a sub-grantee for the purpose of developing and managing housing with NAHASDA funds.

Effect on 1937 Act Funding

Question 19. Must an IHA (or its successor entity) use grant funds provided under the 1937 Act for the original purpose after October 1, 1997?

Answer 19. No. Funds provided to an IHA under the 1937 Act can be used for any activity eligible under NAHASDA. An IHA (or its successor entity) must honor existing contracts the IHA has entered into with others prior to NAHASDA; however, an IHA may reprogram the use of funds for eligible activities subject to written notification to HUD.

Question 20. Will Indian housing authorities (IHA), tribes or tribally designated housing entities (TDHE) be eligible to apply for assistance under any programs covered by the 1937 Act?

Answer 20. No. Section 501 of NAHASDA repealed Title II of the 1937 Act and made Titles I and III inapplicable to Indian housing after September 30, 1997. Therefore, as of October 1, 1997, IHAs and tribes are ineligible for funding for the following programs:

—New development
—Modernization (both the Comprehensive Improvement Assistance Program and the Comprehensive Grant Program including the disaster/emergency reserve)
—Operating subsidy
—HOPE for Public and Indian Housing Homeownership
—Indian Housing Childhood Development
—Section 8

Question 21. Will any operating subsidy be provided to IHAs after October 1, 1997?

Answer 21. Yes. The Fiscal Year (FY) 1997 appropriation for operating subsidy under Section 9 of the 1937 Act covers IHAs fiscal years beginning (FYB) January 1, 1997 and ending December 31, 1997; FYB April 1, 1997 and ending March 31, 1998; FYB July 1, 1997 and ending June 30, 1998; and FYB October 1, 1997 and ending September 30, 1998. IHAs are eligible for funds appropriated prior to FY 98, and therefore, operating subsidy will be provided for the time periods stated in this paragraph.

After September 30, 1997, financial assistance may not be provided under the 1937 Act unless such assistance is provided from amounts made available for FY 97 and pursuant to a commitment entered into before September 30, 1997, therefore, all operating budgets for these periods must have been approved prior to September 30, 1997 in order to be eligible for funding. Operating budget adjustments or revisions after October 1, 1997, cannot be processed.

Question 22. If an IHA has unobligated or unexpended funds in any of the programs listed in Answer 19, how are they handled?

Answer 22. Any unobligated/unexpended funds which were approved for new development, modernization, operations or HOPE can now be used for any eligible NAHASDA activity. Section 8 contracts remain in effect and the program is still governed by the 1937 Act and the existing contract provisions.

Question 23. What is the definition of ''obligated'' as it relates to the development and modernization programs?

Answer 23. Obligated means the cumulative amount of modernization or development commitments entered into by the housing authority; i.e., contract execution for contract labor, materials or services; start and continuation of physical work by force account labor; and start and continuation of administrative expenses. Contract execution means execution of the contract by both the housing authority and the contractor. For force account work, all funds for a group of sequentially-related physical work items are considered obligated when the first work item is started, such as kitchen cabinet replacement followed by kitchen floor replacement, but only where funds continue to be expended at a reasonable rate. Where one force account physical work item is started and is not sequentially related to other physical work items, such as site improvements and kitchen remodeling, then only the funds for the one physical work item started are considered obligated.

Question 24. Does an IHA need to enter into a new grant agreement with HUD covering the use of existing 1937 Act grant funds?

Answer 24. In most instances, the requirement limiting use of grant funds to eligible NAHASDA activities is self-implementing and does not require a new grant agreement between HUD and the IHA. However, in instances where a grant was never placed under annual contributions contract or where a tribe or other organization becomes the successor entity to an IHA, a grant agreement is required to obligate funds to the IHA or to establish the tribe or other organization as the successor entity to access IHA funds held by HUD.

Question 25. What Federal requirements apply after September 30, 1997 to funds provided under the 1937 Act?

Answer 25. Funds are subject to applicable Federal requirements which include but are not limited to:

- procurement requirements as listed under 24 CFR part 85 or as specified in the grantee's HUD approved procurement policy;
- environmental requirements as listed under 24 CFR part 58;
- labor requirements of Sec. 104(b) of NAHASDA;
- tenant or homebuyer selection requirements contained in the grantee's HUD approved admissions policy or which comply with Sections 203, 205 and 207(b) of NAHASDA;
- financial controls requirements specified at 24 CFR Part 85.

Question 26. Do the Federal requirements listed in Question 25 apply to IHAs if they are not designated as a TDHE?

Answer 26. Yes.

Question 27. Are there any reporting requirements after September 30, 1997 for grant funds provided under the 1937 Act?

Answer 27. Yes. When a recipient includes funds provided to an IHA in its IHP, reporting is included in the Annual Report and fiscal audit requirements under NAHASDA.

When funds provided to an IHA are not included in a recipient's IHP, reporting requirements in effect on September 30, 1997, continue to apply until the close-out of the grant activity or until the IHA notifies HUD and HUD acknowledges that the grant funds have been reprogrammed for eligible activities which support the regular operation of the IHA. This requirement applies only to categorical grants provided for specific purposes such as development or modernization grants and not to regular operating activities of the IHA. Please note that the modernization reporting requirements have been simplified and guidance has been provided to tribes, TDHEs, IHAs and Area ONAPs.

Question 28. What audit requirements apply to grants funded under the 1937 Act?

Answer 28. IHAs (or their successor entities) are responsible for providing HUD with audits of program activities in accordance with OMB Circulars A–128 and A–133 for any period prior to October 1, 1997, the effective date of NAHASDA. Notice PIH 97–30 (HA) provides the compliance supplement for annual audits of Indian housing authorities. This requirement includes any overdue audits. Additionally, any grant not included by the recipient in its IHP is subject to these audit requirements for the grant activity until all grant activities are completed and the grant is closed.

Question 29. What process does an IHA (or its successor entity) follow to close grants originally funded with 1937 Act monies?

Answer 29. Where grant activities are essentially completed and the IHA and HUD are in the process of closing the grant, the procedures for establishing actual grant costs in effect as of September 30, 1997, for the grant program are to be followed. This includes the requirement for audit verification of expenditures and final financial settlement between the IHA and HUD. Upon completion of the final financial settlement, HUD will adjust its financial records to reflect the actual cost of the grant.

Where grant activities are not completed, final settlement procedures are dependent upon whether the NAHASDA recipient assumes control of the grant funding. If the recipient does not assume responsibility for funds provided by the 1937 Act, procedures for closing grants are the same as stated in the above paragraph. Where the NAHASDA recipient assumes control of the grant funding, close-out procedures established for NAHASDA grants are to be followed even if a significant portion of the grant activities are completed prior to October 1, 1997.

Question 30. If an IHA wants to remain subject to the 1937 Act after October 1, 1997, can it be converted to a PHA?

Answer 30. No. To be eligible for Indian Housing under the 1937 Act, tribal and state enabling legislation allowed for the creation of housing authorities for the express benefit of Indians. IHAs that were created for the benefit of Indians are ineligible for funding under the 1937 Act after October 1, 1997. They cannot choose to be converted to PHAs.

Effect on ACCs

Question 31. Does the repeal of the 1937 Act terminate existing Annual Contributions Contracts (ACCs)?

Answer 31. Section 502(b) of NAHASDA states that Indian housing developed pursuant to an ACC ''shall not be subject to any provision of [the 1937 Act] or any [ACC] or other agreement pursuant to such Act.'' Based on this language, existing ACCs are terminated with two exceptions (bond financed projects and Section 8) which are explained below in Questions 32 and 33.

Question 32. Can HUD continue funding for bond-financed projects in which the bonds were secured by ACCs?

Answer 32. Section 507 of NAHASDA addresses bond-financed projects. Annual contributions can be made by HUD, consistent with Section 507, to continue payments to trustees on behalf

of holders of bonds issued, and outstanding, in connection with the development of Indian housing projects.

Section 8

Question 33. Are Section 8 ACCs terminated?

Answer 33. No. Section 503 of NAHASDA governs the provision of Section 8 rental assistance for units for which a contract was entered into before October 1, 1997. This section states that after September 30, 1997, financial assistance for rental housing assistance may not be provided to an IHA or TDHE, unless such assistance is provided pursuant to a contract for such assistance before October 1, 1997. Any such assistance shall be governed by the provisions of the 1937 Act and the provisions of such contract.

In other words, if an existing Section 8 contract does not expire until after October 1, 1997, funding will continue to be provided until the expiration date of the contract. This may be as late as fiscal year (FY) 2000. The program is to be operated in accordance with the existing ACC and HAP contract.

Question 34. What will happen to any remaining Section 8 operating reserves after the Section 8 contracts expire?

Answer 34. Section 8 operating reserves will remain with the entity administering the Section 8 program. Once the contract expires, the reserves shall be used for eligible activities under NAHASDA.

Question 35. What will happen to any remaining Section 8 program or project reserves?

Answer 35. Section 8 program or project reserves are those funds held by HUD to fund monthly housing assistance payments. When the contract expires, any remaining funds will remain with the Department.

Question 36. If a Tribe or TDHE chooses not to continue a Section 8 program after the current contract expires, is there a requirement to notify program participants of its intent to discontinue the program?

Answer 36. Yes, IHAs administering Section 8 rental certificates and rental voucher programs for which the ACC term will expire after September 30, 1997, must immediately notify Section 8 participants (including families that have exercised the portability provisions of the Section 8 program and have not been absorbed by the receiving housing authority) that their Section 8 assistance will end upon expiration of the ACC in accordance with the Housing Assistance Payment (HAP) contract, part B, Subpart 6, Paragraph iv.

Owners of Section 8 moderate rehabilitation units must also be notified that after September 30, 1997, HAP contracts will not be renewed upon the expiration of their current HAP contracts. Owners should be advised that they must provide written notice of the impending HAP contract expiration to each Section 8 family 180 days before the contract expires. A copy of the written notice must also be sent to the appropriate housing authority in accordance with Section 8(c)(9) of the 1937 Act, as amended. See PIH Notice 97–50, ''Expiration of Section 8 Annual Contributions Contracts between the Department of Housing and Urban Development and Indian housing authorities'' dated September 19, 1997, for further guidance.

Programs Under the Cranston-Gonzalez National Affordable Housing Act or the Stewart B. McKinney Homeless Assistance Act

Question 37. Will IHAs or tribes be eligible for programs funded under the Cranston-Gonzalez National Affordable Housing Act or the Stewart B. McKinney Homeless Assistance Act?

Answer 37. No. As of October 1, 1997, IHAs or tribes are no longer eligible for the following programs:

—Youth Sports
—Youthbuild
—HOME (Although tribes or IHAs are not eligible as direct grantees for HOME funds, States may choose to fund them if the needs of the tribes are reflected in the State's Consolidated Plan.)
—Housing Assistance for the Homeless which includes: Comprehensive Homeless Assistance Plan; Emergency Shelter Grants; Supportive Housing Programs; Safe Havens for Homeless Individuals Demonstration Program; Shelter Plus Care; Rural Homeless Housing Assistance; and Innovative Homeless Demonstration.

Question 38. If an IHA or tribe has unobligated or unexpended funds in any of the programs listed in Question 37, how are they handled?

Answer 38. Youth Sports, Youthbuild, HOME and the Housing Assistance for the Homeless Programs continue to be governed by the provisions of the statutes in effect at the time of funding. The program shall continue to be operated under existing program provisions. After completion of the funded activities, the grants will be closed out in accordance with their program requirements and grant agreements.

Question 39. What will happen to the Drug Elimination Program?

Answer 39. Section 704 of NAHASDA amends the Public and Assisted Housing Drug Elimination Act of 1990 to exclude IHAs as eligible applicants. However, TDHEs are now eligible applicants. The language in NAHASDA does not include tribes as eligible applicants.

Other Programs and Funds

Question 40. Will tribes be eligible for the Economic Development and Supportive Services (EDSS) Program?

Answer 40. The EDSS program is created by annual appropriations. The appropriation language currently makes IHAs and public housing agencies eligible for this program. Continued eligibility for IHAs will depend on future appropriation language. The language will need to be changed to include tribes and TDHEs. For those with existing EDSS grants, the program should continue to be operated under existing program provisions.

Question 41. Is the same true for the Tenant Opportunity Program (TOP) as for the EDSS Program under Question 40?

Answer 41. Yes.

Question 42. What happens to rental and homeownership operating reserves, mutual help equity accounts under the Mutual Help Homeownership Opportunity Program, earned home payment accounts under the Turnkey III programs and proceeds from the sale of homeownership units?

Answer 42. These funds can now be used for any eligible NAHASDA activity subject to any conditions imposed by the contract or agreement between the IHA and the homebuyer.

Question 43. Do tenant leases and homeownership agreements for the Mutual Help and Turnkey III Programs remain in effect?

Answer 43. Yes. For the rental program, leases remain in effect until the lease term expires. At that time, the tribe, TDHE, or IHA operate the units under the regulations governing NAHASDA. For homeownership programs, the agreements remain in effect until the contract term expires or modifications may be made to the agreement if these changes are acceptable to both parties. Modifications to the agreement must be in accordance with NAHASDA.

Question 44. What happens to tenant accounts receivables?

Answer 44. Since the terms of the rental leases and homeownership agreements remain in effect, the tenant accounts receivable are still due based on current program requirements. New policies regarding payment requirements for units developed under NAHASDA can be adopted by the tribe or TDHE.

Other Pre-NAHASDA Requirements

Question 45. What happens to the current regulations governing the Indian housing program, 24 CFR 950?

Answer 45. As of October 1, 1997, the regulations are cancelled.

Question 46. What cash management and investment policies and procedures are in effect as of October 1, 1997?

Answer 46. Current procedures outlined in PIH Notice 96–33 (HA), extended by Notice 97–41 (HA) dated July 21, 1997, titled ''Required HA Cash Management and Investment Policies and Procedures'' will continue to apply until the effective date of the NAHASDA final regulation.

Question 47. Are IHAs responsible for resolving audit findings which were issued pursuant to activities prior to October 1, 1997?

Answer 47. Yes. Audit findings are open until closed. Findings that are based on operating policies or procedures can be resolved between an IHA (or its successor entity) and HUD by identifying such findings and agreeing that the correction of deficiencies is no longer required by statute or regulation. Findings that are not based on operating policies or procedures such as instances of fraud, criminal activities or ineligible program activities including repayment of any outstanding amounts due the Department, must be resolved between the IHA (or its successor entity) and HUD before the audit finding can be closed.

Question 48. Will financial statements be required when the IHA's FY ends?

Answer 48. The requirement to submit financial statements ended on September 30, 1997.

Question 49. Will the tribe or TDHE be required to submit the Multifamily Tenant Characteristic Reports, HUD 50058, as of 10–1–97?

Answer 49. As of October 1, 1997, the HUD 50058 does not need to be submitted for the rental and homeownership programs. The form is still required for the Section 8 program until the contract term expires.

Question 50. Will LOCCS access to funds be changed for IHAs on October 1, 1997?

Answer 50. No. LOCCS access to funds will be modified only if a recipient assumes responsibility for a grant. At that time, HUD must be notified of the change in responsibility so that access to the grant funds can be provided to the recipient.

LOCCS provides for the disbursement of funds by certain line items contained in program budgets. Since budgets are no longer required, the Area ONAP will enter the entire grant amount under account 1500 when they establish a project in LOCCS. This will obviate the need to provide budget information to the Area ONAP. For grants already established in LOCCS, the grantee can request the Area ONAP to transfer funds to line 1500 to enable access to the funds. The request to transfer funds can be in writing or by telephone.

Question 51. If an IHA is declared ''high risk'' under the provisions of 24 CFR 950.135, will this designation continue as of October 1, 1997?

Answer 51. No. There is no basis or authority for allowing the designation of ''high risk'' to continue because this designation was based on failure to comply with the 1937 Act, implementing regulations or the ACC. Regulations are being developed under NAHASDA which will outline corrective action under the new program.

Question 52. Are cooperation agreements transferable to a successor agency without requiring any action on the agreement by the local government or the successor agency?

Answer 52. Cooperation agreements may be transferable to a successor agency by their terms. However, it is also possible that the agreement is not transferable in which case a new agreement would have to be negotiated. Generally, if the current IHA becomes the TDHE, a new agreement is not needed because the designation of the IHA as a TDHE does not create a new legal entity. However, an IHA's cooperation agreement does not automatically become the Tribe's.

New Program Under NAHASDA

Question 53. What is the IHP submission deadline?

Answer 53. On January 27, 1997, a transition notice was published in the **Federal Register** which established the original IHP deadline submission date of June 1, 1997. Based on public comment, this date was later amended to extend the deadline to November 3, 1997. With the publication of the proposed rule, many commenters indicated that the deadline did not provide sufficient time to prepare an IHP. Therefore, it is unreasonable to expect a recipient to submit a plan prior to publication date of the program regulations.

Based on the above, this transition notice is establishing new IHP submission dates for Fiscal Year 1998 only. An IHP can be submitted no earlier than the publication date of the final regulations implementing NAHASDA and no later than July 1, 1998. The July 1, 1998, date is necessary in order to provide for a 60-day review period by Office of Native American Program (ONAP) field staff and reservation of funds prior to September 30, 1998. The final regulations will establish IHP submission dates for all future years.

Question 54. Will ONAP develop a model IHP as an example or guide for tribes or TDHEs? Is so, will it be available in a diskette format?

Answer 54. A draft IHP format has been developed and submitted to the Office of Management and Budget (OMB) for approval. This form was also mailed to all tribes and IHAs in August 1997.

To assist with the submission of the IHP, the Department is offering three ways in which to submit the IHP. The first is via the Internet. It is anticipated that this will be the easiest method and it will also provide you with on-line resources such as reviewing plan status. You may also develop your plan using a diskette which contains a template of the IHP in a Microsoft Word 6.0 format. Once completed, this diskette is submitted to the Area ONAP. The diskette and internet instructions were sent to all eligible recipients on July 24, 1997. Of course, a hard copy of the plan will also be accepted for the first several years of the program.

Question 55. Are costs incurred prior to the receipt of a FY 1998 Indian Housing Block Grant (IHBG) which are related to the development and preparation of an IHP (including the challenge of data) eligible for reimbursement from an IHBG?

Answer 55. Yes. Under the provisions of paragraph 32 of OMB Circular A–87, pre-award planning and administrative costs incurred by a recipient which are directly related to the development and preparation of its IHP (including the challenge of data) will be considered eligible IHBG expenditures under the following conditions:

(a) The costs would have been allowable if they had been incurred after the date of the award of the IHBG; and,

(b) The costs do not exceed more than 20% of the recipient's anticipated FY 1998 IHBG (or such other amounts approved in the IHP).

Question 56. Can an IHA which currently represents more than one tribe be designated by more than one tribe as their TDHE?

Answer 56. Yes.

Question 57. If a TDHE represents more than one tribe, do individual IHPs need to be submitted?

Answer 57. If a TDHE has been designated by more than one Indian

tribe, the TDHE can submit a separate IHP for each Indian tribe or it may submit a single IHP that covers two or more tribes. However, the IHP must contain a separate certification in accordance with Section 102(d) of NAHASDA and the IHP Tables when requested by such tribes.

Question 58. What happens if a tribe had two IHAs as of September 30, 1996?

Answer 58. Tribes which had established and were operating two IHAs as of September 30, 1996, under the 1937 Act shall be allowed to form and operate two TDHEs under NAHASDA. Nothing in this section shall affect the allocation of funds otherwise due to a tribe under the formula.

Question 59. Who is considered as a tribe in Alaska?

Answer 59. The definition of Federally recognized tribe in NAHASDA reads: ''The term 'federally recognized tribe' means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act of 1975.''

Authority: Section 106 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996).

Dated: January 15, 1998.

Kevin Emanuel Marchman,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–1939 Filed 1–26–98; 8:45 am]

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federal register

Tuesday
January 27, 1998

Part VI

Department of Housing and Urban Development

Notice of Annual Factors for Determining Public Housing Agency Administrative Fees for the Section 8 Rental Voucher, Rental Certificate and Moderate Rehabilitation Programs; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4290–N–01]

Notice of Annual Factors for Determining Public Housing Agency Administrative Fees for the Section 8 Rental Voucher, Rental Certificate and Moderate Rehabilitation Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of factors for determining public housing agency administrative fees for operation of the Section 8 rental voucher, rental certificate and moderate rehabilitation (including moderate rehabilitation single room occupancy and shelter plus care single room occupancy) programs.

SUMMARY: This Notice transmits the schedule of monthly per unit fee amounts for use in determining the on-going administrative fee for housing agencies (HAs) administering the rental voucher, rental certificate and moderate rehabilitation programs during Federal Fiscal Year 1998. The procedures for calculating the earned administrative fees will be issued in an ensuing Notice.

EFFECTIVE DATE: Procedures in this Notice will be used to review and approve the administrative fees stated in the HA's year-end financial statements for appropriateness for HA fiscal years ending on December 31, 1997; March 31, 1998; June 30, 1998; and September 30, 1998. These procedures may also be used to project earned administrative fees in the annual HA budget. This Notice applies to that portion of the HA fiscal year that falls within Federal Fiscal Year (FY) 1998 (October 1, 1997 to September 30, 1998).

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Senior Program Advisor, Office of Public and Assisted Housing Program Delivery, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (These numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3204 (h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB control number 2577–0149. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

(a) The HUD-Independent Agencies Appropriations Act for Fiscal Year 1997 (P.L. 104–204) changed the method to be used in calculating HA administrative fees (see PIH Notice 97–11 issued March 11, 1997). The HA earns an administrative fee for the rental voucher, rental certificate, and moderate rehabilitation programs based on the total number of units under a housing assistance payments contract. This includes the moderate rehabilitation single room occupancy and shelter plus care single room occupancy programs.

The law also provides that HUD may approve preliminary fees of $500 per unit for the initial funding increment for the cost of expenses the HAs incur in the first year an HA administers a tenant-based rental voucher or rental certificate program. This provision applies to HAs that did not administer a tenant-based rental voucher or certificate program before September 26, 1996. The law does not provide for preliminary fees for the regular moderate rehabilitation program or the moderate rehabilitation single room occupancy program or the moderate rehabilitation shelter plus care single room occupancy program.

Additional administrative fees may be approved by HUD Headquarters for costs incurred in assisting families who experience difficulty in obtaining appropriate housing and for extraordinary costs as determined by HUD Headquarters.

II. Method to Determine Per Unit On-Going Administrative Fee

(a) Published Fee Amounts

The following is a schedule of monthly per unit fee amounts to be used by HAs in preparing annual operating budgets and by HUD in approving fiscal year-end financial statements. The tables are organized by the HUD established fair market rent areas and show the monthly fee amounts a HA will earn for each unit under a housing assistance payments contract on the first day of the applicable month.

HUD determined the per-unit monthly fee amounts using Bureau of Labor Statistics (BLS) data on local government wages (ES 202 Series). HUD adjusted the FY 97 monthly administrative fee per unit to develop the FY 98 administrative fee, effective for units assisted during the period from October 1, 1997 through September 30, 1998. The FY 98 administrative fee is calculated by multiplying the administrative fee amounts published in the **Federal Register** on March 12, 1997, by the percentage of change in the government wages using the most recent BLS data.

III. Monthly Fee Schedule

(a) Column A: Fees for 600 Units or Less

The amount in column A is the monthly per unit fee amount to be applied to the first 7,200 unit months (600 units) for the rental certificate and rental voucher programs combined and the first 7,200 unit months (600 units) for housing assistance payment contracts a HA has executed for moderate rehabilitation, including the moderate rehabilitation single room occupancy program and the shelter plus care single room occupancy program, during Federal FY 98 (October 1, 1997 to September 30, 1998).

