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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–23–AD; Amendment 39–12062; AD 2000–26–12]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC135 P1 and EC135 T1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Eurocopter Deutschland GmbH (ECD) Model EC135 P1 and EC135 T1 helicopters that requires inspecting the hydraulic line shielding hose (hose), replacing any unairworthy hose with an airworthy hose, and installing a nylon cable tie. This amendment is prompted by the tail rotor drive shaft Thomas coupling contacting and chafing the hose that shields the fenestron tail rotor hydraulic lines. The actions specified by this AD are intended to prevent damage to the hose, leaking of accumulated hydraulic fluid to an area with an ignition source, inflight fire, and subsequent loss of control of the helicopter.

DATES: Effective February 6, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) for ECD Model EC135 P1 and EC135 T1 helicopters was published in the **Federal Register** on September 18, 2000 (65 FR 56273). That action proposed to require, within 50 hours time-in-service (TIS), inspecting the hose for damage. If damage is found, replacing the unairworthy hose with an airworthy hose within 25 hours TIS was proposed. Also proposed was installing a nylon cable tie to increase the clearance between the drive shaft and the hose.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 25 helicopters of U.S. registry will be affected by this AD, that it will take approximately 9.75 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $14,625 assuming no parts will be required.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–26–12 Eurocopter Deutschland GmbH: Amendment 39–12062. Docket No. 2000–SW–23–AD.

Applicability: Model EC135 P1 and EC135 T1 helicopters, serial numbers 0005 through 0094 with hydraulic line shielding hose DN 56 (hose), part number (P/N) L290M20X1 001, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters 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 (c) 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 prevent damage to the hose, leaking of accumulated hydraulic fluid to an area with

an ignition source, inflight fire, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS),

(1) Inspect the hose in accordance with the Accomplishment Instructions, paragraph 3.A., of Eurocopter Alert Service Bulletin EC 135–29A–003, dated February 24, 1999 (ASB). If a damaged hose is found, within 25 hours TIS, replace the unairworthy hose with an airworthy hose in accordance with the Accomplishment Instructions, paragraph 3.B., of the ASB.

(2) Install a nylon cable tie in accordance with the Accomplishment Instructions, paragraph 3.C., of the ASB.

(b) Inspecting the hose, replacing any unairworthy hose with an airworthy hose, and installing a nylon cable tie constitute terminating action for the requirements of this AD.

(c) 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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) 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 helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspection and modification, if necessary, shall be done in accordance with Accomplishment Instructions, paragraph 3.A. and paragraph 3.B, of Eurocopter Alert Service Bulletin EC 135–29A–003, dated February 24, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 6, 2001.

Issued in Fort Worth, Texas, on December 18, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–33334 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–194–AD; Amendment 39–12065; AD 2000–26–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires deactivation of the map light assemblies; or modification and reidentification of the insulation blankets adjacent to certain map light assemblies, if applicable, a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies, and follow-on actions. This amendment is prompted by the FAA's determination that certain airplanes equipped with reading light assemblies in the crew rest area are subject to the identified unsafe condition. For certain airplanes, this amendment requires deactivation of the reading light assemblies, or an inspection to detect damage of the reading light assemblies, and follow-on or corrective actions, as applicable. The actions specified in this AD are intended to detect any broken light bulb housing, which could expose the power contactor. An exposed power contactor could cause the Captain, First Officer, or Right Observer map light or reading light in the crew rest area to short or overheat, which could result in smoke or fire in the cockpit.

DATES: Effective January 17, 2001.

The incorporation by reference of Boeing Alert Service Bulletin MD11–33A069, Revision 01, including Appendix, dated November 30, 2000, as listed in the regulations, is approved by the Director of the **Federal Register** as of January 17, 2001.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–33A069, March 10, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 20, 2000 (65 FR 17763, April 5, 2000).

Comments for inclusion in the Rules Docket must be received on or before March 5, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–194–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. 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, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Technical Specialist, Systems Safety and Integration, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On March 28, 2000, the FAA issued AD 2000–07–02, amendment 39–11656 (65 FR 17763, April 5, 2000), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require deactivation of the map light assemblies; or modification and reidentification of the insulation blankets adjacent to certain map light assemblies, if applicable, a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies, and follow-on actions. That action was prompted by incidents in which a broken or cracked light bulb housing of the First Officer map light was found. The actions required by that AD are intended to detect a broken light bulb housing, which could expose the power contactor. An exposed power contactor

could cause the Captain, First Officer, or Right Observer map light to short or overheat, which could result in smoke or fire in the cockpit.