Based on the applicable fiscal year end (FYE), a HA must use the following number of unit months to calculate its ongoing administrative fee for FY 98:

FYE December 31—1st quarter FY 98—Up to 1,800 unit months

FYE March 31—2nd quarter FY 98—Up to 3,600 unit months

FYE June 30—3rd quarter FY 98—Up to 5,400 unit months

FYE September 30—4th quarter FY 98—Up to 7,200 unit months

(b) Column B: Fees for Units in Excess of 600 Units

The amount in column B must be used to determine the administrative fee for FY 98 unit months in excess of the administrative fees for the first 600 units, for which fees were calculated in accordance with paragraph (a). The excess unit months, based on the HA's FYE and the number of rental voucher, rental certificate, and moderate rehabilitation units under housing assistance payment contracts during FY 98, are multiplied by the monthly fee per unit in column B. Column A and column B are not used for HA-owned units.

(c) Column C: Fees for HA-Owned Units

The monthly per unit fee amount in column C will be multiplied by the number of unit months available for the rental voucher, rental certificate, and moderate rehabilitation units owned by the HA and that are under housing assistance payments contracts during Federal FY 98. Column A and column B fee amounts are not used for HA-owned units.

(d) Future Year Publication Date

For subsequent fiscal years, HUD will publish an annual Notice in the **Federal Register** establishing the monthly per unit fee amounts for use in determining the on-going administrative fees for HAs operating the rental voucher, rental certificate and moderate rehabilitation programs in each metropolitan and each non-metropolitan fair market rent area for that Federal fiscal year. The annual change in the per-unit-month fee amounts will be based on changes in wage data or other objectively measurable data, as determined by HUD, that reflect the costs of administering the program.

The amounts shown on the attached schedule do not reflect the authority given to HUD to approve additional fees if necessary to reflect extraordinary expenses such as the higher costs of administering small programs and programs operating over large geographic areas or expenses incurred because of difficulties some categories of families are having in finding appropriate housing. HUD will consider HA requests for such increased Section 8 administrative fees. Furthermore, the amounts shown do not include preliminary fees.

Accordingly, the Department publishes the monthly per unit fee amounts to be used for determining HA administrative fees under the rental voucher, rental certificate and moderate rehabilitation programs as set forth on the following schedule:

IV. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice set forth rate determinations and related external administrative requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The notice pertains to the determination of administrative fees for HAs administering the rental voucher, rental certificate and moderate rehabilitation programs during Federal FY 98, and does not alter the established roles of the Department, the States, and local governments.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.850.

Dated: January 13, 1998.

Kevin Emanuel Marchman,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

A L A B A M A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Anniston, AL MSA	36.41	33.97	14.56	Calhoun
Birmingham, AL MSA	37.42	34.93	14.97	Blount, St. Clair, Jefferson, Shelby
Columbus, GA-AL MSA	35.09	32.75	14.04	Russell
Decatur, AL MSA	36.41	33.97	14.56	Morgan, Lawrence
Dothan, AL MSA	36.49	34.05	14.60	Houston, Dale
Florence, AL MSA	36.41	33.97	14.56	Lauderdale, Colbert
Gadsden, AL MSA	36.41	33.97	14.56	Etowah
Huntsville, AL MSA	38.02	35.49	15.21	Limestone, Madison
Mobile, AL MSA	38.01	35.48	15.21	Baldwin, Mobile
Montgomery, AL MSA	36.41	33.97	14.56	Autauga, Montgomery, Elmore
Tuscaloosa, AL MSA	36.71	34.26	14.68	Tuscaloosa

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Barbour	36.85	34.39	14.74	Bullock	36.85	34.39	14.74
Bibb	36.85	34.39	14.74	Chilton	36.85	34.39	14.74
Cherokee	36.85	34.39	14.74	Chambers	36.85	34.39	14.74
Butler	36.85	34.39	14.74	Covington	36.85	34.39	14.74
Coosa	36.85	34.39	14.74	Conecuh	36.85	34.39	14.74
Coffee	36.85	34.39	14.74	Cleburne	36.85	34.39	14.74
Clay	36.85	34.39	14.74	Clarke	36.85	34.39	14.74
Choctaw	36.85	34.39	14.74	Macon	36.85	34.39	14.74
Lowndes	36.85	34.39	14.74	Lee	36.85	34.39	14.74
Lamar	36.85	34.39	14.74	Jackson	36.85	34.39	14.74
Henry	36.85	34.39	14.74	Hale	36.85	34.39	14.74
Greene	36.85	34.39	14.74	Geneva	36.85	34.39	14.74
Franklin	36.85	34.39	14.74	Fayette	36.85	34.39	14.74
Escambia	36.85	34.39	14.74	Dekalb	36.85	34.39	14.74
Dallas	36.85	34.39	14.74	Cullman	36.85	34.39	14.74
Crenshaw	36.85	34.39	14.74	Winston	36.85	34.39	14.74
Wilcox	36.85	34.39	14.74	Washington	36.85	34.39	14.74
Walker	36.85	34.39	14.74	Tallapoosa	36.85	34.39	14.74
Talladega	36.85	34.39	14.74	Sumter	36.85	34.39	14.74
Randolph	36.85	34.39	14.74	Pike	36.85	34.39	14.74
Pickens	36.85	34.39	14.74	Perry	36.85	34.39	14.74
Monroe	36.85	34.39	14.74	Marshall	36.85	34.39	14.74
Marion	36.85	34.39	14.74	Marengo	36.85	34.39	14.74

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

A L A S K A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Anchorage, AK MSA	56.93	53.13	22.77	Anchorage

NONMETROPOLITAN COUNTIES	A	B	C
Northwest Arctic	56.32	52.57	22.53
Nome	61.35	57.26	24.54
Lake & Peninsula	56.32	52.57	22.53
Ketchikan Gateway	68.00	63.47	27.20
Juneau	68.00	63.47	27.20
Fairbanks North Star	58.28	54.39	23.31
Bristol Bay	59.28	55.33	23.71
Aleutian West	59.28	55.33	23.71
Yukon-Koyukuk	59.28	55.33	23.71
Wade Hampton	59.28	55.33	23.71
Southeast Fairbanks	48.80	45.55	19.52
Sitka	66.58	62.14	26.63
North Slope	61.35	57.26	24.54
Matanuska-Susitna	50.39	47.04	20.16
Kodiak Island	68.00	63.47	27.20
Kenai Peninsula	54.76	51.11	21.90
Haines	59.28	55.33	23.71
Dillingham	61.35	57.26	24.54
Bethel	61.35	57.26	24.54
Aleutian East	59.28	55.33	23.71
Wrangell-Petersburg	66.58	62.14	26.63
Valdez-Cordova	68.00	63.47	27.20
Skagway-Yakutat-Angoon	59.28	55.33	23.71
Pr.Wales-Outer Ketchikan	59.28	55.33	23.71

A R I Z O N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Flagstaff, AZ	45.02	42.02	18.01	Coconino
Las Vegas, NV-AZ MSA	56.83	53.05	22.73	Mohave
Phoenix-Mesa, AZ MSA	41.17	38.42	16.47	Pinal, Maricopa
Tucson, AZ MSA	40.70	37.99	16.28	Pima
Yuma, AZ MSA	45.74	42.69	18.30	Yuma

NONMETROPOLITAN COUNTIES	A	B	C
Cochise	35.37	33.01	14.15
Yavapai	44.09	41.15	17.64
Navajo	34.74	32.42	13.89
Greenlee	35.37	33.01	14.15
Gila	36.00	33.60	14.40
Apache	34.74	32.42	13.89
Santa Cruz	36.61	34.17	14.64
La Paz	44.88	41.89	17.95
Graham	35.37	33.01	14.15

A R K A N S A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	34.35	32.06	13.74	Benton, Washington
Fort Smith, AR-OK MSA	34.35	32.06	13.74	Crawford, Sebastian
Jonesboro, AR MSA	34.35	32.06	13.74	Craighead
Little Rock-North Little Rock, AR MSA	37.47	34.98	14.99	Faulkner, Saline, Pulaski, Lonoke
Memphis, TN-AR-MS MSA	39.60	36.96	15.84	Crittenden

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

A R K A N S A S continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Pine Bluff, AR MSA	34.35	32.06	13.74	Jefferson
Texarkana, TX-Texarkana, AR MSA	34.16	31.88	13.66	Miller

NONMETROPOLITAN COUNTIES	A	B	C
Ashley	34.35	32.06	13.74
Calhoun	34.35	32.06	13.74
Boone	34.35	32.06	13.74
Conway	34.35	32.06	13.74
Cleveland	34.35	32.06	13.74
Clay	34.35	32.06	13.74
Chicot	34.35	32.06	13.74
Cross	34.35	32.06	13.74
Dallas	34.35	32.06	13.74
Fulton	34.35	32.06	13.74
Drew	34.35	32.06	13.74
Izard	34.35	32.06	13.74
Howard	34.35	32.06	13.74
Hempstead	34.35	32.06	13.74
Grant	34.35	32.06	13.74
Van Buren	34.35	32.06	13.74
Stone	34.35	32.06	13.74
Sevier	34.35	32.06	13.74
Scott	34.35	32.06	13.74
Randolph	34.35	32.06	13.74
Pope	34.35	32.06	13.74
Poinsett	34.35	32.06	13.74
Phillips	34.35	32.06	13.74
Ouachita	34.35	32.06	13.74
Nevada	34.35	32.06	13.74
Monroe	34.35	32.06	13.74
Marion	34.35	32.06	13.74
Logan	34.35	32.06	13.74
Lincoln	34.35	32.06	13.74
Lawrence	34.35	32.06	13.74
Johnson	34.35	32.06	13.74
Woodruff	34.35	32.06	13.74

NONMETROPOLITAN COUNTIES	A	B	C
Arkansas	34.35	32.06	13.74
Bradley	34.35	32.06	13.74
Baxter	34.35	32.06	13.74
Columbia	34.35	32.06	13.74
Cleburne	34.35	32.06	13.74
Clark	34.35	32.06	13.74
Carroll	34.35	32.06	13.74
Desha	34.35	32.06	13.74
Garland	34.35	32.06	13.74
Franklin	34.35	32.06	13.74
Jackson	34.35	32.06	13.74
Independence	34.35	32.06	13.74
Hot Spring	34.35	32.06	13.74
Greene	34.35	32.06	13.74
White	34.35	32.06	13.74
Union	34.35	32.06	13.74
Sharp	34.35	32.06	13.74
Searcy	34.35	32.06	13.74
St. Francis	34.35	32.06	13.74
Prairie	34.35	32.06	13.74
Polk	34.35	32.06	13.74
Pike	34.35	32.06	13.74
Perry	34.35	32.06	13.74
Newton	34.35	32.06	13.74
Montgomery	34.35	32.06	13.74
Mississippi	34.35	32.06	13.74
Madison	34.35	32.06	13.74
Little River	34.35	32.06	13.74
Lee	34.35	32.06	13.74
Lafayette	34.35	32.06	13.74
Yell	34.35	32.06	13.74

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C A L I F O R N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bakersfield, CA MSA	48.12	44.90	19.25	Kern
Chico-Paradise, CA MSA	42.28	39.45	16.91	Butte
Fresno, CA MSA	43.99	41.05	17.59	Madera, Fresno
Los Angeles-Long Beach, CA PMSA	63.13	58.93	25.25	Los Angeles
Merced, CA MSA	41.34	38.58	16.53	Merced
Modesto, CA MSA	46.32	43.23	18.53	Stanislaus
Oakland, CA PMSA	63.13	58.93	25.25	Alameda, Contra Costa
Orange County, CA PMSA	63.13	58.93	25.25	Orange
Redding, CA MSA	43.99	41.05	17.59	Shasta
Riverside-San Bernardino, CA PMSA	50.37	47.01	20.15	Riverside, San Bernardino
Sacramento, CA PMSA	47.94	44.74	19.18	El Dorado, Sacramento, Placer
Salinas, CA MSA	54.39	50.76	21.76	Monterey
San Diego, CA MSA	56.44	52.68	22.58	San Diego
San Francisco, CA PMSA	63.13	58.93	25.25	San Mateo, San Francisco, Marin
San Jose, CA PMSA	63.13	58.93	25.25	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	54.65	51.01	21.86	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	61.64	57.53	24.66	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	63.13	58.93	25.25	Santa Cruz
Santa Rosa, CA PMSA	61.58	57.48	24.63	Sonoma
Stockton-Lodi, CA MSA	46.01	42.94	18.40	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	54.81	51.15	21.92	Napa, Solano
Ventura, CA PMSA	63.13	58.93	25.25	Ventura
Visalia-Tulare-Porterville, CA MSA	41.02	38.29	16.41	Tulare
Yolo, CA PMSA	47.94	44.74	19.18	Yolo
Yuba City, CA MSA	36.28	33.86	14.51	Yuba, Sutter

NONMETROPOLITAN COUNTIES	A	B	C
Colusa	36.83	34.38	14.73
Amador	48.69	45.44	19.47
Lassen	40.68	37.96	16.27
Kings	40.05	37.38	16.02
Imperial	46.18	43.10	18.47
Glenn	36.83	34.38	14.73
Tuolumne	48.69	45.44	19.47
Tehama	40.68	37.96	16.27
Sierra	54.57	50.94	21.83
Plumas	40.68	37.96	16.27
Mono	50.39	47.03	20.16
Mendocino	47.90	44.71	19.16

NONMETROPOLITAN COUNTIES	A	B	C
Calaveras	48.69	45.44	19.47
Alpine	48.69	45.44	19.47
Lake	44.44	41.48	17.78
Inyo	48.69	45.44	19.47
Humboldt	45.78	42.73	18.31
Del Norte	44.44	41.48	17.78
Trinity	44.44	41.48	17.78
Siskiyou	40.68	37.96	16.27
San Benito	50.39	47.03	20.16
Nevada	54.57	50.94	21.83
Modoc	40.68	37.96	16.27
Mariposa	48.69	45.44	19.47

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C O L O R A D O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	49.06	45.78	19.62	Boulder
Colorado Springs, CO MSA	40.33	37.64	16.13	El Paso
Denver, CO PMSA	43.23	40.36	17.29	Arapahoe, Adams, Jefferson, Douglas, Denver
Fort Collins-Loveland, CO MSA	46.49	43.39	18.60	Larimer
Grand Junction, CO MSA	50.57	47.20	20.23	Mesa
Greeley, CO PMSA	40.09	37.42	16.04	Weld
Pueblo, CO MSA	39.93	37.27	15.97	Pueblo

NONMETROPOLITAN COUNTIES	A	B	C
Alamosa	41.29	38.53	16.51
Conejos	41.29	38.53	16.51
Cheyenne	35.35	32.98	14.14
Bent	35.35	32.98	14.14
Archuleta	41.29	38.53	16.51
Kiowa	35.35	32.98	14.14
Huerfano	41.29	38.53	16.51
Gunnison	54.58	50.94	21.83
Gilpin	47.43	44.27	18.97
Fremont	45.83	42.77	18.33
Eagle	56.49	52.72	22.60
Delta	54.58	50.94	21.83
Crowley	35.35	32.98	14.14
Washington	35.35	32.98	14.14
Summit	54.58	50.94	21.83
San Miguel	56.49	52.72	22.60
Saguache	41.29	38.53	16.51
Rio Grande	41.29	38.53	16.51
Prowers	35.35	32.98	14.14
Phillips	35.35	32.98	14.14
Ouray	54.58	50.94	21.83
Morgan	35.35	32.98	14.14
Montezuma	41.29	38.53	16.51
Mineral	41.29	38.53	16.51
Lincoln	35.35	32.98	14.14
La Plata	46.82	43.70	18.73

NONMETROPOLITAN COUNTIES	A	B	C
Costilla	41.29	38.53	16.51
Clear Creek	45.83	42.77	18.33
Chaffee	45.83	42.77	18.33
Baca	35.35	32.98	14.14
Kit Carson	35.35	32.98	14.14
Jackson	54.58	50.94	21.83
Hinsdale	54.58	50.94	21.83
Grand	54.58	50.94	21.83
Garfield	52.18	48.71	20.87
Elbert	36.57	34.14	14.63
Dolores	41.29	38.53	16.51
Custer	45.83	42.77	18.33
Yuma	35.35	32.98	14.14
Teller	46.08	43.01	18.43
Sedgwick	35.35	32.98	14.14
San Juan	41.29	38.53	16.51
Routt	54.58	50.94	21.83
Rio Blanco	52.18	48.71	20.87
Pitkin	56.49	52.72	22.60
Park	45.83	42.77	18.33
Otero	35.35	32.98	14.14
Montrose	54.58	50.94	21.83
Moffat	52.18	48.71	20.87
Logan	35.35	32.98	14.14
Las Animas	41.29	38.53	16.51
Lake	45.83	42.77	18.33

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C O N N E C T I C U T

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Bridgeport, CT PMSA	60.89	56.83	24.35	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	65.26	60.92	26.11	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 PMSA	57.38	53.55	22.95	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 Windham county towns of Ashford town, Chaplin town Windham 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 New London county towns of Colchester town, Lebanon town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town
New Haven-Meriden, CT PMSA	63.25	59.04	25.30	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 tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	56.33	52.58	22.53	Middlesex county towns of Old Saybrook town Windham county towns of Canterbury town, Plainfield 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 t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

C O N N E C T I C U T continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	65.26	60.92	26.11	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	51.64	48.20	20.66	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	54.21	50.60	21.69	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Litchfield	54.39	50.76	21.76	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
Hartford	51.26	47.84	20.50	Hartland town
Windham	50.45	47.09	20.18	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town
Tolland	56.98	53.17	22.79	Union town
New London	43.73	40.81	17.49	Lyme town, Voluntown town
Middlesex	60.96	56.91	24.39	Chester town, Deep River town, Essex town Westbrook town

D E L A W A R E

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Dover, DE MSA	44.76	41.77	17.90	Kent
Wilmington-Newark, DE-MD PMSA	52.57	49.06	21.03	New Castle

NONMETROPOLITAN COUNTIES	A	B	C
Sussex	46.57	43.46	18.63

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Washington, DC-MD-VA	65.63	61.26	26.25	District of Columbia

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

F L O R I D A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	45.32	42.30	18.13	Volusia, Flagler
Fort Lauderdale, FL PMSA	57.44	53.61	22.98	Broward
Fort Myers-Cape Coral, FL MSA	47.53	44.37	19.01	Lee
Fort Pierce-Port Lucie, FL MSA	48.16	44.95	19.27	St. Lucie, Martin
Fort Walton Beach, FL MSA	35.64	33.25	14.25	Okaloosa
Gainesville, FL MSA	40.63	37.92	16.25	Alachua
Jacksonville, FL MSA	42.82	39.97	17.13	St. Johns, Nassau, Duval, Clay
Lakeland-Winter Haven, FL MSA	37.62	35.12	15.05	Polk
Melbourne-Titusville-Palm Bay, FL MSA	43.59	40.70	17.44	Brevard
Miami, FL PMSA	61.35	57.26	24.54	Dade
Naples, FL MSA	49.46	46.16	19.79	Collier
Ocala, FL MSA	37.05	34.58	14.82	Marion
Orlando, FL MSA	47.22	44.07	18.89	Lake, Osceola, Orange, Seminole
Panama City, FL MSA	35.64	33.25	14.25	Bay
Pensacola, FL MSA	37.05	34.58	14.82	Santa Rosa, Escambia
Punta Gorda, FL MSA	46.28	43.20	18.51	Charlotte
Sarasota-Bradenton, FL MSA	49.61	46.31	19.85	Manatee, Sarasota
Tallahassee, FL MSA	40.23	37.55	16.09	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	45.21	42.19	18.08	Hernando, Pasco, Hillsborough, Pinellas
West Palm Beach-Boca Raton, FL MSA	47.91	44.71	19.16	Palm Beach

NONMETROPOLITAN COUNTIES	A	B	C
Bradford	38.42	35.86	15.37
Desoto	34.77	32.45	13.91
Citrus	34.77	32.45	13.91
Washington	34.77	32.45	13.91
Wakulla	34.77	32.45	13.91
Taylor	34.77	32.45	13.91
Sumter	34.77	32.45	13.91
Okeechobee	34.77	32.45	13.91
Madison	34.77	32.45	13.91
Levy	34.77	32.45	13.91
Jefferson	34.77	32.45	13.91
Indian River	46.82	43.71	18.73
Highlands	34.77	32.45	13.91
Hardee	34.77	32.45	13.91
Gulf	34.77	32.45	13.91
Gilchrist	34.77	32.45	13.91
Dixie	34.77	32.45	13.91

NONMETROPOLITAN COUNTIES	A	B	C
Baker	34.77	32.45	13.91
Columbia	34.77	32.45	13.91
Calhoun	34.77	32.45	13.91
Walton	34.77	32.45	13.91
Union	34.77	32.45	13.91
Suwannee	34.77	32.45	13.91
Putnam	34.77	32.45	13.91
Monroe	59.77	55.79	23.91
Liberty	34.77	32.45	13.91
Lafayette	34.77	32.45	13.91
Jackson	34.77	32.45	13.91
Holmes	34.77	32.45	13.91
Hendry	43.86	40.94	17.54
Hamilton	34.77	32.45	13.91
Glades	43.86	40.94	17.54
Franklin	34.77	32.45	13.91

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

G E O R G I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albany, GA MSA	35.09	32.75	14.04	Dougherty, Lee
Athens, GA MSA	35.97	33.58	14.39	Clarke, Oconee, Madison
Atlanta, GA MSA	48.29	45.06	19.31	Carroll, Rockdale, Spalding, Paulding, Newton, Henry Gwinnett, Fulton, Forsyth, Fayette, Douglas, Dekalb Coweta, Cobb, Clayton, Cherokee, Bartow, Barrow, Walton Pickens
Augusta-Aiken, GA-SC MSA	35.97	33.58	14.39	Columbia, Richmond, Mcduffie
Chattanooga, TN-GA MSA	39.43	36.80	15.77	Catoosa, Walker, Dade
Columbus, GA-AL MSA	35.09	32.75	14.04	Muscogee, Harris, Chattahoochee
Macon, GA MSA	35.66	33.29	14.26	Bibb, Twiggs, Peach, Jones, Houston
Savannah, GA MSA	36.65	34.21	14.66	Bryan, Effingham, Chatham

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Appling	35.51	33.13	14.20	Bacon	35.51	33.13	14.20
Atkinson	35.51	33.13	14.20	Brooks	35.51	33.13	14.20
Brantley	35.51	33.13	14.20	Bleckley	35.51	33.13	14.20
Berrien	35.51	33.13	14.20	Ben Hill	35.51	33.13	14.20
Banks	35.51	33.13	14.20	Baldwin	35.51	33.13	14.20
Baker	35.51	33.13	14.20	Dawson	35.51	33.13	14.20
Crisp	35.51	33.13	14.20	Crawford	35.51	33.13	14.20
Cook	35.51	33.13	14.20	Colquitt	35.51	33.13	14.20
Coffee	35.51	33.13	14.20	Clinch	35.51	33.13	14.20
Clay	35.51	33.13	14.20	Chattooga	35.51	33.13	14.20
Charlton	35.51	33.13	14.20	Candler	35.51	33.13	14.20
Camden	35.51	33.13	14.20	Calhoun	35.51	33.13	14.20
Butts	48.11	44.90	19.24	Burke	35.51	33.13	14.20
Bulloch	35.51	33.13	14.20	Lanier	35.51	33.13	14.20
Lamar	35.51	33.13	14.20	Johnson	35.51	33.13	14.20
Jenkins	35.51	33.13	14.20	Jefferson	35.51	33.13	14.20
Jeff Davis	35.51	33.13	14.20	Jasper	35.51	33.13	14.20
Jackson	35.51	33.13	14.20	Irwin	35.51	33.13	14.20
Heard	35.51	33.13	14.20	Hart	35.51	33.13	14.20
Haralson	35.51	33.13	14.20	Hancock	35.51	33.13	14.20
Hall	39.24	36.62	15.70	Habersham	35.51	33.13	14.20
Greene	35.51	33.13	14.20	Grady	35.51	33.13	14.20
Gordon	35.51	33.13	14.20	Glynn	35.51	33.13	14.20
Glascock	35.51	33.13	14.20	Gilmer	35.51	33.13	14.20
Franklin	35.51	33.13	14.20	Floyd	35.51	33.13	14.20
Fannin	35.51	33.13	14.20	Evans	35.51	33.13	14.20
Emanuel	35.51	33.13	14.20	Elbert	35.51	33.13	14.20
Echols	35.51	33.13	14.20	Early	35.51	33.13	14.20

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

G E O R G I A continued

NONMETROPOLITAN COUNTIES	A	B	C
Dooly	35.51	33.13	14.20
Decatur	35.51	33.13	14.20
Wilkinson	35.51	33.13	14.20
Wilcox	35.51	33.13	14.20
White	35.51	33.13	14.20
Webster	35.51	33.13	14.20
Washington	35.51	33.13	14.20
Ware	35.51	33.13	14.20
Union	35.51	33.13	14.20
Troup	35.51	33.13	14.20
Towns	35.51	33.13	14.20
Tift	35.51	33.13	14.20
Terrell	35.51	33.13	14.20
Taylor	35.51	33.13	14.20
Taliaferro	35.51	33.13	14.20
Sumter	35.51	33.13	14.20
Stephens	35.51	33.13	14.20
Screven	35.51	33.13	14.20
Randolph	35.51	33.13	14.20
Quitman	35.51	33.13	14.20
Pulaski	35.51	33.13	14.20
Pike	35.51	33.13	14.20
Oglethorpe	35.51	33.13	14.20
Morgan	35.51	33.13	14.20
Monroe	35.51	33.13	14.20
Miller	35.51	33.13	14.20
Marion	35.51	33.13	14.20
Mcintosh	35.51	33.13	14.20
Lowndes	35.51	33.13	14.20
Lincoln	35.51	33.13	14.20
Laurens	35.51	33.13	14.20

NONMETROPOLITAN COUNTIES	A	B	C
Dodge	35.51	33.13	14.20
Worth	35.51	33.13	14.20
Wilkes	35.51	33.13	14.20
Whitfield	35.51	33.13	14.20
Wheeler	35.51	33.13	14.20
Wayne	35.51	33.13	14.20
Warren	35.51	33.13	14.20
Upson	35.51	33.13	14.20
Turner	35.51	33.13	14.20
Treutlen	35.51	33.13	14.20
Toombs	35.51	33.13	14.20
Thomas	35.51	33.13	14.20
Telfair	35.51	33.13	14.20
Tattnall	35.51	33.13	14.20
Talbot	35.51	33.13	14.20
Stewart	35.51	33.13	14.20
Seminole	35.51	33.13	14.20
Schley	35.51	33.13	14.20
Rabun	35.51	33.13	14.20
Putnam	35.51	33.13	14.20
Polk	35.51	33.13	14.20
Pierce	35.51	33.13	14.20
Murray	35.51	33.13	14.20
Montgomery	35.51	33.13	14.20
Mitchell	35.51	33.13	14.20
Meriwether	35.51	33.13	14.20
Macon	35.51	33.13	14.20
Lumpkin	35.51	33.13	14.20
Long	35.51	33.13	14.20
Liberty	35.51	33.13	14.20

H A W A I I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Honolulu, HI MSA	68.37	63.81	27.35	Honolulu

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

H A W A I I continued

NONMETROPOLITAN COUNTIES	A	B	C
Hawaii	59.35	55.39	23.74
Kauai	66.84	62.39	26.74
Maui	66.84	62.39	26.74

I D A H O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Boise City, ID MSA	49.45	46.15	19.78	Canyon, Ada
Pocatello, ID MSA	39.80	37.14	15.92	Bannock

NONMETROPOLITAN COUNTIES	A	B	C
Adams	38.42	35.87	15.37
Bear Lake	39.76	37.11	15.90
Boise	38.42	35.87	15.37
Bingham	39.76	37.11	15.90
Clark	43.00	40.13	17.20
Caribou	39.76	37.11	15.90
Butte	43.00	40.13	17.20
Bonneville	43.00	40.13	17.20
Madison	43.00	40.13	17.20
Lewis	39.76	37.11	15.90
Latah	39.76	37.11	15.90
Jerome	40.76	38.04	16.30
Idaho	39.76	37.11	15.90
Gem	38.42	35.87	15.37
Franklin	39.76	37.11	15.90
Custer	43.00	40.13	17.20
Valley	38.42	35.87	15.37
Teton	43.00	40.13	17.20
Power	39.76	37.11	15.90
Owyhee	38.42	35.87	15.37
Nez Perce	39.76	37.11	15.90
Benewah	39.76	37.11	15.90
Bonner	39.76	37.11	15.90
Blaine	42.19	39.37	16.87
Clearwater	39.76	37.11	15.90
Cassia	40.76	38.04	16.30
Camas	40.76	38.04	16.30
Boundary	39.76	37.11	15.90
Minidoka	40.76	38.04	16.30
Lincoln	40.76	38.04	16.30
Lemhi	43.00	40.13	17.20
Kootenai	41.15	38.41	16.46
Jefferson	43.00	40.13	17.20
Gooding	40.76	38.04	16.30
Fremont	43.00	40.13	17.20
Elmore	38.42	35.87	15.37
Washington	38.42	35.87	15.37
Twin Falls	40.76	38.04	16.30
Shoshone	39.76	37.11	15.90
Payette	38.42	35.87	15.37
Oneida	39.76	37.11	15.90

I L L I N O I S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	41.68	38.91	16.67	Mclean
Champaign-Urbana, IL MSA	41.83	39.04	16.73	Champaign
Chicago, IL	59.35	55.39	23.74	Lake, Kane, Dupage, Cook, Will, Mchenry
Davenport-Moline-Rock Island, IA-IL MSA	43.68	40.77	17.47	Rock Island, Henry

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I L L I N O I S continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Decatur, IL MSA	40.41	37.72	16.16	Macon
De Kalb County, IL	47.04	43.90	18.81	Dekalb
Grundy County, IL	60.54	56.50	24.22	Grundy
Kankakee, IL PMSA	40.49	37.80	16.20	Kankakee
Kendall County, Il	59.85	55.86	23.94	Kendall
Peoria-Pekin, IL MSA	46.86	43.74	18.74	Peoria, Woodford, Tazewell
Rockford, IL MSA	42.62	39.78	17.05	Winnebago, Ogle, Boone
St. Louis, MO-IL MSA	40.29	37.60	16.12	Clinton, St. Clair, Monroe, Madison, Jersey
Springfield, IL MSA	42.71	39.85	17.08	Sangamon, Menard

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Alexander	35.57	33.19	14.23	Adams	35.57	33.19	14.23
Clark	35.57	33.19	14.23	Christian	35.57	33.19	14.23
Cass	35.57	33.19	14.23	Carroll	35.57	33.19	14.23
Calhoun	35.57	33.19	14.23	Bureau	37.73	35.22	15.09
Brown	35.57	33.19	14.23	Bond	35.57	33.19	14.23
Hamilton	35.57	33.19	14.23	Greene	35.57	33.19	14.23
Gallatin	35.57	33.19	14.23	Fulton	37.73	35.22	15.09
Franklin	35.99	33.58	14.39	Ford	35.57	33.19	14.23
Fayette	35.57	33.19	14.23	Effingham	35.57	33.19	14.23
Edwards	35.57	33.19	14.23	Edgar	35.57	33.19	14.23
Douglas	35.57	33.19	14.23	De Witt	35.57	33.19	14.23
Cumberland	35.57	33.19	14.23	Crawford	35.57	33.19	14.23
Coles	35.57	33.19	14.23	Clay	35.57	33.19	14.23
Randolph	35.57	33.19	14.23	Putnam	37.73	35.22	15.09
Pulaski	35.57	33.19	14.23	Pope	35.57	33.19	14.23
Pike	35.57	33.19	14.23	Piatt	35.57	33.19	14.23
Perry	35.57	33.19	14.23	Moultrie	35.57	33.19	14.23
Morgan	35.57	33.19	14.23	Montgomery	35.57	33.19	14.23
Mercer	35.57	33.19	14.23	Massac	35.57	33.19	14.23
Mason	35.57	33.19	14.23	Marshall	37.73	35.22	15.09
Marion	35.57	33.19	14.23	Macoupin	35.57	33.19	14.23
Mcdonough	35.57	33.19	14.23	Logan	35.57	33.19	14.23
Livingston	35.57	33.19	14.23	Lee	42.54	39.71	17.02
Lawrence	35.57	33.19	14.23	La Salle	42.54	39.71	17.02
Knox	36.31	33.89	14.52	Johnson	35.57	33.19	14.23
Jo Daviess	35.57	33.19	14.23	Jefferson	35.57	33.19	14.23
Jasper	35.57	33.19	14.23	Jackson	35.99	33.58	14.39
Iroquois	35.57	33.19	14.23	Henderson	35.57	33.19	14.23
Hardin	35.57	33.19	14.23	Hancock	35.57	33.19	14.23

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I L L I N O I S continued

NONMETROPOLITAN COUNTIES	A	B	C
Williamson	35.99	33.58	14.39
White	35.57	33.19	14.23
Washington	35.57	33.19	14.23
Wabash	35.57	33.19	14.23
Union	35.57	33.19	14.23
Stark	37.73	35.22	15.09
Scott	35.57	33.19	14.23
Saline	35.57	33.19	14.23
Whiteside	42.54	39.71	17.02
Wayne	35.57	33.19	14.23
Warren	35.57	33.19	14.23
Vermilion	35.57	33.19	14.23
Stephenson	35.57	33.19	14.23
Shelby	35.57	33.19	14.23
Schuyler	35.57	33.19	14.23
Richland	35.57	33.19	14.23

I N D I A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bloomington, IN MSA	37.19	34.72	14.88	Monroe
Cincinnati, OH-KY-IN	40.49	37.79	16.20	Dearborn
Elkhart-Goshen, IN MSA	36.27	33.85	14.51	Elkhart
Evansville-Henderson, IN-KY MSA	36.02	33.61	14.41	Posey, Warrick, Vanderburgh
Fort Wayne, IN MSA	37.53	35.03	15.01	Allen, Adams, Whitley, Wells, Huntington, De Kalb
Gary, IN PMSA	45.82	42.76	18.33	Porter, Lake
Indianapolis, IN MSA	41.49	38.72	16.60	Hamilton, Boone, Shelby, Morgan, Marion, Madison, Johnson Hendricks, Hancock
Kokomo, IN MSA	36.50	34.07	14.60	Howard, Tipton
Lafayette, IN MSA	40.07	37.40	16.03	Clinton, Tippecanoe
Louisville, KY-IN MSA	33.00	30.80	13.20	Clark, Scott, Harrison, Floyd
Muncie, IN MSA	34.96	32.63	13.98	Delaware
Ohio County, IN	34.96	32.63	13.98	Ohio
South Bend, IN MSA	36.94	34.47	14.78	St. Joseph
Terre Haute, IN MSA	34.96	32.63	13.98	Vermillion, Clay, Vigo

NONMETROPOLITAN COUNTIES	A	B	C
Bartholomew	37.49	34.99	14.99
Benton	34.61	32.30	13.84
Dubois	34.61	32.30	13.84
Daviess	34.61	32.30	13.84
Cass	34.61	32.30	13.84
Brown	37.49	34.99	14.99
Wayne	34.61	32.30	13.84
Warren	34.61	32.30	13.84
Union	34.61	32.30	13.84
Sullivan	34.61	32.30	13.84
Starke	34.61	32.30	13.84
Blackford	34.61	32.30	13.84
Fayette	34.61	32.30	13.84
Decatur	36.22	33.81	14.49
Crawford	34.61	32.30	13.84
Carroll	34.61	32.30	13.84
White	34.61	32.30	13.84
Washington	35.57	33.21	14.23
Wabash	34.61	32.30	13.84
Switzerland	34.61	32.30	13.84
Steuben	34.61	32.30	13.84
Spencer	34.61	32.30	13.84

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I N D I A N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Rush	34.61	32.30	13.84
Randolph	34.61	32.30	13.84
Pulaski	34.61	32.30	13.84
Perry	34.61	32.30	13.84
Owen	35.09	32.75	14.04
Noble	34.61	32.30	13.84
Montgomery	34.61	32.30	13.84
Martin	34.61	32.30	13.84
Lawrence	34.61	32.30	13.84
Lagrange	34.61	32.30	13.84
Knox	34.61	32.30	13.84
Jefferson	34.61	32.30	13.84
Jasper	34.61	32.30	13.84
Henry	34.61	32.30	13.84
Grant	34.61	32.30	13.84
Fulton	34.61	32.30	13.84
Fountain	34.61	32.30	13.84
Ripley	34.61	32.30	13.84
Putnam	34.69	32.37	13.87
Pike	34.61	32.30	13.84
Parke	34.61	32.30	13.84
Orange	34.61	32.30	13.84
Newton	34.61	32.30	13.84
Miami	34.61	32.30	13.84
Marshall	34.61	32.30	13.84
La Porte	35.82	33.43	14.33
Kosciusko	34.61	32.30	13.84
Jennings	36.22	33.81	14.49
Jay	34.61	32.30	13.84
Jackson	36.22	33.81	14.49
Greene	34.61	32.30	13.84
Gibson	34.61	32.30	13.84
Franklin	34.61	32.30	13.84

I O W A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	42.19	39.38	16.88	Linn
Davenport-Moline-Rock Island, IA-IL MSA	43.68	40.77	17.47	Scott
Des Moines, IA MSA	43.58	40.68	17.43	Polk, Dallas, Warren
Dubuque, IA MSA	39.04	36.44	15.62	Dubuque
Iowa City, IA MSA	44.42	41.46	17.77	Johnson
Omaha, NE-IA MSA	39.91	37.25	15.96	Pottawattamie
Sioux City, IA-NE MSA	38.13	35.59	15.25	Woodbury
Waterloo-Cedar Falls, IA MSA	42.35	39.53	16.94	Black Hawk

NONMETROPOLITAN COUNTIES	A	B	C
Adams	35.15	32.81	14.06
Buena Vista	35.15	32.81	14.06
Bremer	42.04	39.24	16.82
Benton	35.15	32.81	14.06
Appanoose	35.15	32.81	14.06
Sac	35.15	32.81	14.06
Poweshiek	35.15	32.81	14.06
Plymouth	35.15	32.81	14.06
Page	35.15	32.81	14.06
Adair	35.15	32.81	14.06
Buchanan	35.15	32.81	14.06
Boone	37.70	35.19	15.08
Audubon	35.15	32.81	14.06
Allamakee	35.15	32.81	14.06
Ringgold	35.15	32.81	14.06
Pocahontas	35.15	32.81	14.06
Palo Alto	35.15	32.81	14.06
Osceola	35.15	32.81	14.06

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

I O W A continued

NONMETROPOLITAN COUNTIES	A	B	C
O'Brien	35.15	32.81	14.06
Montgomery	35.15	32.81	14.06
Monona	35.15	32.81	14.06
Mills	35.15	32.81	14.06
Marion	35.15	32.81	14.06
Madison	35.15	32.81	14.06
Lucas	35.15	32.81	14.06
Lee	35.15	32.81	14.06
Keokuk	35.15	32.81	14.06
Jefferson	35.15	32.81	14.06
Jackson	37.04	34.57	14.81
Ida	35.15	32.81	14.06
Howard	35.15	32.81	14.06
Harrison	35.15	32.81	14.06
Hancock	35.15	32.81	14.06
Guthrie	35.15	32.81	14.06
Greene	35.15	32.81	14.06
Franklin	35.15	32.81	14.06
Fayette	35.15	32.81	14.06
Dickinson	35.15	32.81	14.06
Delaware	37.04	34.57	14.81
Davis	35.15	32.81	14.06
Clinton	37.04	34.57	14.81
Clay	35.15	32.81	14.06
Chickasaw	35.15	32.81	14.06
Cerro Gordo	35.15	32.81	14.06
Cass	35.15	32.81	14.06
Calhoun	35.15	32.81	14.06
Wright	35.15	32.81	14.06
Winneshiek	35.15	32.81	14.06
Webster	35.15	32.81	14.06
Washington	35.15	32.81	14.06
Van Buren	35.15	32.81	14.06
Taylor	35.15	32.81	14.06
Story	38.19	35.64	15.28
Shelby	35.15	32.81	14.06

NONMETROPOLITAN COUNTIES	A	B	C
Muscatine	35.15	32.81	14.06
Monroe	35.15	32.81	14.06
Mitchell	35.15	32.81	14.06
Marshall	35.15	32.81	14.06
Mahaska	35.15	32.81	14.06
Lyon	35.15	32.81	14.06
Louisa	35.15	32.81	14.06
Kossuth	35.15	32.81	14.06
Jones	35.15	32.81	14.06
Jasper	35.15	32.81	14.06
Iowa	35.15	32.81	14.06
Humboldt	35.15	32.81	14.06
Henry	35.15	32.81	14.06
Hardin	35.15	32.81	14.06
Hamilton	35.15	32.81	14.06
Grundy	35.15	32.81	14.06
Fremont	35.15	32.81	14.06
Floyd	35.15	32.81	14.06
Emmet	35.15	32.81	14.06
Des Moines	35.15	32.81	14.06
Decatur	35.15	32.81	14.06
Crawford	35.15	32.81	14.06
Clayton	35.15	32.81	14.06
Clarke	35.15	32.81	14.06
Cherokee	35.15	32.81	14.06
Cedar	37.04	34.57	14.81
Carroll	35.15	32.81	14.06
Butler	35.15	32.81	14.06
Worth	35.15	32.81	14.06
Winnebago	35.15	32.81	14.06
Wayne	35.15	32.81	14.06
Wapello	36.96	34.49	14.78
Union	35.15	32.81	14.06
Tama	35.15	32.81	14.06
Sioux	35.15	32.81	14.06

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K A N S A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	39.17	36.55	15.67	Johnson, Wyandotte, Miami, Leavenworth
Lawrence, KS MSA	41.56	38.80	16.62	Douglas
Topeka, KS MSA	37.61	35.11	15.05	Shawnee
Wichita, KS MSA	40.52	37.81	16.21	Butler, Sedgwick, Harvey

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Chase	34.96	32.63	13.98	Brown	34.96	32.63	13.98
Bourbon	34.96	32.63	13.98	Barton	34.96	32.63	13.98
Barber	34.96	32.63	13.98	Atchison	34.96	32.63	13.98
Anderson	34.96	32.63	13.98	Allen	34.96	32.63	13.98
Jackson	34.96	32.63	13.98	Hodgeman	34.96	32.63	13.98
Haskell	34.96	32.63	13.98	Harper	34.96	32.63	13.98
Hamilton	34.96	32.63	13.98	Greenwood	34.96	32.63	13.98
Greeley	34.96	32.63	13.98	Gray	34.96	32.63	13.98
Grant	34.96	32.63	13.98	Graham	34.96	32.63	13.98
Gove	34.96	32.63	13.98	Geary	34.96	32.63	13.98
Franklin	34.96	32.63	13.98	Ford	34.96	32.63	13.98
Finney	34.96	32.63	13.98	Ellsworth	34.96	32.63	13.98
Ellis	34.96	32.63	13.98	Elk	34.96	32.63	13.98
Edwards	34.96	32.63	13.98	Doniphan	34.96	32.63	13.98
Dickinson	34.96	32.63	13.98	Decatur	34.96	32.63	13.98
Crawford	34.96	32.63	13.98	Cowley	34.96	32.63	13.98
Comanche	34.96	32.63	13.98	Coffey	34.96	32.63	13.98
Cloud	34.96	32.63	13.98	Clay	34.96	32.63	13.98
Clark	34.96	32.63	13.98	Cheyenne	34.96	32.63	13.98
Cherokee	34.96	32.63	13.98	Chautauqua	34.96	32.63	13.98
Woodson	34.96	32.63	13.98	Wilson	34.96	32.63	13.98
Wichita	34.96	32.63	13.98	Washington	34.96	32.63	13.98
Wallace	34.96	32.63	13.98	Wabaunsee	34.96	32.63	13.98
Trego	34.96	32.63	13.98	Thomas	34.96	32.63	13.98
Sumner	34.96	32.63	13.98	Stevens	34.96	32.63	13.98
Stanton	34.96	32.63	13.98	Stafford	34.96	32.63	13.98
Smith	34.96	32.63	13.98	Sherman	34.96	32.63	13.98
Sheridan	34.96	32.63	13.98	Seward	34.96	32.63	13.98
Scott	34.96	32.63	13.98	Saline	34.96	32.63	13.98
Russell	34.96	32.63	13.98	Rush	34.96	32.63	13.98
Rooks	34.96	32.63	13.98	Riley	34.96	32.63	13.98
Rice	34.96	32.63	13.98	Republic	34.96	32.63	13.98
Reno	34.96	32.63	13.98	Rawlins	34.96	32.63	13.98
Pratt	34.96	32.63	13.98	Pottawatomie	34.96	32.63	13.98

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K A N S A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Phillips	34.96	32.63	13.98
Ottawa	34.96	32.63	13.98
Osage	34.96	32.63	13.98
Ness	34.96	32.63	13.98
Nemaha	34.96	32.63	13.98
Morris	34.96	32.63	13.98
Mitchell	34.96	32.63	13.98
Marshall	34.96	32.63	13.98
Mcpherson	34.96	32.63	13.98
Logan	34.96	32.63	13.98
Lincoln	34.96	32.63	13.98
Labette	34.96	32.63	13.98
Kingman	34.96	32.63	13.98
Jewell	34.96	32.63	13.98
Pawnee	34.96	32.63	13.98
Osborne	34.96	32.63	13.98
Norton	34.96	32.63	13.98
Neosho	34.96	32.63	13.98
Morton	34.96	32.63	13.98
Montgomery	34.96	32.63	13.98
Meade	34.96	32.63	13.98
Marion	34.96	32.63	13.98
Lyon	34.96	32.63	13.98
Linn	34.96	32.63	13.98
Lane	34.96	32.63	13.98
Kiowa	34.96	32.63	13.98
Kearny	34.96	32.63	13.98
Jefferson	34.96	32.63	13.98

K E N T U C K Y

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	40.49	37.79	16.20	Kenton, Campbell, Boone
Clarksville-Hopkinsville, TN-KY MSA	40.12	37.45	16.05	Christian
Evansville-Henderson, IN-KY MSA	36.02	33.61	14.41	Henderson
Gallatin County, KY	33.00	30.80	13.20	Gallatin
Grant County, KY	33.00	30.80	13.20	Grant
Huntington-Ashland, WV-KY-OH MSA	36.64	34.19	14.66	Boyd, Greenup, Carter
Lexington, KY MSA	36.55	34.10	14.62	Clark, Bourbon, Scott, Madison, Jessamine, Fayette Woodford
Louisville, KY-IN MSA	33.00	30.80	13.20	Bullitt, Oldham, Jefferson
Owensboro, KY MSA	33.00	30.80	13.20	Daviess
Pendleton County, KY	33.00	30.80	13.20	Pendleton

NONMETROPOLITAN COUNTIES	A	B	C
Allen	33.61	31.37	13.45
Clay	33.61	31.37	13.45
Carroll	33.61	31.37	13.45
Calloway	33.61	31.37	13.45
Butler	33.61	31.37	13.45
Breathitt	33.61	31.37	13.45
Boyle	33.61	31.37	13.45
Bath	33.61	31.37	13.45
Ballard	33.61	31.37	13.45
Letcher	33.61	31.37	13.45
Adair	33.61	31.37	13.45
Casey	33.61	31.37	13.45
Carlisle	33.61	31.37	13.45
Caldwell	33.61	31.37	13.45
Breckinridge	33.61	31.37	13.45
Bracken	33.61	31.37	13.45
Bell	33.61	31.37	13.45
Barren	33.61	31.37	13.45
Anderson	34.23	31.95	13.69
Leslie	33.61	31.37	13.45

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	A	B	C
Lee	33.61	31.37	13.45
Laurel	33.61	31.37	13.45
Knox	33.61	31.37	13.45
Johnson	33.61	31.37	13.45
Hopkins	33.61	31.37	13.45
Henry	33.61	31.37	13.45
Harrison	33.61	31.37	13.45
Hardin	33.61	31.37	13.45
Green	33.61	31.37	13.45
Graves	33.61	31.37	13.45
Fulton	33.61	31.37	13.45
Floyd	33.61	31.37	13.45
Estill	33.61	31.37	13.45
Edmonson	33.61	31.37	13.45
Crittenden	33.61	31.37	13.45
Wolfe	33.61	31.37	13.45
Webster	33.61	31.37	13.45
Washington	33.61	31.37	13.45
Union	33.61	31.37	13.45
Trigg	33.61	31.37	13.45
Taylor	33.61	31.37	13.45
Simpson	33.61	31.37	13.45
Russell	33.61	31.37	13.45
Rockcastle	33.61	31.37	13.45
Pulaski	33.61	31.37	13.45
Pike	33.61	31.37	13.45
Owsley	33.61	31.37	13.45
Ohio	33.61	31.37	13.45
Nelson	33.61	31.37	13.45
Morgan	33.61	31.37	13.45
Monroe	33.61	31.37	13.45
Mercer	34.23	31.95	13.69
Meade	33.61	31.37	13.45
Martin	33.61	31.37	13.45
Marion	33.61	31.37	13.45
Mclean	33.61	31.37	13.45
Mccracken	33.61	31.37	13.45
Logan	33.61	31.37	13.45
Lincoln	33.61	31.37	13.45

NONMETROPOLITAN COUNTIES	A	B	C
Lawrence	33.61	31.37	13.45
Larue	33.61	31.37	13.45
Knott	33.61	31.37	13.45
Jackson	33.61	31.37	13.45
Hickman	33.61	31.37	13.45
Hart	33.61	31.37	13.45
Harlan	33.61	31.37	13.45
Hancock	33.61	31.37	13.45
Grayson	33.61	31.37	13.45
Garrard	33.61	31.37	13.45
Franklin	34.23	31.95	13.69
Fleming	33.61	31.37	13.45
Elliott	33.61	31.37	13.45
Cumberland	33.61	31.37	13.45
Clinton	33.61	31.37	13.45
Whitley	33.61	31.37	13.45
Wayne	33.61	31.37	13.45
Warren	33.61	31.37	13.45
Trimble	33.61	31.37	13.45
Todd	33.61	31.37	13.45
Spencer	33.61	31.37	13.45
Shelby	33.61	31.37	13.45
Rowan	33.61	31.37	13.45
Robertson	33.61	31.37	13.45
Powell	33.61	31.37	13.45
Perry	33.61	31.37	13.45
Owen	33.61	31.37	13.45
Nicholas	33.61	31.37	13.45
Muhlenberg	33.61	31.37	13.45
Montgomery	33.61	31.37	13.45
Metcalfe	33.61	31.37	13.45
Menifee	33.61	31.37	13.45
Mason	33.61	31.37	13.45
Marshall	33.61	31.37	13.45
Magoffin	33.61	31.37	13.45
Mccreary	33.61	31.37	13.45
Lyon	33.61	31.37	13.45
Livingston	33.61	31.37	13.45
Lewis	33.61	31.37	13.45

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

L O U I S I A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Alexandria, LA MSA	35.22	32.86	14.09	Rapides
Baton Rouge, LA MSA	41.47	38.70	16.59	East Baton Rouge, Ascension, West Baton Rouge, Livingston
Houma, LA MSA	36.77	34.32	14.71	Terrebonne, Lafourche
Lafayette, LA MSA	35.22	32.86	14.09	Acadia, St. Martin, Lafayette, St. Landry
Lake Charles, LA MSA	35.22	32.86	14.09	Calcasieu
Monroe, LA MSA	35.22	32.86	14.09	Ouachita
New Orleans, LA	38.41	35.84	15.36	St. Bernard, Plaquemines, Orleans, Jefferson, St. Tammany St. John the Baptist, St. Charles
St. James Parish, LA	35.22	32.86	14.09	St. James
Shreveport-Bossier City, LA MSA	37.60	35.09	15.04	Bossier, Webster, Caddo

NONMETROPOLITAN COUNTIES	A	B	C
Catahoula	34.48	32.18	13.79
Caldwell	34.48	32.18	13.79
Beauregard	34.48	32.18	13.79
Assumption	34.48	32.18	13.79
Morehouse	34.48	32.18	13.79
Lincoln	34.48	32.18	13.79
Jefferson Davis	34.48	32.18	13.79
Iberville	34.48	32.18	13.79
Grant	34.48	32.18	13.79
Evangeline	34.48	32.18	13.79
East Carroll	34.48	32.18	13.79
Concordia	34.48	32.18	13.79
Winn	34.48	32.18	13.79
West Carroll	34.48	32.18	13.79
Vernon	34.48	32.18	13.79
Union	34.48	32.18	13.79
Tangipahoa	34.48	32.18	13.79
St. Helena	34.48	32.18	13.79
Richland	34.48	32.18	13.79
Pointe Coupee	34.48	32.18	13.79

NONMETROPOLITAN COUNTIES	A	B	C
Cameron	34.48	32.18	13.79
Bienville	34.48	32.18	13.79
Avoyelles	34.48	32.18	13.79
Allen	34.48	32.18	13.79
Madison	34.48	32.18	13.79
La Salle	34.48	32.18	13.79
Jackson	34.48	32.18	13.79
Iberia	34.48	32.18	13.79
Franklin	34.48	32.18	13.79
East Feliciana	34.48	32.18	13.79
De Soto	34.48	32.18	13.79
Claiborne	34.48	32.18	13.79
West Feliciana	34.48	32.18	13.79
Washington	34.48	32.18	13.79
Vermilion	34.48	32.18	13.79
Tensas	34.48	32.18	13.79
St. Mary	34.48	32.18	13.79
Sabine	34.48	32.18	13.79
Red River	34.48	32.18	13.79
Natchitoches	34.48	32.18	13.79

M A I N E

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Bangor, ME MSA	42.09	39.28	16.84	Waldo county towns of Winterport town Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A I N E continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Penobscot Indian I, Veazie town
Lewiston-Auburn, ME MSA	41.46	38.70	16.59	Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	57.95	54.08	23.18	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	53.00	49.48	21.20	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Aroostook	38.43	35.87	15.37	
Androscoggin	38.06	35.52	15.22	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Penobscot	38.98	36.38	15.59	Alton town, Argyle unorg., Bradford town, Bradley town Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town
Oxford	37.72	35.20	15.09	
Lincoln	39.69	37.05	15.88	
Knox	40.34	37.66	16.14	
Kennebec	40.40	37.70	16.16	
Hancock	39.45	36.83	15.78	
Franklin	37.72	35.20	15.09	
Cumberland	44.01	41.08	17.61	Baldwin town, Bridgton town, Brunswick town Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A I N E continued

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
York	50.64	47.26	20.26	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town
Washington	38.98	36.38	15.59	
Waldo	38.98	36.38	15.59	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 t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Somerset	38.35	35.80	15.34	
Sagadahoc	46.14	43.05	18.45	
Piscataquis	33.86	31.61	13.54	

M A R Y L A N D

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Baltimore, MD	47.85	44.65	19.14	Baltimore, Anne Arundel, Baltimore city, Queen Anne's Howard, Harford, Carroll
Columbia, MD	63.24	59.02	25.30	Columbia
Cumberland, MD-WV MSA	33.97	31.70	13.59	Allegany
Hagerstown, MD PMSA	37.54	35.03	15.01	Washington
Washington, DC-MD-VA	65.63	61.26	26.25	Prince George's, Montgomery, Frederick, Charles, Calvert
Wilmington-Newark, DE-MD PMSA	52.57	49.06	21.03	Cecil

NONMETROPOLITAN COUNTIES	A	B	C
Dorchester	36.66	34.22	14.66
Worcester	37.79	35.27	15.12
Talbot	42.19	39.38	16.88
St. Mary's	51.78	48.33	20.71
Garrett	34.42	32.12	13.77
Caroline	35.13	32.79	14.05
Wicomico	43.57	40.67	17.43
Somerset	36.66	34.22	14.66
Kent	38.61	36.04	15.44

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	64.96	60.63	25.98	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Boston, MA-NH PMSA.....	64.80	60.48	25.92	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 Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop 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 Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town 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 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 town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city
Brockton, MA PMSA.....	53.91	50.32	21.56	Bristol county towns of Easton town, Raynham town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town Hanson town, Lakeville town, Middleborough town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Plympton town, West Bridgewater t, Whitman town
				Norfolk county towns of Avon town
Fitchburg-Leominster, MA MSA	54.31	50.69	21.72	Worcester county towns of Ashburnham town, Fitchburg city
				Gardner city, Leominster city, Lunenburg town
				Templeton town, Westminster town, Winchendon town
				Middlesex county towns of Ashby town
Lawrence, MA-NH PMSA	52.07	48.60	20.83	Essex county towns of Andover town, Boxford town
				Georgetown town, Groveland town, Haverhill city
				Lawrence city, Merrimac town, Methuen town
				North Andover town, West Newbury town
Lowell, MA-NH PMSA	54.39	50.76	21.76	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 MSA	47.01	43.89	18.81	Plymouth county towns of Marion town, Mattapoisett town
				Rochester town
				Bristol county towns of Acushnet town, Dartmouth town
				Fairhaven town, Freetown town, New Bedford city
Pittsfield, MA MSA	49.74	46.43	19.90	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 PMSA	55.74	52.02	22.30	Bristol county towns of Attleboro city, Fall River city
				North Attleborough, Rehoboth town, Seekonk town
				Somerset town, Swansea town, Westport town
Springfield, MA MSA	48.70	45.45	19.48	Hampden county towns of Agawam town, Chicopee city
				East Longmeadow to, Hampden town, Holyoke city
				Longmeadow town, Ludlow town, Monson town
				Montgomery town, Palmer town, Russell town
				Southwick town, Springfield city, Westfield city
				West Springfield t, Wilbraham town
				Franklin county towns of Sunderland town
				Hampshire county towns of Amherst town, Belchertown town
				Easthampton town, Granby town, Hadley town
				Hatfield town, Huntington town, Northampton city
				Southampton town, South Hadley town, Ware town
				Williamsburg town
Worcester, MA-CT	54.21	50.60	21.69	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 to, Grafton town, Holden town
				Leicester town, Millbury town, Northborough town
				Northbridge town, North Brookfield t, Oakham town
				Oxford town, Paxton town, Princeton town, Rutland town
				Shrewsbury town, Southbridge town, Spencer town
				Sterling town, Sturbridge town, Sutton town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Uxbridge town, Webster town, Westborough town West Boylston town, West Brookfield to, Worcester city

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Barnstable	63.99	59.72	25.59	Bourne town, Falmouth town, Provincetown town Truro town, Wellfleet town
Worcester	47.89	44.70	19.16	Athol town, Hardwick town, Hubbardston town New Braintree town, Petersham town, Phillipston town Royalston town, Warren town
Nantucket	63.99	59.72	25.59	
Hampshire	58.63	54.71	23.45	Chesterfield town, Cummington town, Goshen town Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town
Hampden	46.71	43.60	18.69	Blandford town, Brimfield town, Chester town Granville town, Tolland town, Wales town
Franklin	48.60	45.37	19.44	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
Dukes	63.99	59.72	25.59	
Berkshire	43.15	40.28	17.26	Alford town, Becket town, Clarksburg town, Egremont town Florida town, Great Barrington t, Hancock town Monterey town, Mount Washington t, New Ashford town New Marlborough to, North Adams city, Otis town Peru town, Sandisfield town, Savoy town, Sheffield town Tyringham town, Washington town, West Stockbridge t Williamstown town, Windsor town

M I C H I G A N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	53.98	50.38	21.59	Lenawee, Washtenaw, Livingston
Benton Harbor, MI MSA	39.49	36.86	15.80	Berrien
Detroit, MI PMSA	45.30	42.28	18.12	Lapeer, St. Clair, Oakland, Monroe, Macomb, Wayne
Flint, MI PMSA	38.99	36.39	15.60	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	42.76	39.91	17.11	Kent, Allegan, Ottawa, Muskegon
Jackson, MI MSA	39.15	36.55	15.66	Jackson
Kalamazoo-Battle Creek, MI MSA	40.83	38.12	16.33	Calhoun, Van Buren, Kalamazoo
Lansing-East Lansing, MI MSA	43.44	40.54	17.38	Eaton, Clinton, Ingham

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I C H I G A N continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Saginaw-Bay City-Midland, MI MSA	38.73	36.16	15.49	Bay, Saginaw, Midland

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Benzie	37.42	34.93	14.97	Barry	36.37	33.94	14.55
Baraga	34.90	32.57	13.96	Arenac	34.90	32.57	13.96
Antrim	37.42	34.93	14.97	Alpena	34.90	32.57	13.96
Alger	34.90	32.57	13.96	Alcona	34.90	32.57	13.96
Menominee	37.42	34.93	14.97	Mecosta	34.90	32.57	13.96
Mason	34.90	32.57	13.96	Marquette	37.42	34.93	14.97
Manistee	37.42	34.93	14.97	Mackinac	34.90	32.57	13.96
Luce	34.90	32.57	13.96	Leelanau	38.48	35.92	15.39
Lake	34.90	32.57	13.96	Keweenaw	34.90	32.57	13.96
Kalkaska	37.42	34.93	14.97	Isabella	37.66	35.15	15.06
Iron	34.90	32.57	13.96	Iosco	34.90	32.57	13.96
Ionia	34.98	32.64	13.99	Huron	34.90	32.57	13.96
Houghton	34.90	32.57	13.96	Hillsdale	37.25	34.77	14.90
Gratiot	37.66	35.15	15.06	Grand Traverse	38.73	36.15	15.49
Gogebic	34.90	32.57	13.96	Gladwin	34.90	32.57	13.96
Emmet	37.42	34.93	14.97	Dickinson	34.90	32.57	13.96
Delta	34.90	32.57	13.96	Crawford	34.90	32.57	13.96
Clare	34.90	32.57	13.96	Chippewa	34.90	32.57	13.96
Cheboygan	34.90	32.57	13.96	Charlevoix	37.42	34.93	14.97
Cass	34.90	32.57	13.96	Branch	35.14	32.79	14.05
Wexford	37.42	34.93	14.97	Tuscola	35.02	32.68	14.01
Shiawassee	37.17	34.69	14.87	Schoolcraft	34.90	32.57	13.96
Sanilac	34.90	32.57	13.96	St. Joseph	35.14	32.79	14.05
Roscommon	34.90	32.57	13.96	Presque Isle	34.90	32.57	13.96
Otsego	34.90	32.57	13.96	Oscoda	34.90	32.57	13.96
Osceola	34.90	32.57	13.96	Ontonagon	34.90	32.57	13.96
Ogemaw	34.90	32.57	13.96	Oceana	34.90	32.57	13.96
Newaygo	34.90	32.57	13.96	Montmorency	34.90	32.57	13.96
Montcalm	34.90	32.57	13.96	Missaukee	37.42	34.93	14.97

M I N N E S O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	37.25	34.77	14.90	St. Louis
Fargo-Moorhead, ND-MN MSA	38.08	35.54	15.23	Clay
Grand Forks, ND-MN MSA	36.40	33.97	14.56	Polk

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I N N E S O T A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
La Crosse, WI-MN MSA	41.61	38.83	16.64	Houston
Minneapolis-St. Paul, MN-WI MSA	50.37	47.01	20.15	Carver, Anoka, Washington, Sherburne, Scott, Ramsey Isanti, Hennepin, Dakota, Chisago, Wright
Rochester, MN MSA	41.70	38.93	16.68	Olmsted
St. Cloud, MN MSA	38.38	35.82	15.35	Stearns, Benton

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Big Stone	34.13	31.85	13.65	Beltrami	34.13	31.85	13.65
Becker	34.13	31.85	13.65	Aitkin	35.23	32.89	14.09
Cottonwood	34.13	31.85	13.65	Cook	34.13	31.85	13.65
Clearwater	34.13	31.85	13.65	Chippewa	34.13	31.85	13.65
Cass	34.13	31.85	13.65	Carlton	34.13	31.85	13.65
Brown	34.13	31.85	13.65	Blue Earth	37.32	34.83	14.93
Lac qui Parle	34.13	31.85	13.65	Koochiching	34.13	31.85	13.65
Kittson	34.13	31.85	13.65	Kandiyohi	35.80	33.41	14.32
Kanabec	34.13	31.85	13.65	Jackson	34.13	31.85	13.65
Itasca	34.13	31.85	13.65	Hubbard	34.13	31.85	13.65
Grant	34.13	31.85	13.65	Goodhue	34.13	31.85	13.65
Freeborn	37.23	34.75	14.89	Fillmore	34.13	31.85	13.65
Faribault	34.13	31.85	13.65	Douglas	34.13	31.85	13.65
Dodge	34.13	31.85	13.65	Crow Wing	34.13	31.85	13.65
Yellow Medicine	34.13	31.85	13.65	Winona	34.60	32.30	13.84
Wilkin	34.13	31.85	13.65	Watonwan	34.13	31.85	13.65
Waseca	34.13	31.85	13.65	Wadena	34.13	31.85	13.65
Wabasha	34.13	31.85	13.65	Traverse	34.13	31.85	13.65
Todd	34.13	31.85	13.65	Swift	34.13	31.85	13.65
Stevens	34.13	31.85	13.65	Steele	37.23	34.75	14.89
Sibley	35.48	33.12	14.19	Roseau	34.13	31.85	13.65
Rock	34.13	31.85	13.65	Rice	38.35	35.79	15.34
Renville	35.80	33.41	14.32	Redwood	34.13	31.85	13.65
Red Lake	34.13	31.85	13.65	Pope	34.13	31.85	13.65
Pipestone	34.13	31.85	13.65	Pine	34.13	31.85	13.65
Pennington	34.13	31.85	13.65	Otter Tail	34.13	31.85	13.65
Norman	34.13	31.85	13.65	Nobles	34.13	31.85	13.65
Nicollet	35.95	33.56	14.38	Murray	34.13	31.85	13.65
Mower	34.13	31.85	13.65	Morrison	34.13	31.85	13.65
Mille Lacs	34.13	31.85	13.65	Meeker	35.80	33.41	14.32
Martin	34.13	31.85	13.65	Marshall	34.13	31.85	13.65
Mahnomen	34.13	31.85	13.65	Mcleod	35.80	33.41	14.32
Lyon	34.13	31.85	13.65	Lincoln	34.13	31.85	13.65

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I N N E S O T A continued

NONMETROPOLITAN COUNTIES	A	B	C
Le Sueur	35.48	33.12	14.19
Lake	34.13	31.85	13.65
Lake of the Woods	34.13	31.85	13.65

M I S S I S S I P P I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	35.73	33.34	14.29	Hancock, Jackson, Harrison
Hattiesburg, MS MSA	35.73	33.34	14.29	Lamar, Forrest
Jackson, MS MSA	42.15	39.35	16.86	Madison, Hinds, Rankin
Memphis, TN-AR-MS MSA	39.60	36.96	15.84	Desoto

NONMETROPOLITAN COUNTIES	A	B	C
Alcorn	36.28	33.85	14.51
Bolivar	36.28	33.85	14.51
Attala	36.28	33.85	14.51
Coahoma	36.28	33.85	14.51
Clarke	36.28	33.85	14.51
Choctaw	36.28	33.85	14.51
Carroll	36.28	33.85	14.51
Yazoo	36.28	33.85	14.51
Winston	36.28	33.85	14.51
Webster	36.28	33.85	14.51
Washington	36.28	33.85	14.51
Walthall	36.28	33.85	14.51
Tunica	36.28	33.85	14.51
Tippah	36.28	33.85	14.51
Tallahatchie	36.28	33.85	14.51
Stone	36.28	33.85	14.51
Simpson	36.28	33.85	14.51
Scott	36.28	33.85	14.51
Prentiss	36.28	33.85	14.51
Pike	36.28	33.85	14.51
Pearl River	36.28	33.85	14.51
Oktibbeha	36.28	33.85	14.51
Newton	36.28	33.85	14.51
Montgomery	36.28	33.85	14.51
Marshall	36.28	33.85	14.51
Lowndes	36.28	33.85	14.51
Leflore	36.28	33.85	14.51
Leake	36.28	33.85	14.51
Adams	36.28	33.85	14.51
Benton	36.28	33.85	14.51
Amite	36.28	33.85	14.51
Clay	36.28	33.85	14.51
Claiborne	36.28	33.85	14.51
Chickasaw	36.28	33.85	14.51
Calhoun	36.28	33.85	14.51
Yalobusha	36.28	33.85	14.51
Wilkinson	36.28	33.85	14.51
Wayne	36.28	33.85	14.51
Warren	36.28	33.85	14.51
Union	36.28	33.85	14.51
Tishomingo	36.28	33.85	14.51
Tate	36.28	33.85	14.51
Sunflower	36.28	33.85	14.51
Smith	36.28	33.85	14.51
Sharkey	36.28	33.85	14.51
Quitman	36.28	33.85	14.51
Pontotoc	36.28	33.85	14.51
Perry	36.28	33.85	14.51
Panola	36.28	33.85	14.51
Noxubee	36.28	33.85	14.51
Neshoba	36.28	33.85	14.51
Monroe	36.28	33.85	14.51
Marion	36.28	33.85	14.51
Lincoln	36.28	33.85	14.51
Lee	36.28	33.85	14.51
Lawrence	36.28	33.85	14.51

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	A	B	C
Lauderdale	36.28	33.85	14.51
Kemper	36.28	33.85	14.51
Jefferson Davis	36.28	33.85	14.51
Jasper	36.28	33.85	14.51
Issaquena	36.28	33.85	14.51
Holmes	36.28	33.85	14.51
Greene	36.28	33.85	14.51
Franklin	36.28	33.85	14.51
Copiah	36.28	33.85	14.51
Lafayette	36.28	33.85	14.51
Jones	36.28	33.85	14.51
Jefferson	36.28	33.85	14.51
Itawamba	36.28	33.85	14.51
Humphreys	36.28	33.85	14.51
Grenada	36.28	33.85	14.51
George	36.28	33.85	14.51
Covington	36.28	33.85	14.51

M I S S O U R I

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Columbia, MO MSA	34.49	32.19	13.80	Boone
Joplin, MO MSA	34.29	32.00	13.71	Newton, Jasper
Kansas City, MO-KS MSA	39.17	36.55	15.67	Clay, Cass, Ray, Platte, Lafayette, Jackson, Clinton
St. Joseph, MO MSA	34.29	32.00	13.71	Andrew, Buchanan
St. Louis, MO-IL MSA	40.29	37.60	16.12	Crawford-Sullivan (part), St. Louis city, Warren St. Louis, St. Charles, Lincoln, Jefferson, Franklin
Springfield, MO MSA	34.29	32.00	13.71	Christian, Webster, Greene

NONMETROPOLITAN COUNTIES	A	B	C
Atchison	35.73	33.34	14.29
Bates	35.73	33.34	14.29
Barry	35.73	33.34	14.29
Carroll	35.73	33.34	14.29
Camden	35.73	33.34	14.29
Caldwell	35.73	33.34	14.29
Bollinger	35.73	33.34	14.29
Mcdonald	35.73	33.34	14.29
Linn	35.73	33.34	14.29
Lawrence	35.73	33.34	14.29
Knox	35.73	33.34	14.29
Iron	35.73	33.34	14.29
Howard	35.73	33.34	14.29
Hickory	35.73	33.34	14.29
Harrison	35.73	33.34	14.29
Gentry	35.73	33.34	14.29
Dunklin	35.73	33.34	14.29
Dent	35.73	33.34	14.29
Daviess	35.73	33.34	14.29
Adair	35.73	33.34	14.29
Barton	35.73	33.34	14.29
Audrain	35.73	33.34	14.29
Cape Girardeau	35.73	33.34	14.29
Callaway	35.73	33.34	14.29
Butler	35.73	33.34	14.29
Benton	35.73	33.34	14.29
Livingston	35.73	33.34	14.29
Lewis	35.73	33.34	14.29
Laclede	35.73	33.34	14.29
Johnson	35.73	33.34	14.29
Howell	35.73	33.34	14.29
Holt	35.73	33.34	14.29
Henry	35.73	33.34	14.29
Grundy	35.73	33.34	14.29
Gasconade	35.73	33.34	14.29
Douglas	35.73	33.34	14.29
Dekalb	35.73	33.34	14.29
Dallas	35.73	33.34	14.29

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	A	B	C
Dade	35.73	33.34	14.29
Cooper	35.73	33.34	14.29
Clark	35.73	33.34	14.29
Cedar	35.73	33.34	14.29
Wright	35.73	33.34	14.29
Wayne	35.73	33.34	14.29
Vernon	35.73	33.34	14.29
Taney	35.73	33.34	14.29
Stone	35.73	33.34	14.29
Shelby	35.73	33.34	14.29
Scott	35.73	33.34	14.29
Schuyler	35.73	33.34	14.29
St. Francois	35.73	33.34	14.29
St. Clair	35.73	33.34	14.29
Reynolds	35.73	33.34	14.29
Ralls	35.73	33.34	14.29
Pulaski	35.73	33.34	14.29
Pike	35.73	33.34	14.29
Pettis	35.73	33.34	14.29
Pemiscot	35.73	33.34	14.29
Osage	35.73	33.34	14.29
Nodaway	35.73	33.34	14.29
Morgan	35.73	33.34	14.29
Monroe	35.73	33.34	14.29
Mississippi	35.73	33.34	14.29
Mercer	35.73	33.34	14.29
Maries	35.73	33.34	14.29
Macon	35.73	33.34	14.29

NONMETROPOLITAN COUNTIES	A	B	C
Crawford	35.73	33.34	14.29
Cole	35.73	33.34	14.29
Chariton	35.73	33.34	14.29
Carter	35.73	33.34	14.29
Worth	35.73	33.34	14.29
Washington	35.73	33.34	14.29
Texas	35.73	33.34	14.29
Sullivan	35.73	33.34	14.29
Stoddard	35.73	33.34	14.29
Shannon	35.73	33.34	14.29
Scotland	35.73	33.34	14.29
Saline	35.73	33.34	14.29
Ste. Genevieve	35.73	33.34	14.29
Ripley	35.73	33.34	14.29
Randolph	35.73	33.34	14.29
Putnam	35.73	33.34	14.29
Polk	35.73	33.34	14.29
Phelps	35.73	33.34	14.29
Perry	35.73	33.34	14.29
Ozark	35.73	33.34	14.29
Oregon	35.73	33.34	14.29
New Madrid	35.73	33.34	14.29
Montgomery	35.73	33.34	14.29
Moniteau	35.73	33.34	14.29
Miller	35.73	33.34	14.29
Marion	35.73	33.34	14.29
Madison	35.73	33.34	14.29

M O N T A N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Billings, MT MSA	46.12	43.04	18.45	Yellowstone
Great Falls, MT MSA	40.83	38.12	16.33	Cascade

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

M O N T A N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Beaverhead	39.94	37.28	15.98
Big Horn	37.63	35.12	15.05
Carter	37.63	35.12	15.05
Broadwater	39.94	37.28	15.98
Flathead	40.76	38.05	16.31
Fallon	37.63	35.12	15.05
Dawson	37.63	35.12	15.05
Custer	37.63	35.12	15.05
Wheatland	37.63	35.12	15.05
Treasure	37.63	35.12	15.05
Teton	37.14	34.66	14.86
Stillwater	37.63	35.12	15.05
Sheridan	37.14	34.66	14.86
Rosebud	37.63	35.12	15.05
Richland	37.63	35.12	15.05
Prairie	37.63	35.12	15.05
Powder River	37.63	35.12	15.05
Phillips	37.14	34.66	14.86
Park	39.94	37.28	15.98
Missoula	40.76	38.05	16.31
Meagher	39.94	37.28	15.98
Mccone	37.63	35.12	15.05
Liberty	37.14	34.66	14.86
Lake	40.76	38.05	16.31
Jefferson	39.94	37.28	15.98
Granite	39.94	37.28	15.98
Glacier	37.14	34.66	14.86

NONMETROPOLITAN COUNTIES	A	B	C
Blaine	37.14	34.66	14.86
Chouteau	37.14	34.66	14.86
Carbon	37.63	35.12	15.05
Gallatin	44.80	41.81	17.92
Fergus	37.63	35.12	15.05
Deer Lodge	39.94	37.28	15.98
Daniels	37.14	34.66	14.86
Wibaux	37.63	35.12	15.05
Valley	37.14	34.66	14.86
Toole	37.14	34.66	14.86
Sweet Grass	37.63	35.12	15.05
Silver Bow	39.94	37.28	15.98
Sanders	40.76	38.05	16.31
Roosevelt	37.14	34.66	14.86
Ravalli	40.76	38.05	16.31
Powell	39.94	37.28	15.98
Pondera	37.14	34.66	14.86
Petroleum	37.63	35.12	15.05
Musselshell	37.63	35.12	15.05
Mineral	40.76	38.05	16.31
Madison	39.94	37.28	15.98
Lincoln	40.76	38.05	16.31
Lewis and Clark	46.45	43.35	18.58
Judith Basin	37.63	35.12	15.05
Hill	37.14	34.66	14.86
Golden Valley	37.63	35.12	15.05
Garfield	37.63	35.12	15.05

N E B R A S K A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Lincoln, NE MSA	39.39	36.76	15.76	Lancaster
Omaha, NE-IA MSA	39.91	37.25	15.96	Washington, Sarpy, Douglas, Cass
Sioux City, IA-NE MSA	38.13	35.59	15.25	Dakota

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	A	B	C
Adams	36.08	33.67	14.43
Antelope	36.08	33.67	14.43
Colfax	36.08	33.67	14.43
Cheyenne	36.08	33.67	14.43
Chase	36.08	33.67	14.43
Butler	36.08	33.67	14.43
Buffalo	36.08	33.67	14.43
Boyd	36.08	33.67	14.43
Boone	36.08	33.67	14.43
Banner	36.08	33.67	14.43
Thurston	36.08	33.67	14.43
Thayer	36.08	33.67	14.43
Sioux	36.08	33.67	14.43
Sheridan	36.08	33.67	14.43
Scotts Bluff	36.08	33.67	14.43
Saline	36.08	33.67	14.43
Richardson	36.08	33.67	14.43
Polk	36.08	33.67	14.43
Pierce	36.08	33.67	14.43
Perkins	36.08	33.67	14.43
Otoe	36.08	33.67	14.43
Nemaha	36.08	33.67	14.43
Morrill	36.08	33.67	14.43
Madison	36.08	33.67	14.43
Loup	36.08	33.67	14.43
Lincoln	36.08	33.67	14.43
Kimball	36.08	33.67	14.43
Keith	36.08	33.67	14.43
Johnson	36.08	33.67	14.43
Howard	36.08	33.67	14.43
Holt	36.08	33.67	14.43
Hayes	36.08	33.67	14.43
Hamilton	36.08	33.67	14.43
Greeley	36.08	33.67	14.43
Gosper	36.08	33.67	14.43
Garden	36.08	33.67	14.43
Furnas	36.08	33.67	14.43
Franklin	36.08	33.67	14.43
Dundy	36.08	33.67	14.43
Dixon	36.08	33.67	14.43

NONMETROPOLITAN COUNTIES	A	B	C
Arthur	36.08	33.67	14.43
Cuming	36.08	33.67	14.43
Clay	36.08	33.67	14.43
Cherry	36.08	33.67	14.43
Cedar	36.08	33.67	14.43
Burt	36.08	33.67	14.43
Brown	36.08	33.67	14.43
Box Butte	36.08	33.67	14.43
Blaine	36.08	33.67	14.43
Valley	36.08	33.67	14.43
Thomas	36.08	33.67	14.43
Stanton	36.08	33.67	14.43
Sherman	36.08	33.67	14.43
Seward	36.08	33.67	14.43
Saunders	36.08	33.67	14.43
Rock	36.08	33.67	14.43
Red Willow	36.08	33.67	14.43
Platte	36.08	33.67	14.43
Phelps	36.08	33.67	14.43
Pawnee	36.08	33.67	14.43
Nuckolls	36.08	33.67	14.43
Nance	36.08	33.67	14.43
Merrick	36.08	33.67	14.43
Mcpherson	36.08	33.67	14.43
Logan	36.08	33.67	14.43
Knox	36.08	33.67	14.43
Keya Paha	36.08	33.67	14.43
Kearney	36.08	33.67	14.43
Jefferson	36.08	33.67	14.43
Hooker	36.08	33.67	14.43
Hitchcock	36.08	33.67	14.43
Harlan	36.08	33.67	14.43
Hall	36.08	33.67	14.43
Grant	36.08	33.67	14.43
Garfield	36.08	33.67	14.43
Gage	36.08	33.67	14.43
Frontier	36.08	33.67	14.43
Fillmore	36.08	33.67	14.43
Dodge	36.08	33.67	14.43
Deuel	36.08	33.67	14.43

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	A	B	C
Dawson	36.08	33.67	14.43
Custer	36.08	33.67	14.43
Wheeler	36.08	33.67	14.43
Wayne	36.08	33.67	14.43
Dawes	36.08	33.67	14.43
York	36.08	33.67	14.43
Webster	36.08	33.67	14.43

N E V A D A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	56.83	53.05	22.73	Nye, Clark
Reno, NV MSA	49.23	45.95	19.69	Washoe

NONMETROPOLITAN COUNTIES	A	B	C
Churchill	50.49	47.12	20.20
Lincoln	50.49	47.12	20.20
Humboldt	50.49	47.12	20.20
Esmeralda	50.49	47.12	20.20
Douglas	52.26	48.78	20.90
White Pine	50.49	47.12	20.20
Pershing	50.49	47.12	20.20
Lyon	50.49	47.12	20.20
Lander	50.49	47.12	20.20
Eureka	50.49	47.12	20.20
Elko	50.49	47.12	20.20
Carson City	50.49	47.12	20.20
Storey	50.49	47.12	20.20
Mineral	50.49	47.12	20.20

N E W H A M P S H I R E

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Boston, MA-NH PMSA	64.80	60.48	25.92	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	52.07	48.60	20.83	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	54.39	50.76	21.76	Hillsborough county towns of Pelham town
Manchester, NH PMSA	51.19	47.77	20.47	Rockingham county towns of Auburn town, Candia town Londonderry town Merrimack county towns of Allenstown town, Hooksett town Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town
Nashua, NH PMSA	54.38	50.75	21.75	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	53.00	49.48	21.20	Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E W H A M P S H I R E continued

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
				Somersworth city Rockingham county towns of Brentwood town East Kingston town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Carroll	47.77	44.59	19.11	
Belknap	47.52	44.36	19.01	
Sullivan	46.07	43.00	18.43	
Strafford	54.52	50.89	21.81	Middleton town, New Durham town, Strafford town
Rockingham	59.13	55.18	23.65	Deerfield town, Northwood town, Nottingham town
Merrimack	60.33	56.31	24.13	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
Hillsborough	61.22	57.13	24.49	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
Grafton	49.06	45.78	19.62	
Coos	43.25	40.37	17.30	
Cheshire	56.38	52.63	22.55	

N E W J E R S E Y

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	58.66	54.76	23.46	Cape May, Atlantic
Bergen-Passaic, NJ PMSA	71.04	66.31	28.42	Passaic, Bergen
Jersey City, NJ PMSA	59.20	55.26	23.68	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	71.04	66.31	28.42	Hunterdon, Somerset, Middlesex
Monmouth-Ocean, NJ PMSA	69.55	64.90	27.82	Ocean, Monmouth
Newark, NJ PMSA	69.36	64.74	27.75	Morris, Essex, Warren, Union, Sussex
Philadelphia, PA-NJ PMSA	53.55	49.98	21.42	Burlington, Salem, Gloucester, Camden
Trenton, NJ PMSA	68.16	63.61	27.26	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	56.40	52.63	22.56	Cumberland

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E W M E X I C O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albuquerque, NM MSA	46.61	43.51	18.65	Bernalillo, Valencia, Sandoval
Las Cruces, NM MSA	36.99	34.53	14.80	Dona Ana
Santa Fe, NM MSA	55.16	51.48	22.06	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Catron	35.35	32.98	14.14	Curry	35.35	32.98	14.14
Colfax	35.35	32.98	14.14	Cibola	35.35	32.98	14.14
Chaves	35.76	33.37	14.30	Lincoln	35.76	33.37	14.30
Lea	39.47	36.84	15.79	Hidalgo	35.35	32.98	14.14
Harding	35.35	32.98	14.14	Guadalupe	35.35	32.98	14.14
Grant	35.35	32.98	14.14	Eddy	39.47	36.84	15.79
Debaca	35.35	32.98	14.14	Union	35.35	32.98	14.14
Torrance	35.35	32.98	14.14	Taos	37.69	35.18	15.08
Socorro	35.76	33.37	14.30	Sierra	35.76	33.37	14.30
San Miguel	35.35	32.98	14.14	San Juan	45.67	42.62	18.27
Roosevelt	35.35	32.98	14.14	Rio Arriba	35.35	32.98	14.14
Quay	35.35	32.98	14.14	Otero	35.76	33.37	14.30
Mora	35.35	32.98	14.14	Mckinley	45.67	42.62	18.27
Luna	35.35	32.98	14.14				

N E W Y O R K

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	48.10	44.90	19.24	Montgomery, Albany, Schoharie, Schenectady, Saratoga Rensselaer
Binghamton, NY MSA	41.98	39.18	16.79	Tioga, Broome
Buffalo-Niagara Falls, NY PMSA	41.38	38.63	16.55	Niagara, Erie
Dutchess County, NY PMSA	66.28	61.86	26.51	Dutchess
Elmira, NY MSA	42.75	39.89	17.10	Chemung
Glens Falls, NY MSA	45.54	42.51	18.22	Washington, Warren
Jamestown, NY MSA	39.60	36.96	15.84	Chautauqua
Nassau-Suffolk, NY PMSA	68.91	64.32	27.57	Nassau, Suffolk
New York, NY PMSA	59.90	55.90	23.96	Bronx, Rockland, Richmond, Queens, Putnam, New York Kings
Westchester County, NY	68.91	64.32	27.57	Westchester
Newburgh, NY-PA PMSA	61.57	57.46	24.63	Orange
Rochester, NY MSA	50.64	47.27	20.26	Wayne, Orleans, Ontario, Monroe, Livingston, Genesee
Syracuse, NY MSA	44.27	41.32	17.71	Madison, Cayuga, Oswego, Onondaga
Utica-Rome, NY MSA	40.53	37.83	16.21	Oneida, Herkimer

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N E W Y O R K continued

NONMETROPOLITAN COUNTIES	A	B	C
Clinton	40.87	38.14	16.35
Cattaraugus	36.40	33.98	14.56
Hamilton	39.29	36.67	15.72
Fulton	36.56	34.13	14.62
Essex	39.29	36.67	15.72
Cortland	44.51	41.54	17.80
Yates	40.54	37.83	16.21
Ulster	52.74	49.23	21.10
Sullivan	47.78	44.59	19.11
Seneca	43.43	40.54	17.37
St. Lawrence	40.37	37.68	16.15
Lewis	42.35	39.53	16.94
Chenango	42.76	39.91	17.11
Allegany	36.40	33.98	14.56
Greene	45.25	42.23	18.10
Franklin	39.29	36.67	15.72
Delaware	39.96	37.30	15.98
Columbia	42.21	39.40	16.88
Wyoming	40.37	37.68	16.15
Tompkins	46.06	43.00	18.43
Steuben	40.79	38.06	16.31
Schuyler	40.79	38.06	16.31
Otsego	39.96	37.30	15.98
Jefferson	44.34	41.38	17.74

N O R T H C A R O L I N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Asheville, NC MSA	35.83	33.43	14.33	Madison, Buncombe
Charlotte-Gastonia-Rock Hill, NC-SC MSA	39.25	36.62	15.70	Gaston, Cabarrus, Union, Rowan, Mecklenburg, Lincoln
Fayetteville, NC MSA	36.41	33.99	14.56	Cumberland
Goldsboro, NC MSA	35.83	33.43	14.33	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	37.07	34.61	14.83	Davidson, Alamance, Yadkin, Stokes, Randolph, Guilford Forsyth, Davie
Greenville, NC MSA	35.83	33.43	14.33	Pitt
Hickory-Morganton, NC MSA	37.75	35.23	15.10	Alexander, Catawba, Caldwell, Burke
Jacksonville, NC MSA	35.83	33.43	14.33	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	44.51	41.54	17.80	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	42.80	39.94	17.12	Chatham, Franklin, Durham, Wake, Orange, Johnston
Rocky Mount, NC MSA	35.83	33.43	14.33	Edgecombe, Nash
Wilmington, NC MSA	35.83	33.43	14.33	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	A	B	C
Alleghany	35.31	32.95	14.13
Wilson	35.31	32.95	14.13
Watauga	42.90	40.04	17.16
Warren	35.31	32.95	14.13
Tyrrell	35.31	32.95	14.13
Swain	35.31	32.95	14.13
Stanly	35.31	32.95	14.13
Sampson	35.31	32.95	14.13
Rockingham	35.31	32.95	14.13
Richmond	35.31	32.95	14.13
Yancey	35.31	32.95	14.13
Wilkes	35.97	33.57	14.39
Washington	35.31	32.95	14.13
Vance	35.31	32.95	14.13
Transylvania	35.31	32.95	14.13
Surry	35.31	32.95	14.13
Scotland	35.31	32.95	14.13
Rutherford	35.31	32.95	14.13
Robeson	35.31	32.95	14.13
Polk	35.31	32.95	14.13

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N O R T H C A R O L I N A continued

NONMETROPOLITAN COUNTIES	A	B	C
Person	35.31	32.95	14.13
Pender	35.31	32.95	14.13
Pamlico	35.31	32.95	14.13
Moore	35.31	32.95	14.13
Mitchell	35.31	32.95	14.13
Macon	35.31	32.95	14.13
Lenoir	35.31	32.95	14.13
Jones	35.31	32.95	14.13
Iredell	38.52	35.96	15.41
Hoke	35.31	32.95	14.13
Henderson	35.31	32.95	14.13
Harnett	35.31	32.95	14.13
Greene	35.31	32.95	14.13
Graham	35.31	32.95	14.13
Duplin	35.31	32.95	14.13
Craven	35.31	32.95	14.13
Cleveland	35.31	32.95	14.13
Chowan	35.31	32.95	14.13
Caswell	35.31	32.95	14.13
Camden	35.31	32.95	14.13
Bertie	35.31	32.95	14.13
Avery	35.31	32.95	14.13
Anson	35.31	32.95	14.13

NONMETROPOLITAN COUNTIES	A	B	C
Perquimans	35.31	32.95	14.13
Pasquotank	35.31	32.95	14.13
Northampton	35.31	32.95	14.13
Montgomery	35.31	32.95	14.13
Martin	35.31	32.95	14.13
Mcdowell	35.31	32.95	14.13
Lee	35.64	33.26	14.25
Jackson	35.31	32.95	14.13
Hyde	35.31	32.95	14.13
Hertford	35.31	32.95	14.13
Haywood	35.31	32.95	14.13
Halifax	35.31	32.95	14.13
Granville	35.31	32.95	14.13
Gates	35.31	32.95	14.13
Dare	35.31	32.95	14.13
Columbus	35.31	32.95	14.13
Clay	35.31	32.95	14.13
Cherokee	35.31	32.95	14.13
Carteret	35.31	32.95	14.13
Bladen	35.31	32.95	14.13
Beaufort	35.31	32.95	14.13
Ashe	35.31	32.95	14.13

N O R T H D A K O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bismarck, ND MSA	38.15	35.60	15.26	Morton, Burleigh
Fargo-Moorhead, ND-MN MSA	38.08	35.54	15.23	Cass
Grand Forks, ND-MN MSA	36.40	33.97	14.56	Grand Forks

NONMETROPOLITAN COUNTIES	A	B	C
Billings	34.48	32.18	13.79
Barnes	34.48	32.18	13.79
Eddy	34.48	32.18	13.79
Divide	34.48	32.18	13.79
Cavalier	34.48	32.18	13.79
Bowman	34.48	32.18	13.79
Nelson	34.48	32.18	13.79
Mercer	34.48	32.18	13.79

NONMETROPOLITAN COUNTIES	A	B	C
Benson	34.48	32.18	13.79
Adams	34.48	32.18	13.79
Dunn	34.48	32.18	13.79
Dickey	34.48	32.18	13.79
Burke	34.48	32.18	13.79
Bottineau	34.48	32.18	13.79
Mountrail	34.48	32.18	13.79
Mclean	34.48	32.18	13.79

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

N O R T H D A K O T A continued

NONMETROPOLITAN COUNTIES	A	B	C
Mckenzie	34.48	32.18	13.79
Mchenry	34.48	32.18	13.79
Lamoure	34.48	32.18	13.79
Hettinger	34.48	32.18	13.79
Grant	34.48	32.18	13.79
Foster	34.48	32.18	13.79
Williams	34.48	32.18	13.79
Ward	34.48	32.18	13.79
Traill	34.48	32.18	13.79
Stutsman	34.48	32.18	13.79
Stark	34.48	32.18	13.79
Sioux	34.48	32.18	13.79
Sargent	34.48	32.18	13.79
Richland	34.48	32.18	13.79
Ransom	34.48	32.18	13.79
Pierce	34.48	32.18	13.79
Oliver	34.48	32.18	13.79

NONMETROPOLITAN COUNTIES	A	B	C
Mcintosh	34.48	32.18	13.79
Logan	34.48	32.18	13.79
Kidder	34.48	32.18	13.79
Griggs	34.48	32.18	13.79
Golden Valley	34.48	32.18	13.79
Emmons	34.48	32.18	13.79
Wells	34.48	32.18	13.79
Walsh	34.48	32.18	13.79
Towner	34.48	32.18	13.79
Steele	34.48	32.18	13.79
Slope	34.48	32.18	13.79
Sheridan	34.48	32.18	13.79
Rolette	34.48	32.18	13.79
Renville	34.48	32.18	13.79
Ramsey	34.48	32.18	13.79
Pembina	34.48	32.18	13.79

O H I O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Akron, OH PMSA	41.14	38.39	16.45	Portage, Summit
Brown County, OH	35.44	33.07	14.18	Brown
Canton-Massillon, OH MSA	35.44	33.07	14.18	Stark, Carroll
Cincinnati, OH-KY-IN	40.49	37.79	16.20	Hamilton, Clermont, Warren
Cleveland-Lorain-Elyria, OH PMSA	41.81	39.03	16.73	Ashtabula, Geauga, Cuyahoga, Medina, Lorain, Lake
Columbus, OH MSA	39.66	37.01	15.87	Delaware, Madison, Licking, Franklin, Fairfield, Pickaway
Dayton-Springfield, OH MSA	36.94	34.47	14.77	Clark, Miami, Greene, Montgomery
Hamilton-Middletown, OH PMSA	42.08	39.27	16.83	Butler
Huntington-Ashland, WV-KY-OH MSA	36.64	34.19	14.66	Lawrence
Lima, OH MSA	36.02	33.62	14.41	Allen, Auglaize
Mansfield, OH MSA	35.44	33.07	14.18	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	34.09	31.82	13.64	Washington
Steubenville-Weirton, OH-WV MSA	36.27	33.85	14.51	Jefferson
Toledo, OH MSA	41.56	38.80	16.62	Fulton, Wood, Lucas
Wheeling, WV-OH MSA	35.86	33.46	14.34	Belmont
Youngstown-Warren, OH MSA	36.02	33.62	14.41	Columbiana, Trumbull, Mahoning

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

O H I O continued

NONMETROPOLITAN COUNTIES	A	B	C
Champaign	35.12	32.78	14.05
Ashland	35.12	32.78	14.05
Preble	35.20	32.85	14.08
Perry	35.12	32.78	14.05
Ottawa	36.92	34.46	14.77
Muskingum	35.12	32.78	14.05
Morgan	35.12	32.78	14.05
Mercer	35.12	32.78	14.05
Marion	35.12	32.78	14.05
Knox	35.12	32.78	14.05
Huron	35.12	32.78	14.05
Hocking	35.12	32.78	14.05
Henry	36.10	33.70	14.44
Hardin	35.12	32.78	14.05
Guernsey	35.12	32.78	14.05
Fayette	35.12	32.78	14.05
Defiance	36.10	33.70	14.44
Coshocton	35.12	32.78	14.05
Wyandot	35.12	32.78	14.05
Wayne	35.28	32.93	14.11
Van Wert	35.12	32.78	14.05
Tuscarawas	35.12	32.78	14.05
Seneca	35.12	32.78	14.05
Sandusky	36.59	34.15	14.64
Putnam	35.12	32.78	14.05

NONMETROPOLITAN COUNTIES	A	B	C
Athens	35.12	32.78	14.05
Adams	35.12	32.78	14.05
Pike	35.12	32.78	14.05
Paulding	36.10	33.70	14.44
Noble	35.12	32.78	14.05
Morrow	35.12	32.78	14.05
Monroe	35.12	32.78	14.05
Meigs	35.12	32.78	14.05
Logan	35.12	32.78	14.05
Jackson	35.12	32.78	14.05
Holmes	35.12	32.78	14.05
Highland	35.12	32.78	14.05
Harrison	35.12	32.78	14.05
Hancock	35.20	32.85	14.08
Gallia	35.12	32.78	14.05
Erie	36.59	34.15	14.64
Darke	35.12	32.78	14.05
Clinton	35.12	32.78	14.05
Williams	36.10	33.70	14.44
Vinton	35.12	32.78	14.05
Union	39.13	36.53	15.65
Shelby	35.92	33.53	14.37
Scioto	35.12	32.78	14.05
Ross	35.12	32.78	14.05

O K L A H O M A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Enid, OK MSA	39.24	36.62	15.70	Garfield
Fort Smith, AR-OK MSA	34.35	32.06	13.74	Sequoyah
Lawton, OK MSA	35.51	33.13	14.20	Comanche
Oklahoma City, OK MSA	36.50	34.07	14.60	Pottawatomie, Oklahoma, Mcclain, Logan, Cleveland Canadian
Tulsa, OK MSA	35.51	33.13	14.20	Osage, Creek, Wagoner, Tulsa, Rogers

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

O K L A H O M A continued

NONMETROPOLITAN COUNTIES	A	B	C
Adair	35.83	33.43	14.33
Beaver	35.83	33.43	14.33
Alfalfa	35.83	33.43	14.33
Lincoln	35.83	33.43	14.33
Latimer	35.83	33.43	14.33
Kingfisher	35.83	33.43	14.33
Johnston	35.83	33.43	14.33
Jackson	35.83	33.43	14.33
Haskell	35.83	33.43	14.33
Harmon	35.83	33.43	14.33
Grant	35.83	33.43	14.33
Garvin	35.83	33.43	14.33
Dewey	35.83	33.43	14.33
Custer	35.83	33.43	14.33
Cotton	35.83	33.43	14.33
Cimarron	35.83	33.43	14.33
Cherokee	35.83	33.43	14.33
Caddo	35.83	33.43	14.33
Blaine	35.83	33.43	14.33
Woods	35.83	33.43	14.33
Washington	35.83	33.43	14.33
Texas	35.83	33.43	14.33
Seminole	35.83	33.43	14.33
Pushmataha	35.83	33.43	14.33
Pittsburg	35.83	33.43	14.33
Pawnee	35.83	33.43	14.33
Okmulgee	35.83	33.43	14.33
Nowata	35.83	33.43	14.33
Muskogee	35.83	33.43	14.33
Mayes	35.83	33.43	14.33
Major	35.83	33.43	14.33
Mccurtain	35.83	33.43	14.33

NONMETROPOLITAN COUNTIES	A	B	C
Beckham	35.83	33.43	14.33
Atoka	35.83	33.43	14.33
Love	35.83	33.43	14.33
Le Flore	35.83	33.43	14.33
Kiowa	35.83	33.43	14.33
Kay	35.83	33.43	14.33
Jefferson	35.83	33.43	14.33
Hughes	35.83	33.43	14.33
Harper	35.83	33.43	14.33
Greer	35.83	33.43	14.33
Grady	35.83	33.43	14.33
Ellis	35.83	33.43	14.33
Delaware	35.83	33.43	14.33
Craig	35.83	33.43	14.33
Coal	35.83	33.43	14.33
Choctaw	35.83	33.43	14.33
Carter	35.83	33.43	14.33
Bryan	35.83	33.43	14.33
Woodward	35.83	33.43	14.33
Washita	35.83	33.43	14.33
Tillman	35.83	33.43	14.33
Stephens	35.83	33.43	14.33
Roger Mills	35.83	33.43	14.33
Pontotoc	35.83	33.43	14.33
Payne	35.83	33.43	14.33
Ottawa	35.83	33.43	14.33
Okfuskee	35.83	33.43	14.33
Noble	35.83	33.43	14.33
Murray	35.83	33.43	14.33
Marshall	35.83	33.43	14.33
Mcintosh	35.83	33.43	14.33

O R E G O N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Eugene-Springfield, OR MSA	51.49	48.05	20.59	Lane
Medford-Ashland, OR MSA	51.15	47.73	20.46	Jackson
Portland-Vancouver, OR-WA PMSA	44.80	41.81	17.92	Washington, Multnomah, Columbia, Clackamas, Yamhill

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

O R E G O N continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Salem, OR PMSA	48.10	44.89	19.24	Marion, Polk

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Baker	46.65	43.55	18.66	Crook	49.36	46.07	19.75
Coos	48.77	45.52	19.51	Clatsop	45.39	42.36	18.15
Benton	47.59	44.42	19.04	Jefferson	49.36	46.07	19.75
Hood River	49.36	46.07	19.75	Harney	44.54	41.57	17.82
Grant	46.65	43.55	18.66	Gilliam	46.65	43.55	18.66
Douglas	48.77	45.52	19.51	Deschutes	49.36	46.07	19.75
Curry	48.77	45.52	19.51	Wheeler	46.65	43.55	18.66
Wasco	49.36	46.07	19.75	Wallowa	46.65	43.55	18.66
Union	46.65	43.55	18.66	Umatilla	46.65	43.55	18.66
Tillamook	45.39	42.36	18.15	Sherman	49.36	46.07	19.75
Morrow	46.65	43.55	18.66	Malheur	44.54	41.57	17.82
Linn	47.59	44.42	19.04	Lincoln	45.39	42.36	18.15
Lake	44.54	41.57	17.82	Klamath	44.54	41.57	17.82
Josephine	48.77	45.52	19.51				

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	45.61	42.57	18.24	Lehigh, Carbon, Northampton
Altoona, PA MSA	39.50	36.86	15.80	Blair
Erie, PA MSA	45.37	42.34	18.15	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	46.67	43.56	18.67	Cumberland, Perry, Lebanon, Dauphin
Johnstown, PA MSA	38.35	35.79	15.34	Cambria, Somerset
Lancaster, PA MSA	47.41	44.25	18.96	Lancaster
Newburgh, NY-PA PMSA	56.37	52.62	22.55	Pike
Philadelphia, PA-NJ PMSA	53.55	49.98	21.42	Bucks, Philadelphia, Montgomery, Delaware, Chester
Pittsburgh, PA PMSA	37.38	34.88	14.95	Westmoreland, Washington, Fayette, Butler, Beaver Allegheny
Reading, PA MSA	44.47	41.51	17.79	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	36.23	33.82	14.49	Columbia, Wyoming, Luzerne, Lackawanna
Sharon, PA MSA	42.10	39.30	16.84	Mercer
State College, PA MSA	50.84	47.45	20.34	Centre
Williamsport, PA MSA	38.35	35.79	15.34	Lycoming
York, PA MSA	42.84	39.99	17.14	York

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

P E N N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES	A	B	C
Adams	43.71	40.79	17.48
Venango	36.88	34.42	14.75
Tioga	37.21	34.73	14.88
Sullivan	37.21	34.73	14.88
Schuylkill	41.62	38.85	16.65
Northumberland	38.55	35.98	15.42
Monroe	49.20	45.92	19.68
Mc Kean	37.72	35.20	15.09
Juniata	37.30	34.81	14.92
Indiana	44.79	41.80	17.92
Greene	38.55	35.98	15.42
Franklin	41.21	38.46	16.48
Elk	37.72	35.20	15.09
Clinton	37.38	34.89	14.95
Clarion	36.88	34.42	14.75
Bradford	37.21	34.73	14.88
Armstrong	44.79	41.80	17.92

NONMETROPOLITAN COUNTIES	A	B	C
Warren	38.21	35.67	15.29
Union	43.63	40.72	17.45
Susquehanna	37.21	34.73	14.88
Snyder	37.30	34.81	14.92
Potter	37.72	35.20	15.09
Montour	38.55	35.98	15.42
Mifflin	38.13	35.59	15.25
Lawrence	38.21	35.67	15.29
Jefferson	38.55	35.98	15.42
Huntingdon	36.21	33.80	14.49
Fulton	36.21	33.80	14.49
Forest	36.88	34.42	14.75
Crawford	38.21	35.67	15.29
Clearfield	38.55	35.98	15.42
Cameron	37.72	35.20	15.09
Bedford	36.21	33.80	14.49
Wayne	45.63	42.58	18.25

R H O D E I S L A N D

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	56.33	52.58	22.53	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA PMSA	55.74	52.02	22.30	Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Bristol county towns of Barrington town, Bristol town Warren town Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Newport county towns of Jamestown town Little Compton tow, Tiverton town

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Newport	65.64	61.26	26.25	Middletown town, Newport city, Portsmouth town
Washington	50.18	46.83	20.07	New Shoreham town

S O U T H C A R O L I N A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	35.97	33.58	14.39	Aiken, Edgefield
Charleston-North Charleston, SC MSA	38.52	35.95	15.41	Berkeley, Dorchester, Charleston
Charlotte-Gastonia-Rock Hill, NC-SC MSA	39.25	36.62	15.70	York
Columbia, SC MSA	38.93	36.34	15.57	Lexington, Richland
Florence, SC MSA	34.48	32.18	13.79	Florence
Greenville-Spartanburg-Anderson, SC MSA	34.48	32.18	13.79	Cherokee, Anderson, Spartanburg, Pickens, Greenville
Myrtle Beach, SC MSA	34.48	32.18	13.79	Horry
Sumter, SC MSA	34.48	32.18	13.79	Sumter

NONMETROPOLITAN COUNTIES	A	B	C
Abbeville	34.58	32.27	13.83
Allendale	34.58	32.27	13.83
Calhoun	34.58	32.27	13.83
Barnwell	34.58	32.27	13.83
Union	34.58	32.27	13.83
Orangeburg	34.58	32.27	13.83
Newberry	34.58	32.27	13.83
Marion	34.58	32.27	13.83
Lee	34.58	32.27	13.83
Lancaster	34.58	32.27	13.83
Jasper	34.58	32.27	13.83
Greenwood	34.58	32.27	13.83
Fairfield	34.58	32.27	13.83
Darlington	34.58	32.27	13.83
Clarendon	34.58	32.27	13.83

NONMETROPOLITAN COUNTIES	A	B	C
Bamberg	34.58	32.27	13.83
Chester	34.58	32.27	13.83
Beaufort	35.28	32.92	14.11
Williamsburg	34.58	32.27	13.83
Saluda	34.58	32.27	13.83
Oconee	34.58	32.27	13.83
Marlboro	34.58	32.27	13.83
Mccormick	34.58	32.27	13.83
Laurens	34.58	32.27	13.83
Kershaw	34.58	32.27	13.83
Hampton	34.58	32.27	13.83
Georgetown	34.58	32.27	13.83
Dillon	34.58	32.27	13.83
Colleton	34.58	32.27	13.83
Chesterfield	34.58	32.27	13.83

S O U T H D A K O T A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Rapid City, SD MSA	37.27	34.79	14.91	Pennington
Sioux Falls, SD MSA	39.81	37.15	15.92	Minnehaha, Lincoln

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES	A	B	C
Beadle	35.57	33.19	14.23
Brown	35.57	33.19	14.23
Bon Homme	35.57	33.19	14.23
Ziebach	35.57	33.19	14.23
Walworth	35.57	33.19	14.23
Turner	35.57	33.19	14.23
Todd	35.57	33.19	14.23
Stanley	38.64	36.06	15.46
Shannon	35.57	33.19	14.23
Roberts	35.57	33.19	14.23
Perkins	35.57	33.19	14.23
Miner	35.57	33.19	14.23
Meade	35.57	33.19	14.23
Mcpherson	35.57	33.19	14.23
Lyman	35.57	33.19	14.23
Lake	35.57	33.19	14.23
Jones	35.57	33.19	14.23
Jackson	35.57	33.19	14.23
Hutchinson	35.57	33.19	14.23
Harding	35.57	33.19	14.23
Hand	35.57	33.19	14.23
Haakon	35.57	33.19	14.23
Grant	35.57	33.19	14.23
Fall River	35.57	33.19	14.23
Douglas	35.57	33.19	14.23
Deuel	35.57	33.19	14.23
Davison	35.57	33.19	14.23
Corson	35.57	33.19	14.23
Clay	35.57	33.19	14.23
Charles Mix	35.57	33.19	14.23
Butte	35.57	33.19	14.23
Brule	35.57	33.19	14.23

NONMETROPOLITAN COUNTIES	A	B	C
Aurora	35.57	33.19	14.23
Brookings	35.57	33.19	14.23
Bennett	35.57	33.19	14.23
Yankton	35.57	33.19	14.23
Union	35.57	33.19	14.23
Tripp	35.57	33.19	14.23
Sully	35.57	33.19	14.23
Spink	35.57	33.19	14.23
Sanborn	35.57	33.19	14.23
Potter	35.57	33.19	14.23
Moody	35.57	33.19	14.23
Mellette	35.57	33.19	14.23
Marshall	35.57	33.19	14.23
Mccook	35.57	33.19	14.23
Lawrence	35.57	33.19	14.23
Kingsbury	35.57	33.19	14.23
Jerauld	35.57	33.19	14.23
Hyde	35.57	33.19	14.23
Hughes	38.64	36.06	15.46
Hanson	35.57	33.19	14.23
Hamlin	35.57	33.19	14.23
Gregory	35.57	33.19	14.23
Faulk	35.57	33.19	14.23
Edmunds	35.57	33.19	14.23
Dewey	35.57	33.19	14.23
Day	35.57	33.19	14.23
Custer	35.57	33.19	14.23
Codington	35.57	33.19	14.23
Clark	35.57	33.19	14.23
Campbell	35.57	33.19	14.23
Buffalo	35.57	33.19	14.23

T E N N E S S E E

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	39.43	36.80	15.77	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	40.12	37.45	16.05	Montgomery
Jackson, TN MSA	36.69	34.24	14.68	Madison

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E N N E S S E E continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	36.69	34.24	14.68	Carter, Sullivan, Hawkins, Washington, Unicoi
Knoxville, TN MSA	36.95	34.48	14.78	Blount, Anderson, Union, Sevier, Loudon, Knox
Memphis, TN-AR-MS MSA	39.60	36.96	15.84	Tipton, Shelby, Fayette
Nashville, TN MSA	43.89	40.96	17.55	Cheatham, Rutherford, Robertson, Dickson, Davidson Wilson, Williamson, Sumner

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Bedford	36.57	34.12	14.63	Campbell	36.57	34.12	14.63
Bradley	36.57	34.12	14.63	Bledsoe	36.57	34.12	14.63
Benton	36.57	34.12	14.63	Crockett	36.57	34.12	14.63
Coffee	36.57	34.12	14.63	Cocke	36.57	34.12	14.63
Clay	36.57	34.12	14.63	Claiborne	36.57	34.12	14.63
Chester	36.57	34.12	14.63	Carroll	36.57	34.12	14.63
Cannon	36.57	34.12	14.63	Macon	36.57	34.12	14.63
Mcnairy	36.57	34.12	14.63	Mcminn	36.57	34.12	14.63
Lincoln	36.57	34.12	14.63	Lewis	36.57	34.12	14.63
Lawrence	36.57	34.12	14.63	Lauderdale	36.57	34.12	14.63
Lake	36.57	34.12	14.63	Johnson	36.57	34.12	14.63
Jefferson	36.57	34.12	14.63	Jackson	36.57	34.12	14.63
Humphreys	36.57	34.12	14.63	Houston	36.57	34.12	14.63
Hickman	36.57	34.12	14.63	Henry	36.57	34.12	14.63
Henderson	36.57	34.12	14.63	Haywood	36.57	34.12	14.63
Hardin	36.57	34.12	14.63	Hardeman	36.57	34.12	14.63
Hancock	36.57	34.12	14.63	Hamblen	36.57	34.12	14.63
Grundy	36.57	34.12	14.63	Greene	36.57	34.12	14.63
Grainger	36.57	34.12	14.63	Giles	36.57	34.12	14.63
Gibson	36.57	34.12	14.63	Franklin	36.57	34.12	14.63
Fentress	36.57	34.12	14.63	Dyer	36.57	34.12	14.63
Dekalb	36.57	34.12	14.63	Decatur	36.57	34.12	14.63
Cumberland	36.57	34.12	14.63	White	36.57	34.12	14.63
Weakley	36.57	34.12	14.63	Wayne	36.57	34.12	14.63
Warren	36.57	34.12	14.63	Van Buren	36.57	34.12	14.63
Trousdale	36.57	34.12	14.63	Stewart	36.57	34.12	14.63
Smith	36.57	34.12	14.63	Sequatchie	39.30	36.67	15.72
Scott	36.57	34.12	14.63	Roane	36.57	34.12	14.63
Rhea	36.57	34.12	14.63	Putnam	36.57	34.12	14.63
Polk	36.57	34.12	14.63	Pickett	36.57	34.12	14.63
Perry	36.57	34.12	14.63	Overton	36.57	34.12	14.63
Obion	36.57	34.12	14.63	Morgan	36.57	34.12	14.63
Moore	36.57	34.12	14.63	Monroe	36.57	34.12	14.63

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	A	B	C
Meigs	36.57	34.12	14.63
Marshall	36.57	34.12	14.63
Maury	36.57	34.12	14.63

T E X A S

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Abilene, TX MSA	34.16	31.88	13.66	Taylor
Amarillo, TX MSA	34.16	31.88	13.66	Potter, Randall
Austin-San Marcos, TX MSA	44.43	41.48	17.77	Bastrop, Williamson, Travis, Hays, Caldwell
Beaumont-Port Arthur, TX MSA	39.02	36.42	15.61	Orange, Jefferson, Hardin
Brazoria, TX PMSA	43.53	40.62	17.41	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	34.64	32.33	13.85	Cameron
Bryan-College Station, TX MSA	45.64	42.60	18.26	Brazos
Corpus Christi, TX MSA	39.82	37.16	15.93	San Patricio, Nueces
Dallas, TX	45.56	42.53	18.23	Rockwall, Kaufman, Hunt, Ellis, Denton, Dallas, Collin
El Paso, TX MSA	37.75	35.23	15.10	El Paso
Fort Worth-Arlington, TX PMSA	42.45	39.62	16.98	Tarrant, Parker, Johnson, Hood
Galveston-Texas City, TX PMSA	39.15	36.54	15.66	Galveston
Henderson County, TX	34.16	31.88	13.66	Henderson
Houston, TX PMSA	40.31	37.62	16.12	Fort Bend, Chambers, Waller, Montgomery, Liberty, Harris
Killeen-Temple, TX MSA	34.16	31.88	13.66	Coryell, Bell
Laredo, TX MSA	34.16	31.88	13.66	Webb
Longview-Marshall, TX MSA	38.30	35.75	15.32	Gregg, Upshur, Harrison
Lubbock, TX MSA	34.16	31.88	13.66	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	34.24	31.95	13.69	Hidalgo
Odessa-Midland, TX MSA	43.89	40.96	17.56	Midland, Ector
San Angelo, TX MSA	34.16	31.88	13.66	Tom Green
San Antonio, TX MSA	39.06	36.47	15.63	Bexar, Wilson, Guadalupe, Comal
Sherman-Denison, TX MSA	34.16	31.88	13.66	Grayson
Texarkana, TX-Texarkana, AR MSA	34.16	31.88	13.66	Bowie
Tyler, TX MSA	38.95	36.35	15.58	Smith
Victoria, TX MSA	47.33	44.16	18.93	Victoria
Waco, TX MSA	34.16	31.88	13.66	Mclennan
Wichita Falls, TX MSA	34.96	32.62	13.98	Wichita, Archer

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Andrews	34.00	31.73	13.60
Atascosa	34.00	31.73	13.60
Aransas	34.00	31.73	13.60
Bosque	34.00	31.73	13.60
Blanco	34.00	31.73	13.60
Baylor	34.00	31.73	13.60
Bailey	34.00	31.73	13.60
Delta	34.00	31.73	13.60
Dawson	34.00	31.73	13.60
Culberson	34.00	31.73	13.60
Crockett	34.00	31.73	13.60
Cottle	34.00	31.73	13.60
Concho	34.00	31.73	13.60
Colorado	34.08	31.80	13.63
Coleman	34.00	31.73	13.60
Cochran	34.00	31.73	13.60
Childress	34.00	31.73	13.60
Castro	34.00	31.73	13.60
Carson	34.00	31.73	13.60
Callahan	34.00	31.73	13.60
Burnet	34.00	31.73	13.60
Brown	34.00	31.73	13.60
Briscoe	34.00	31.73	13.60
Zavala	34.00	31.73	13.60
Young	34.00	31.73	13.60
Wood	34.00	31.73	13.60
Winkler	34.00	31.73	13.60
Wilbarger	34.00	31.73	13.60
Wharton	34.08	31.80	13.63
Ward	34.00	31.73	13.60
Van Zandt	34.00	31.73	13.60
Uvalde	34.00	31.73	13.60
Tyler	34.00	31.73	13.60
Titus	34.00	31.73	13.60
Terry	34.00	31.73	13.60
Swisher	34.00	31.73	13.60
Stonewall	34.00	31.73	13.60
Stephens	34.00	31.73	13.60
Somervell	34.00	31.73	13.60
Shelby	34.00	31.73	13.60

NONMETROPOLITAN COUNTIES	A	B	C
Anderson	34.00	31.73	13.60
Armstrong	34.00	31.73	13.60
Angelina	34.00	31.73	13.60
Borden	34.00	31.73	13.60
Bee	34.00	31.73	13.60
Bandera	34.00	31.73	13.60
Austin	34.08	31.80	13.63
Deaf Smith	34.00	31.73	13.60
Dallam	34.00	31.73	13.60
Crosby	34.00	31.73	13.60
Crane	34.00	31.73	13.60
Cooke	34.00	31.73	13.60
Comanche	34.00	31.73	13.60
Collingsworth	34.00	31.73	13.60
Coke	34.00	31.73	13.60
Clay	34.00	31.73	13.60
Cherokee	34.00	31.73	13.60
Cass	34.00	31.73	13.60
Camp	34.00	31.73	13.60
Calhoun	34.00	31.73	13.60
Burleson	34.00	31.73	13.60
Brooks	34.00	31.73	13.60
Brewster	34.00	31.73	13.60
Zapata	34.00	31.73	13.60
Yoakum	34.00	31.73	13.60
Wise	34.08	31.80	13.63
Willacy	34.00	31.73	13.60
Wheeler	34.00	31.73	13.60
Washington	34.00	31.73	13.60
Walker	36.17	33.76	14.47
Val Verde	34.00	31.73	13.60
Upton	34.00	31.73	13.60
Trinity	34.00	31.73	13.60
Throckmorton	34.00	31.73	13.60
Terrell	34.00	31.73	13.60
Sutton	34.00	31.73	13.60
Sterling	34.00	31.73	13.60
Starr	34.00	31.73	13.60
Sherman	34.00	31.73	13.60
Shackelford	34.00	31.73	13.60

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Scurry	34.00	31.73	13.60
San Saba	34.00	31.73	13.60
San Augustine	34.00	31.73	13.60
Rusk	34.00	31.73	13.60
Robertson	34.00	31.73	13.60
Refugio	34.00	31.73	13.60
Red River	34.00	31.73	13.60
Reagan	34.00	31.73	13.60
Presidio	34.00	31.73	13.60
Pecos	34.00	31.73	13.60
Panola	34.00	31.73	13.60
Oldham	34.00	31.73	13.60
Nolan	34.00	31.73	13.60
Navarro	34.00	31.73	13.60
Motley	34.00	31.73	13.60
Moore	34.00	31.73	13.60
Mitchell	34.00	31.73	13.60
Milam	34.00	31.73	13.60
Medina	34.00	31.73	13.60
Matagorda	34.08	31.80	13.63
Martin	34.00	31.73	13.60
Madison	34.00	31.73	13.60
Mcculloch	34.00	31.73	13.60
Loving	34.00	31.73	13.60
Live Oak	34.00	31.73	13.60
Limestone	34.00	31.73	13.60
Lee	34.00	31.73	13.60
La Salle	34.00	31.73	13.60
Lamb	34.00	31.73	13.60
Knox	34.00	31.73	13.60
Kinney	34.00	31.73	13.60
Kimble	34.00	31.73	13.60
Kent	34.00	31.73	13.60
Kendall	34.00	31.73	13.60
Jones	34.00	31.73	13.60
Jim Hogg	34.00	31.73	13.60
Jasper	34.00	31.73	13.60
Jack	34.00	31.73	13.60
Hutchinson	34.00	31.73	13.60
Howard	34.00	31.73	13.60

NONMETROPOLITAN COUNTIES	A	B	C
Schleicher	34.00	31.73	13.60
San Jacinto	34.00	31.73	13.60
Sabine	34.00	31.73	13.60
Runnels	34.00	31.73	13.60
Roberts	34.00	31.73	13.60
Reeves	34.00	31.73	13.60
Real	34.00	31.73	13.60
Rains	34.00	31.73	13.60
Polk	34.00	31.73	13.60
Parmer	34.00	31.73	13.60
Palo Pinto	34.00	31.73	13.60
Ochiltree	34.00	31.73	13.60
Newton	34.00	31.73	13.60
Nacogdoches	34.55	32.25	13.82
Morris	34.00	31.73	13.60
Montague	34.00	31.73	13.60
Mills	34.00	31.73	13.60
Menard	34.00	31.73	13.60
Maverick	34.00	31.73	13.60
Mason	34.00	31.73	13.60
Marion	34.00	31.73	13.60
Mcmullen	34.00	31.73	13.60
Lynn	34.00	31.73	13.60
Llano	34.00	31.73	13.60
Lipscomb	34.00	31.73	13.60
Leon	34.00	31.73	13.60
Lavaca	34.00	31.73	13.60
Lampasas	34.00	31.73	13.60
Lamar	34.00	31.73	13.60
Kleberg	34.00	31.73	13.60
King	34.00	31.73	13.60
Kerr	34.00	31.73	13.60
Kenedy	34.00	31.73	13.60
Karnes	34.00	31.73	13.60
Jim Wells	34.00	31.73	13.60
Jeff Davis	34.00	31.73	13.60
Jackson	34.00	31.73	13.60
Irion	34.00	31.73	13.60
Hudspeth	34.00	31.73	13.60
Houston	34.00	31.73	13.60

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

T E X A S continued

NONMETROPOLITAN COUNTIES	A	B	C
Hopkins	34.00	31.73	13.60
Hill	34.00	31.73	13.60
Haskell	34.00	31.73	13.60
Hardeman	34.00	31.73	13.60
Hamilton	34.00	31.73	13.60
Hale	34.00	31.73	13.60
Gray	34.00	31.73	13.60
Goliad	34.00	31.73	13.60
Gillespie	34.00	31.73	13.60
Gaines	34.00	31.73	13.60
Freestone	34.00	31.73	13.60
Foard	34.00	31.73	13.60
Fisher	34.00	31.73	13.60
Fannin	34.00	31.73	13.60
Erath	34.00	31.73	13.60
Eastland	34.00	31.73	13.60
Donley	34.00	31.73	13.60
Dickens	34.00	31.73	13.60

NONMETROPOLITAN COUNTIES	A	B	C
Hockley	34.00	31.73	13.60
Hemphill	34.00	31.73	13.60
Hartley	34.00	31.73	13.60
Hansford	34.00	31.73	13.60
Hall	34.00	31.73	13.60
Grimes	34.00	31.73	13.60
Gonzales	34.00	31.73	13.60
Glasscock	34.00	31.73	13.60
Garza	34.00	31.73	13.60
Frio	34.00	31.73	13.60
Franklin	34.00	31.73	13.60
Floyd	34.00	31.73	13.60
Fayette	34.00	31.73	13.60
Falls	34.00	31.73	13.60
Edwards	34.00	31.73	13.60
Duval	34.00	31.73	13.60
Dimmit	34.00	31.73	13.60
Dewitt	34.00	31.73	13.60

U T A H

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Kane County, UT	41.61	38.84	16.65	Kane
Provo-Orem, UT MSA	37.76	35.25	15.11	Utah
Salt Lake City-Ogden, UT MSA	35.81	33.42	14.32	Weber, Salt Lake, Davis

NONMETROPOLITAN COUNTIES	A	B	C
Beaver	41.88	39.09	16.75
Carbon	47.64	44.46	19.06
Box Elder	38.51	35.94	15.40
Washington	45.33	42.31	18.13
Uintah	47.64	44.46	19.06
Summit	49.30	46.01	19.72
Sanpete	41.88	39.09	16.75
Rich	38.51	35.94	15.40
Morgan	47.64	44.46	19.06
Juab	41.88	39.09	16.75
Grand	47.64	44.46	19.06
Emery	47.64	44.46	19.06

NONMETROPOLITAN COUNTIES	A	B	C
Daggett	47.64	44.46	19.06
Cache	38.51	35.94	15.40
Wayne	41.88	39.09	16.75
Wasatch	47.64	44.46	19.06
Tooele	38.51	35.94	15.40
Sevier	41.88	39.09	16.75
San Juan	47.64	44.46	19.06
Piute	41.88	39.09	16.75
Millard	41.88	39.09	16.75
Iron	41.88	39.09	16.75
Garfield	41.88	39.09	16.75
Duchesne	47.64	44.46	19.06

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

V E R M O N T

METROPOLITAN FMR AREAS	A	B	C	Components of FMR AREA within STATE
Burlington, VT MSA	54.64	50.99	21.85	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Grand Isle county towns of Grand Isle town South Hero town Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town

NONMETROPOLITAN COUNTIES	A	B	C	Towns within non metropolitan counties
Bennington	45.18	42.17	18.07	
Addison	43.65	40.75	17.46	
Orleans	37.09	34.62	14.84	
Orange	44.46	41.49	17.78	
Lamoille	44.86	41.86	17.94	
Grand Isle	37.09	34.62	14.84	Alburg town, Isle La Motte town, North Hero town
Franklin	41.57	38.80	16.63	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Essex	37.09	34.62	14.84	
Chittenden	50.54	47.17	20.22	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Caledonia	37.09	34.62	14.84	
Windsor	47.74	44.56	19.10	
Windham	46.61	43.51	18.65	
Washington	44.70	41.72	17.88	
Rutland	48.22	45.01	19.29	

V I R G I N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Charlottesville, VA MSA	45.14	42.14	18.06	Charlottesville city, Greene, Fluvanna, Albemarle
Clarke County, VA	36.01	33.62	14.40	Clarke
Culpeper County, VA	37.52	35.02	15.01	Culpeper
Danville, VA MSA	34.64	32.33	13.86	Danville city, Pittsylvania
Johnson City-Kingsport-Bristol, TN-VA MSA	36.69	34.24	14.68	Bristol city, Washington, Scott
King George County, VA	42.00	39.20	16.80	King George
Lynchburg, VA MSA	35.93	33.54	14.37	Lynchburg city, Bedford city, Campbell, Bedford, Amherst
Norfolk-Virginia Beach-Newport News, VA-NC MSA	44.51	41.54	17.80	Gloucester, James City, Isle of Wight, Portsmouth city Poquoson city, Norfolk city, Newport News city Hampton city, Chesapeake city, York, Mathews

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

V I R G I N I A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Richmond-Petersburg, VA MSA	40.37	37.68	16.15	Williamsburg city, Virginia Beach city, Suffolk city Charles City, Hanover, Goochland, Dinwiddie, Chesterfield Richmond city, Petersburg city, Hopewell city Colonial Heights city, Prince George, Powhatan, New Kent Henrico
Roanoke, VA MSA	35.53	33.16	14.21	Salem city, Roanoke city, Roanoke, Botetourt
Warren County, VA	36.01	33.62	14.40	Warren
Washington, DC-MD-VA	65.63	61.26	26.25	Arlington, Loudoun, Fairfax, Fredericksburg city Fauquier, Falls Church city, Fairfax city Alexandria city, Stafford, Spotsylvania, Prince William Manassas Park city, Manassas city

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Alleghany	34.46	32.16	13.78	Accomack	34.38	32.09	13.75
Bath	34.46	32.16	13.78	Augusta	34.46	32.16	13.78
Appomattox	34.38	32.09	13.75	Amelia	34.38	32.09	13.75
Craig	34.38	32.09	13.75	Charlotte	34.38	32.09	13.75
Carroll	34.38	32.09	13.75	Caroline	41.69	38.91	16.68
Buckingham	34.38	32.09	13.75	Buchanan	34.38	32.09	13.75
Brunswick	34.38	32.09	13.75	Bland	34.38	32.09	13.75
Lee	34.38	32.09	13.75	Lancaster	34.38	32.09	13.75
King William	34.38	32.09	13.75	King and Queen	34.38	32.09	13.75
Highland	34.46	32.16	13.78	Henry	34.54	32.24	13.82
Halifax	34.38	32.09	13.75	Greensville	34.38	32.09	13.75
Grayson	34.38	32.09	13.75	Giles	34.38	32.09	13.75
Frederick	35.74	33.37	14.30	Franklin	34.38	32.09	13.75
Floyd	34.38	32.09	13.75	Essex	34.38	32.09	13.75
Dickenson	34.38	32.09	13.75	Cumberland	34.38	32.09	13.75
Wythe	34.38	32.09	13.75	Wise	34.38	32.09	13.75
Westmoreland	34.38	32.09	13.75	Tazewell	34.38	32.09	13.75
Sussex	34.38	32.09	13.75	Surry	34.38	32.09	13.75
Southampton	34.38	32.09	13.75	Smyth	34.38	32.09	13.75
Shenandoah	35.74	33.37	14.30	Russell	34.38	32.09	13.75
Rockingham	35.67	33.29	14.27	Rockbridge	34.46	32.16	13.78
Richmond	34.38	32.09	13.75	Rappahannock	37.24	34.76	14.90
Pulaski	34.38	32.09	13.75	Prince Edward	34.38	32.09	13.75
Patrick	34.38	32.09	13.75	Page	34.54	32.24	13.82
Orange	37.24	34.76	14.90	Nottoway	34.38	32.09	13.75
Northumberland	34.38	32.09	13.75	Northampton	34.38	32.09	13.75
Nelson	34.38	32.09	13.75	Montgomery	41.77	38.99	16.71
Middlesex	34.38	32.09	13.75	Mecklenburg	34.38	32.09	13.75

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	A	B	C
Madison	36.55	34.11	14.62
Louisa	35.99	33.59	14.40
Lunenburg	34.38	32.09	13.75

W A S H I N G T O N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Bellingham, WA MSA	50.51	47.14	20.20	Whatcom
Bremerton, WA PMSA	47.00	43.87	18.80	Kitsap
Olympia, WA PMSA	48.55	45.31	19.42	Thurston
Portland-Vancouver, OR-WA PMSA	44.80	41.81	17.92	Clark
Richland-Kennewick-Pasco, WA MSA	41.05	38.30	16.42	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	53.21	49.66	21.28	Island, Snohomish, King
Spokane, WA MSA	40.88	38.16	16.35	Spokane
Tacoma, WA PMSA	45.19	42.18	18.08	Pierce
Yakima, WA MSA	42.68	39.83	17.07	Yakima

NONMETROPOLITAN COUNTIES	A	B	C
Adams	35.06	32.72	14.02
Asotin	45.20	42.19	18.08
Cowlitz	36.37	33.94	14.55
Clallam	45.45	42.42	18.18
Skagit	46.35	43.26	18.54
Pend Oreille	35.06	32.72	14.02
Okanogan	38.41	35.86	15.37
Lincoln	35.06	32.72	14.02
Klickitat	42.18	39.37	16.87
Jefferson	45.45	42.42	18.18
Grant	35.06	32.72	14.02
Ferry	35.06	32.72	14.02
Walla Walla	45.20	42.19	18.08
Stevens	35.06	32.72	14.02
Chelan	42.18	39.37	16.87
Douglas	42.18	39.37	16.87
Columbia	45.20	42.19	18.08
Skamania	42.18	39.37	16.87
San Juan	47.98	44.77	19.19
Pacific	45.45	42.42	18.18
Mason	45.45	42.42	18.18
Lewis	42.18	39.37	16.87
Kittitas	38.41	35.86	15.37
Grays Harbor	45.45	42.42	18.18
Garfield	45.20	42.19	18.08
Whitman	45.20	42.19	18.08
Wahkiakum	42.18	39.37	16.87

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Berkeley County, WV	37.04	34.56	14.81	Berkeley
Charleston, WV MSA	44.45	41.48	17.78	Kanawha, Putnam
Cumberland, MD-WV MSA	33.97	31.70	13.59	Mineral
Huntington-Ashland, WV-KY-OH MSA	36.64	34.19	14.66	Wayne, Cabell
Jefferson County, WV	37.18	34.70	14.87	Jefferson

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	34.09	31.82	13.64	Wood
Steubenville-Weirton, OH-WV MSA	36.27	33.85	14.51	Hancock, Brooke
Wheeling, WV-OH MSA	35.86	33.46	14.34	Ohio, Marshall

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Lincoln	36.57	34.12	14.63	Lewis	36.57	34.12	14.63
Jackson	37.33	34.84	14.93	Harrison	37.33	34.84	14.93
Hardy	36.57	34.12	14.63	Hampshire	36.57	34.12	14.63
Greenbrier	36.57	34.12	14.63	Grant	36.57	34.12	14.63
Gilmer	36.90	34.44	14.76	Fayette	36.57	34.12	14.63
Doddridge	36.57	34.12	14.63	Clay	36.57	34.12	14.63
Calhoun	37.33	34.84	14.93	Braxton	36.57	34.12	14.63
Boone	36.57	34.12	14.63	Barbour	36.57	34.12	14.63
Wyoming	36.57	34.12	14.63	Wirt	36.57	34.12	14.63
Wetzel	36.57	34.12	14.63	Webster	36.57	34.12	14.63
Upshur	36.57	34.12	14.63	Tyler	36.57	34.12	14.63
Tucker	36.57	34.12	14.63	Taylor	36.57	34.12	14.63
Summers	36.57	34.12	14.63	Roane	37.33	34.84	14.93
Ritchie	36.57	34.12	14.63	Randolph	36.57	34.12	14.63
Raleigh	36.57	34.12	14.63	Preston	40.15	37.47	16.06
Pocahontas	36.57	34.12	14.63	Pleasants	36.57	34.12	14.63
Pendleton	36.57	34.12	14.63	Nicholas	36.57	34.12	14.63
Morgan	36.57	34.12	14.63	Monroe	36.57	34.12	14.63
Monongalia	40.15	37.47	16.06	Mingo	36.57	34.12	14.63
Mercer	36.57	34.12	14.63	Mason	36.57	34.12	14.63
Marion	40.15	37.47	16.06	Mcdowell	36.57	34.12	14.63
Logan	36.57	34.12	14.63				

W I S C O N S I N

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	36.62	34.18	14.65	Calumet, Winnebago, Outagamie
Duluth-Superior, MN-WI MSA	37.25	34.77	14.90	Douglas
Eau Claire, WI MSA	35.14	32.79	14.05	Chippewa, Eau Claire
Green Bay, WI MSA	36.45	34.02	14.58	Brown
Janesville-Beloit, WI MSA	40.35	37.66	16.14	Rock
Kenosha, WI PMSA	44.97	41.97	17.99	Kenosha
La Crosse, WI-MN MSA	41.61	38.83	16.64	La Crosse
Madison, WI MSA	48.40	45.18	19.36	Dane

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

W I S C O N S I N continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	43.49	40.58	17.39	Ozaukee, Milwaukee, Waukesha, Washington
Minneapolis-St. Paul, MN-WI MSA	50.37	47.01	20.15	St. Croix, Pierce
Racine, WI PMSA	39.72	37.07	15.89	Racine
Sheboygan, WI MSA	36.04	33.64	14.41	Sheboygan
Wausau, WI MSA	35.79	33.40	14.31	Marathon

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Adams	36.21	33.80	14.49	Green	35.64	33.25	14.25
Grant	35.64	33.25	14.25	Forest	35.64	33.25	14.25
Fond du Lac	37.38	34.89	14.95	Florence	35.64	33.25	14.25
Dunn	35.64	33.25	14.25	Door	35.64	33.25	14.25
Dodge	35.64	33.25	14.25	Crawford	35.64	33.25	14.25
Columbia	35.64	33.25	14.25	Clark	35.64	33.25	14.25
Burnett	35.64	33.25	14.25	Buffalo	35.64	33.25	14.25
Bayfield	35.64	33.25	14.25	Barron	35.64	33.25	14.25
Ashland	35.64	33.25	14.25	Wood	36.21	33.80	14.49
Waushara	35.64	33.25	14.25	Waupaca	35.64	33.25	14.25
Washburn	35.64	33.25	14.25	Walworth	39.12	36.51	15.65
Vilas	35.64	33.25	14.25	Vernon	35.64	33.25	14.25
Trempealeau	35.64	33.25	14.25	Taylor	35.64	33.25	14.25
Shawano	35.64	33.25	14.25	Sawyer	35.64	33.25	14.25
Sauk	36.21	33.80	14.49	Rusk	35.64	33.25	14.25
Richland	35.64	33.25	14.25	Price	35.64	33.25	14.25
Portage	36.29	33.87	14.52	Polk	35.64	33.25	14.25
Pepin	35.64	33.25	14.25	Oneida	35.64	33.25	14.25
Oconto	35.64	33.25	14.25	Monroe	35.64	33.25	14.25
Menominee	35.64	33.25	14.25	Marquette	35.64	33.25	14.25
Marinette	35.64	33.25	14.25	Manitowoc	35.64	33.25	14.25
Lincoln	35.64	33.25	14.25	Langlade	35.64	33.25	14.25
Lafayette	35.64	33.25	14.25	Kewaunee	35.64	33.25	14.25
Juneau	36.21	33.80	14.49	Jefferson	37.80	35.28	15.12
Jackson	35.64	33.25	14.25	Iron	35.64	33.25	14.25
Iowa	35.64	33.25	14.25	Green Lake	35.72	33.33	14.29

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

W Y O M I N G

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Casper, WY MSA	49.73	46.42	19.89	Natrona
Cheyenne, WY MSA	41.28	38.53	16.51	Laramie

NONMETROPOLITAN COUNTIES	A	B	C
Albany	34.41	32.11	13.76
Big Horn	33.81	31.55	13.52
Johnson	33.81	31.55	13.52
Goshen	33.81	31.55	13.52
Crook	33.81	31.55	13.52
Carbon	33.81	31.55	13.52
Washakie	33.81	31.55	13.52
Teton	50.39	47.03	20.16
Sublette	33.81	31.55	13.52
Platte	33.81	31.55	13.52
Niobrara	33.81	31.55	13.52
Campbell	33.81	31.55	13.52
Lincoln	33.81	31.55	13.52
Hot Springs	33.81	31.55	13.52
Fremont	33.81	31.55	13.52
Converse	33.81	31.55	13.52
Weston	33.81	31.55	13.52
Uinta	33.81	31.55	13.52
Sweetwater	33.81	31.55	13.52
Sheridan	45.73	42.67	18.29
Park	33.81	31.55	13.52

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	A	B	C
Pacific Islands	66.05	61.66	26.42

P U E R T O R I C O

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
Aguadilla, PR MSA	36.41	33.97	14.56	Aguada Municipio, Moca Municipio, Aguadilla Municipio
Arecibo, PR PMSA	39.97	37.31	15.99	Camuy Municipio, Arecibo Municipio, Hatillo Municipio
Caguas, PR PMSA	36.41	33.97	14.56	Caguas Municipio, Cidra Municipio, Cayey Municipio San Lorenzo Municipio, Gurabo Municipio
Mayaguez, PR MSA	36.41	33.97	14.56	Cabo Rojo Municipio, Anasco Municipio San German Municipio, Sabana Grande Municipio Mayaguez Municipio, Hormigueros Municipio
Ponce, PR MSA	39.12	36.51	15.65	Ponce Municipio, Penuelas Municipio, Juana Diaz Municipio Guayanilla Municipio, Yauco Municipio, Villalba Municipio
San Juan-Bayamon, PR PMSA	39.12	36.51	15.65	Barceloneta Municipio, Aguas Buenas Municipio Catano Municipio, Carolina Municipio, Canovanas Municipio Bayamon Municipio, Humacao Municipio, Guaynabo Municipio Florida Municipio, Fajardo Municipio, Dorado Municipio Corozal Municipio, Comerio Municipio, Ceiba Municipio Yabucoa Municipio, Vega Baja Municipio Vega Alta Municipio, Trujillo Alto Municipio Toa Baja Municipio, Toa Alta Municipio San Juan Municipio, Rio Grande Municipio

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

ADMINISTRATIVE FEES DOLLAR AMOUNT PER UNIT MONTH

PAGE 55

P U E R T O R I C O continued

METROPOLITAN FMR AREAS	A	B	C	Counties of FMR AREA within STATE
				Naranjito Municipio, Naguabo Municipio, Morovis Municipio Manati Municipio, Luquillo Municipio, Loiza Municipio Las Piedras Municipio, Juncos Municipio

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Maunabo Municipio.....	36.47	34.03	14.59	Maricao Municipio.....	36.47	34.03	14.59
Las Marias Municipio....	36.47	34.03	14.59	Lares Municipio.....	36.47	34.03	14.59
Lajas Municipio.....	36.47	34.03	14.59	Jayuya Municipio.....	36.47	34.03	14.59
Isabela Municipio.....	36.47	34.03	14.59	Guayama Municipio.....	36.47	34.03	14.59
Guanica Municipio.....	36.47	34.03	14.59	Culebra Municipio.....	36.47	34.03	14.59
Coamo Municipio.....	36.47	34.03	14.59	Ciales Municipio.....	36.47	34.03	14.59
Barranquitas Municipio..	36.47	34.03	14.59	Arroyo Municipio.....	36.47	34.03	14.59
Aibonito Municipio.....	36.47	34.03	14.59	Adjuntas Municipio.....	36.47	34.03	14.59
Vieques Municipio.....	36.47	34.03	14.59	Utuado Municipio.....	36.47	34.03	14.59
Santa Isabel Municipio..	36.47	34.03	14.59	San Sebastian Municipio.	36.47	34.03	14.59
Salinas Municipio.....	36.47	34.03	14.59	Rincon Municipio.....	36.47	34.03	14.59
Quebradillas Municipio..	40.04	37.37	16.02	Patillas Municipio.....	36.47	34.03	14.59
Orocovis Municipio.....	36.47	34.03	14.59				

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	A	B	C	NONMETROPOLITAN COUNTIES	A	B	C
Virgin Islands.....	52.18	48.71	20.87				

Note: A = First 600 units; B = Remainder of units; c = PHA owned units.

100797

[FR Doc. 98–1941 Filed 1–26–98; 8:45 am]

BILLING CODE 4210–33–C

federal register

Tuesday
January 27, 1998

Part VII

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priority for Fiscal Years 1998–1999 for a Rehabilitation Engineering Research Center; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priority for Fiscal Years 1998–1999 for a Rehabilitation Engineering Research Center

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priority for Fiscal Years 1998–1999 for a Rehabilitation Engineering Research Center.

SUMMARY: The Secretary proposes a funding priority for a Rehabilitation Engineering Research Center (RERC) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1998–1999. The Secretary takes this action to focus research attention on problems that are significant to disabled persons and to the research community. This priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before February 26, 1998.

ADDRESSES: All comments concerning this proposed priority should be addressed to Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, SW., room 3418, Switzer Building, Washington, DC 20202–2645. Comments may also be sent through the Internet: comments@ed.gov.

You must include the term ''Engineering Research Centers'' in the electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains a proposed priority under the Disability and Rehabilitation Research Projects and Centers program for an RERC focused on the development of rehabilitation technology devices, particularly low-cost prosthetic and orthotic devices, to meet the rehabilitation needs of land mine survivors.

The authority for RERCs is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(b)(3)). Under this program the Secretary makes awards to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. An RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization. NIDRR is authorized, under Section 204(b)(6) of the Rehabilitation Act, to provide support for a program of international rehabilitation research, demonstration, and training.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 761a(g) and 762).

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the notice of final priority.

Description of the Rehabilitation Engineering Research Center Program

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers, and (2) study new or emerging technologies, products, or environments;

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas, and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services, and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities.

Each RERC must provide training opportunities to individuals, including individuals with disabilities, to become researchers of rehabilitation technology and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organization.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority.

Proposed Priority: Improved Technology Access for Land Mine Survivors

Background

In the House Report accompanying the appropriations for the Department of Education:

> The Committee has included up to $850,000 * * * for NIDRR to establish, through a competitive award, a rehabilitation engineering research center dealing with the unique needs of land mine survivors. The center is to operate in cooperation with an institution of higher education involved in both rehabilitation medicine and engineering research, training and service and is to focus on the unique rehabilitation needs of the victims of land mine injuries. Specifically, the center is to focus on the development of inexpensive replacement limbs; the development and dissemination of educational materials on prosthetics, and other appropriate prosthetic, orthotic, or assistive technology devices; and the training of health care providers in effective methods of assistance to this population.

In response to this report language, the Secretary is proposing the following priority. Both the Congress and NIDRR are aware of the historic significance of periods of international conflict in stimulating the science of rehabilitation to develop solutions to the impairments caused by sustained large-scale violence. Most recently, survivors of landmine injuries in dozens of nations in Latin America, Europe, Africa, and Asia are in need of innovative solutions to address the loss of limbs and other

conditions such as sensory impairments, communication impairments, burns, and other conditions caused by anti-personnel land mines. The Secretary is particularly interested in receiving comments about the feasibility of addressing, to some extent, land mine injuries that do not involve missing limbs, such as vision, hearing, and other types of impairments within the scope of this RERC.

Because most of those with unmet needs are located in countries that are either not industrialized, lack infrastructures for rehabilitative services, or lack economic resources, the approaches to meeting these needs must be tailored to their particular circumstances. Solutions, which will focus on, but not be limited to, limb replacement, must be suitable for the available materials, resources, and expertise in the relevant countries, and must also concentrate on building capacity in those nations for design and fitting, manufacture, distribution, maintenance, and provision of supports and services. This RERC will have broad scope in the development of devices through scientific methods, training of indigenous scientists, service providers, and advocates, and transferring technology to the local economies.

There are many national and international organizations that play a role in addressing the problems of landmine survivors and the Center should involve relevant organizations in appropriate roles in Center operations. Included in this group are organizations of survivors themselves; these consumer organizations are important targets of education, information, and training, particularly in the areas of self-help, maintenance of devices, and the need for accommodations, supports, and follow-up care. Because so many of the victims of land mines are children, special attention must be directed toward the special needs of children who are growing and developing, and for whom most prostheses or orthoses therefore will have a limited period of utility. The Center may opt to address these problems through technological solutions where feasible, or through partnerships that will provide ongoing care and support.

The work of this RERC will have implications for the United States population as well. There is a continuing need for new and different types of prostheses and orthoses in the United States and other developed nations, with special need for prosthetic and orthotic devices and other rehabilitation technology that is suitable for different climates, low-cost, and appropriate in various cultures. New conditions of health care delivery portend limited resources for rehabilitation technologies and services and durable medical equipment; thus there will be a greater emphasis on durability, endurance, cost containment, and ease of maintenance. This Center's activities will contribute to advancing science, broadening knowledge of materials and methods, and increasing our understanding of and sensitivity to cultural and economic concerns in provision of these rehabilitation technologies.

Priority

The Secretary proposes to establish an RERC to address the unique rehabilitation needs of land mine survivors through developing and testing appropriate innovative replacement limbs (particularly low-cost limbs suitable for developing economies), and other prosthetic and orthotic devices; training indigenous technicians, manufacturers, and health care providers in the fabrication and fitting of appropriate devices; and educating land mine survivors and their families.

In carrying out the general purposes of this priority, the RERC shall:

1. Develop a sound scientific process for evaluating the suitability of existing devices, assessing user needs, developing new and innovative designs, and testing inexpensive replacement limbs, prototypes of prostheses, orthoses, and other appropriate rehabilitation technology devices.

2. Identify and evaluate existing technologies and systems used for limb replacement and related rehabilitation technology in various nations where there are extensive land mine injuries.

3. Demonstrate the suitability of proposed devices in terms of cost-effectiveness and appropriateness to the indigenous economies, including available materials, work force capabilities, and infrastructure capacity for timely production and delivery of devices.

4. Identify the needs of land mine survivors for other types of rehabilitation technologies which may include but need not be limited to vision, hearing and speech aids, and wheelchairs.

5. Develop and maintain a database to track and correlate consumer needs and characteristics, device specification and performance, and outcomes and conduct a definitive evaluation of the products and procedures.

In addition to its research functions, the RERC must:

- Address the needs of land mine survivors of all ages, with particular attention to systems for meeting the changing needs of growing children.
- Conduct, in the third year of the award, a state-of-the-science conference and provide NIDRR with a report on this conference by the end of the fourth year.
- Conduct training of health care providers in affected nations in effective methods of providing rehabilitative assistance to this population.
- Collaborate with key international organizations and Government agencies in the affected nations, with consumer organizations of land mine survivors, and with rehabilitation researchers and service providers, and other Federal agencies including the Department of Defense, Agency for International Development, Centers for Disease Control, and the Department of Veterans' Affairs.

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Note: The official version of this document is the document published in the **Federal Register**.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 353.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Research Centers)

Dated: January 22, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–1936 Filed 1–26–98; 8:45 am]

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Federal Register

Vol. 63, No. 17

Tuesday, January 27, 1998

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FEDERAL REGISTER PAGES AND DATES, JANUARY

1–138 2
139–398 5
399–654 6
655–1050 7
1051–1320 8
1321–1734 9
1735–1888 12
1889–2134 13
2135–2304 14
2305–2592 15
2593–2872 16
2873–3016 20
3017–3246 21
3247–3446 22
3447–3634 23
3635–3790 26
3791–4150 27

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7062 2871
7063 3243
7064 3245

Executive Orders:
12947 (See Notice of January 21, 1998) 3445

Administrative Orders:
Notice of January 2, 1998 653
Notice of January 21, 1998 3445
Presidential Determinations:
No. 98–9 of January 6, 1998 3635
No. 98–10 of January 12, 1998 3447

5 CFR

251 2305
551 2304

Proposed Rules:
890 446

7 CFR

301 ..... 1, 1321
783 3791
905 3247
925 655
930 399
944 3247
966 139
980 139
982 3251
997 ..... 2846, 3254
998 ..... 2846, 3254
1478 3791
1703 3637
1730 3449
1930 2135
2003 3256

Proposed Rules:
319 3844
610 446
868 2353
930 3048
1001 3667
1002 3667
1004 3667
1005 3667
1006 3667
1007 3667
1012 3667
1013 3667
1030 3667
1032 3667
1033 3667
1036 3667
1040 3667
1044 3667
1046 3667
1049 3667
1050 3667
1064 3667
1065 3667
1068 3667
1076 3667
1079 3667
1106 3667
1124 3667
1126 3667
1131 3667
1134 3667
1135 3667
1137 3667
1138 3667
1139 3667
1209 3848
1301 ..... 1396, 3267
3200 3481

8 CFR

103 1331
207 3792
208 3792
299 3792
212 1331
214 1331
235 1331
274a 1331

Proposed Rules:
3 2901
103 1775
292 2901

9 CFR

1 3017
2 3017
3 ..... 1, 3017
78 3637
92 1889
93 ..... 1889, 3638
94 ..... 406, 1889
95 1889
96 ..... 406, 1889
97 1889
98 1889
130 1889
145 2
147 2
310 1735
319 147

Proposed Rules:
54 3671
71 3849
79 3671
304 1797
305 1797
310 1800
327 1797
335 1797
381 1797
500 1797

10 CFR

9 2873
30 1890
32 1890
40 1890
50 ....1335, 1890
52 1890
60 1890
61 1890
70 1890
71 1890
72 1890
110 1890
150 1890

Proposed Rules:

50 ....3052, 3673
430 ....2186, 3053
708 374

11 CFR

Proposed Rules:

114 3851

12 CFR

207 ....2806, 3804
220 ....2806, 3804
221 ....2806, 3804
224 ....2806, 3804
226 2723
265 2806
560 1051
900 3453
932 3453
933 3453

Proposed Rules:

10 2640
220 2840
221 2840
224 2840
309 29
563 563
563b 563

14 CFR

19 4
25 3023
39 ....4, 658, 1335, 1337, 1735, 1737, 1738, 1901, 1903, 1905, 1907, 1909, 1911, 1912, 1913, 2593, 2596, 3031, 3455, 3458, 3809
61 660
71 ....924, 1884, 1915, 1916, 1997, 2136, 2137, 2138, 2598, 2599, 2600, 2601, 2884, 2885, 2887, 2888, 2889, 2890, 3618
91 ....1917, 2304
93 1917
97 ....666, 2139, 2601, 2603, 2604, 2891
121 ....4, 1917, 2304
135 ....4, 1917
142 2304

Proposed Rules:

25 2186
39 ....167, 169, 171, 172, 174, 1070, 1072, 1074, 1076, 1930, 2911, 3054, 3056, 3267, 3270, 3272, 3273, 3275, 3276, 3278, 3483, 3852
71 ....2913, 3673, 3674, 3675, 3854, 3855, 3856, 3857, 3858, 3859
91 126
121 126
125 126
129 126
255 3491

15 CFR

732 2452
740 2452
742 2452
743 2452
744 2452
746 2452
762 2452
774 2452
806 3459
902 ....290, 667

16 CFR

Proposed Rules:

Ch. I 1802
Ch. II 3280
303 ....447, 449
1210 1077

17 CFR

Ch. II 451
230 3032
232 3462
240 ....1884, 2854

Proposed Rules:

1 ....695, 2188, 3492
140 3285

19 CFR

Proposed Rules:

201 3505
207 3505

20 CFR

200 2140

Proposed Rules:

200 34
209 2914

21 CFR

175 3463
178 3463
510 408
520 ....148, 408
558 ....408, 2306
820 3465

Proposed Rules:

101 1078
201 176

22 CFR

40 669
41 669

Proposed Rules:

228 3506

23 CFR

1260 3811
1327 149

24 CFR

207 1302
251 1302
252 1302
255 1302
266 1302
3500 3214

Proposed Rules:

81 1997

25 CFR

Proposed Rules:

291 3289

26 CFR

1 ....6, 409, 411, 671, 1054, 1740, 1917, 2892, 3186, 3256, 3812
40 24
48 24
513 2723
602 ....6, 1917, 2723, 2892

Proposed Rules:

1 ....35, 39, 42, 453, 707, 1803, 1932, 1933, 3057, 3296, 3677
31 3680
54 708
301 ....1086, 3186

29 CFR

1610 1610
1910 1152
1926 ....1152, 1919, 3813
4044 2307

30 CFR

203 2605
206 3618
260 2626
924 1342

Proposed Rules:

Ch. II 185
56 ....290, 2642
57 ....290, 2642
62 ....290, 2642
70 ....290, 2642
71 ....290, 2642
904 1396
913 2916
916 2916
918 712
920 2919
935 3507
936 ....454, 1399
943 3508
944 2192

31 CFR

103 ....1919, 3640

32 CFR

104 3465
270 3472

Proposed Rules:

721 3860
722 3860

33 CFR

100 3036
117 ....1746, 2141, 2308, 2894

Proposed Rules:

154 3861
155 3861
165 1089

35 CFR

115 2141
117 2141
119 2141

Proposed Rules:

133 186
135 186

36 CFR

1151 1924
1153 1924
1155 1924
1191 ....2000, 2060

37 CFR

203 1926
253 2142

Proposed Rules:

201 3685

38 CFR

3 ....412, 413

39 CFR

20 ....3642, 3814
111 153
255 2304

40 CFR

9 ....673, 926, 1059, 1318
51 ....414, 1362
52 ....26, 414, 415, 674, 1060, 1362, 1369, 1927, 2146, 2147, 3037, 3650
60 ....414, 1746
61 ....414, 1746
62 2154
63 ....1746, 2630
68 640
81 2726
85 926
86 926
140 1318
180 ....156, 416, 417, 676, 679, 1369, 1377, 1379, 2156, 2163
185 2163
186 ....1379, 2163
228 682
244 683
245 683
271 ....683, 2167
272 2896
712 684
716 684
721 ....673, 685, 686, 3394

Proposed Rules:

Ch. I 3686
52 ....456, 714, 1091, 1804, 1935, 2194, 3687, 3693
55 2642
60 2194
61 2194
62 ....2195, 3509
63 2194
73 714
81 2804
90 3950
122 1536
123 1536
180 3057
185 3057
186 3057
194 3863
300 3061
440 2646

41 CFR

Proposed Rules:

51–5 3530
51–6 3530
51–8 3530
51–9 3530
51–10 3530

42 CFR

Ch. IV 2920

405 687
411 1646
413 ....292, 1379
424 2926
440 292
441 292
489 292
Proposed Rules:
411 1659
424 1659
435 1659
455 1659
1001 187

43 CFR

Proposed Rules:
2360 3531
3100 1936
3106 1936
3130 1936
3160 1936

44 CFR

11 1063
65 ....3039, 3041
67 3044
Proposed Rules:
67 3063

45 CFR

1301 2312
1304 2312
1305 2312
1306 2312
1630 1532
Proposed Rules:
302 187
303 187
304 187

46 CFR

382 3819
Proposed Rules:
10 3070
15 ....2939, 3070

47 CFR

0 990
1 ....990, 2170, 2315
20 2631
21 2315
24 ....2170, 2315
26 2315
27 2315
36 2094
54 ....162, 2094, 3830
69 2094
73 ....164, 160, 2350, 2351, 3832, 3833, 3834
90 2315
95 2315
Proposed Rules:
1 ....460, 770
21 770
24 770
26 770
27 770
64 1943
73 ....193, 194, 2354, 2355
76 1943
79 3070
90 770
95 770
101 ....3075+

48 CFR

4 1532
6 1532
8 1399
12 1532
13 1532
16 1532
19 1532
32 1532
33 1532
41 1532
42 1532
43 1532
49 1532
52 1532
53 ....648, 1532
1505 690
1514 690
1535 418
1537 690
1548 690
1552 ....418, 690, 691, 1532
1842 3652
Proposed Rules:
Ch. XXVIII 1399
44 649
52 4074
922 386
952 386
970 386

49 CFR

10 2171
173 1884
195 3653
382 2172
393 1383
571 ....27, 3654, 3662
653 418
654 418
1111 2638
Proposed Rules:
232 ....195, 1418, 2631
571 46

50 CFR

17 ....692, 1752, 3835
32 2178
226 1388
285 667
600 419
622 ....290, 443, 1772
648 ....444, 1773, 2182, 2184, 3478
660 419
Proposed Rules:
14 3298
17 ....1418, 1948, 3301, 3863, 3877
222 1807
227 1807
300 ....1812, 3693
622 1813
648 ....466, 2651
660 ....2195, 3532
679 2694

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 27, 1998

DEFENSE DEPARTMENT
Navy Department
Personnel:
Employee conduct standards and reporting procedures on defense related employment; CFR parts removed; published 1-27-98

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
New York; published 1-27-98
Texas; published 1-27-98

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
San Bernardino kangaroo rat; published 1-27-98

LABOR DEPARTMENT
Occupational Safety and Health Administration
Construction safety and health standards:
Scaffolds; effective date and reporting and recordkeeping requirements; published 1-27-98

POSTAL SERVICE
International Mail Manual:
Global priority mail; expansion; published 1-27-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 1-12-98

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Speed limit enforcement certification:
National maximum speed limit compliance program; CFR part removed; published 1-27-98

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Speed limit enforcement certification:
National maximum speed limit compliance program; CFR part removed; published 1-27-98

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Foreign tax credit claims of U.S. taxpayers; filing requirements; published 1-27-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Poultry and rabbit products; voluntary grading program changes; comments due by 1-30-98; published 12-1-97

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Export certification:
Non-government facilities; accreditation for laboratory testing or phytosanitary inspection services; comments due by 1-26-98; published 11-25-97

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Noninsured crop disaster assistance program provisions; aquacultural species, etc.
Correction; comments due by 1-26-98; published 11-25-97

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Poultry inspection:
Imported products; list of eligible countries—
Mexico; comments due by 1-27-98; published 11-28-97

COMMERCE DEPARTMENT
Economic Analysis Bureau
International services surveys:
Foreign direct investments in U.S.—
BE-12; benchmark survey-1997; reporting requirements; comments due by 1-26-98; published 12-10-97

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic tuna; comments due by 1-30-98; published 1-7-98
Magnuson Act provisions—
Nattional standards guidelines; comments due by 1-28-98; published 12-29-97
Marine mammals:
Designated critical habitats—
Central California Coast and Southern Oregon/ Northern California Coast coho salmon; comments due by 1-26-98; published 11-25-97

DEFENSE DEPARTMENT
Air Force Department
Appointment to the United States Air Force Academy; comments due by 1-30-98; published 12-1-97

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Contract financing payments; distribution; comments due by 1-26-98; published 11-26-97
Contracting by negotiation; procedures; comments due by 1-26-98; published 11-26-97
Restructuring bonuses; allowability of costs; comments due by 1-26-98; published 11-26-97
Vocational rehabilitation and education:
Veterans education—
Election of education benefits; comments due by 1-26-98; published 11-25-97

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Hazardous waste combustors; total mercury and particulate continuous emissions monitoring systems, etc.; comments due by 1-29-98; published 12-30-97
Air pollution control; new motor vehicles and engines:
New nonroad compression-ignition engines at or above 37 kilowatts—
Nonroad engine and vehicle standards; State regulation preemption; comments due by 1-29-98; published 12-30-97
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Colorado; comments due by 1-30-98; published 12-31-97
Hazardous waste program authorizations:
Louisiana; comments due by 1-28-98; published 12-29-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bifenthrin; comments due by 1-26-98; published 11-26-97
Cyfluthrin; comments due by 1-26-98; published 11-26-97
Cypermethrin; comments due by 1-26-98; published 11-26-97
Deltamethrin, etc.; comments due by 1-26-98; published 11-26-97
Fenpropathrin; comments due by 1-26-98; published 11-26-97
Fenvalerate; comments due by 1-26-98; published 11-26-97
Fipronil; comments due by 1-26-98; published 11-26-97
Hexythiazox; comments due by 1-26-98; published 11-26-97
Lambda-cyhalothrin; comments due by 1-26-98; published 11-26-97
Tebufenozide; comments due by 1-26-98; published 11-26-97
Tefluthrin; comments due by 1-26-98; published 11-26-97
Zeta-cypermethrin; comments due by 1-26-98; published 11-26-97
Toxic substances:
Testing requirements—
1,1,2-trichloroethane; comments due by 1-27-98; published 12-23-97
Ethylene dichloride; comments due by 1-27-98; published 12-23-97

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Commercial broadcast and instructional television fixed service licenses; competitive bidding procedures; comment request; comments due by 1-26-98; published 12-12-97
Radio stations; table of assignments:
California; comments due by 1-26-98; published 12-16-97

Texas; comments due by 1-26-98; published 12-16-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Labeling of drug products (OTC)—

Analgesic/antipyretic active ingredients for internal use; required alcohol warning; comments due by 1-28-98; published 11-14-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:

Ceiling rents on total tenant payments for public housing projects; comments due by 1-26-98; published 11-25-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

West Indian manatee; comments due by 1-26-98; published 11-26-97

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Administrative appeals process and alternative dispute resolution; release of third-party proprietary information; comments due by 1-27-98; published 12-31-97

INTERIOR DEPARTMENT

National Park Service

National Park System:

Right-of-way permits; issuance; comments due by 1-30-98; published 12-1-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Pennsylvania; comments due by 1-28-98; published 12-29-97

Texas; comments due by 1-28-98; published 12-29-97

Utah; comments due by 1-29-98; published 1-14-98

TRANSPORTATION DEPARTMENT

Coast Guard

Anchorage regualtions:

California; comments due by 1-26-98; published 11-25-97

Vocational rehabilitation and education:

Veterans education—

Election of education benefits; comments due by 1-26-98; published 11-25-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; comments due by 1-26-98; published 12-11-97

Construcciones Aeronauticas, S.A.; comments due by 1-30-98; published 12-31-97

Empresa Brasileria de Aeronautica S.A.; comments due by 1-28-98; published 12-29-97

EXTRA Flugzeugbau; comments due by 1-27-98; published 12-31-97

SOCATA-Groupe AEROSPATIALE; comments due by 1-26-98; published 12-24-97

Class D and Class E airspace; comments due by 1-26-98; published 12-22-97

Class E airspace; comments due by 1-26-98; published 12-4-97

Colored Federal airways; comments due by 1-30-98; published 12-12-97

VOR Federal airways; comments due by 1-28-98; published 12-15-97

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes, etc.:

Elective entity classification; treatment of changes; comments due by 1-26-98; published 10-28-97

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:

Veterans education—

Election of education benefits; comments due by 1-26-98; published 11-25-97

LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws was published in the **Federal Register** on December 31, 1997.

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