The incidents that prompted AD 2000–07–02 are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–07–02, an investigation revealed that certain affected airplanes are equipped with Skybunk reading light assemblies in the crew rest area. Skybunk reading light assemblies are identical in design to the subject map light assemblies. An exposed power contactor due to a broken or cracked light bulb housing could cause the Captain, First Officer, or Right Observer map light or reading light in the crew rest area to short or overheat, which could result in smoke or fire in the cockpit or crew rest area.

Explanation of Relevant Service Bulletin

The FAA has review and approved Boeing Alert Service Bulletin MD11–33A069,

Revision 01, including Appendix, dated November 30, 2000. The procedures for deactivation of the map light assemblies; modification and reidentification of the insulation blankets adjacent to certain map light assemblies; a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies; and follow-on actions in Revision 01 of the service bulletin are identical to those described in the original issue of the service bulletin (which was referenced in AD 2000–07–02 as the appropriate source of service information). Revision 01 of the service bulletin also describes new procedures for:

1. Deactivating the reading light assemblies in the crew rest area, which includes disconnecting, coiling, and stowing the power wires to each reading light assembly; ensuring that deactivated reading lights do not illuminate; and installing an inop ring on the circuit breaker; OR

2. Performing an inspection to detect damage (*i.e.,* cracks, damaged or broken components, or chafed or damaged reading light assembly wires) of the reading light assemblies in the crew rest area, and follow-on or corrective actions, as applicable. The follow-on actions include ensuring that the operative reading lights illuminate, and performing repetitive inspections of the reading light assemblies. The corrective actions include replacing the reading light assembly with a new or serviceable light assembly, ensuring that the deactivated reading lights do not illuminate, and repetitive inspections of the reading light assemblies; or deactivating the damaged reading light assemblies.

Operators should note that Revision 01 of the service bulletin incorrectly contains in ''Option 2 (Deactivate Damaged Reading Light Assemblies),'' paragraph F., page 22, of the Accomplishment Instructions a sentence that reads ''Perform repetitive inspections of reading lights for damage per Compliance paragraph.'' As indicated in the following sentence in that paragraph, repetitive inspections of a deactivated reading light are not required.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 2000–07–02 to continue to require deactivation of the map light assemblies; or modification and reidentification of the insulation blankets adjacent to certain map light assemblies, if applicable, a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies, and follow-on actions. This AD also requires accomplishment of the new actions specified in Boeing Alert Service Bulletin MD11–33A069, Revision 01, including Appendix, dated November 30, 2000, described previously.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once final action is identified, or once the modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public 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 shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** 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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 Number 2000–NM–194–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11656 (65 FR 17763, April 5, 2000), and by adding a new airworthiness directive (AD), amendment 39–12065, to read as follows:

2000–26–15—McDonnell Douglas: Amendment 39–12065. Docket 2000–NM–194–AD. Supersedes AD 2000–07–02, Amendment 39–11656.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–33A069, dated March 10, 2000, or Boeing Alert Service Bulletin MD11–33A069, Revision 01, dated November 30, 2000; 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 (c) 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 an exposed power contactor, which could cause the Captain, First Officer, or Right Observer map light or reading light in the crew rest area to short or overheat and consequent smoke or fire in the cockpit or crew rest area, accomplish the following:

Restatement of Requirements of AD 2000–07–02

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–33A069, March 10, 2000: Within 30 days after April 20, 2000 (the effective date of AD 2000–07–02, amendment 39–11656), do the actions specified in either paragraph (a)(1), or (a)(2) or (a)(3) of this AD, as applicable, per McDonnell Douglas Alert Service Bulletin MD11–33A069, March 10, 2000, or Boeing Alert Service Bulletin MD11–33A069, Revision 01, dated November 30, 2000. As of the effective date of this AD, only Boeing Alert Service Bulletin MD11–33A069, Revision 01, including Appendix, dated November 30, 2000, shall be used.

Option 1 (Deactivate Map Light Assemblies)

(1) For Groups 1 and 2 airplanes identified in McDonnell Douglas Alert Service Bulletin MD11–33A069, March 10, 2000: Disconnect, coil, and stow power wires to each Captain, First Officer, and Right Observer map light assembly, until the requirements of paragraph (a)(2) or (a)(3) of this AD, as applicable, have been accomplished.

Note 2: Repetitive inspections of the deactivated map light assemblies are not required.

Option 2 (Inspect/Replace/Deactivate Map Light Assemblies)

(2) For Group 1 airplanes identified in McDonnell Douglas Alert Service Bulletin MD11–33A069, March 10, 2000: Modify and reidentify the insulation blankets adjacent to the Captain and First Officer map light assemblies; and do a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies.

Note 3: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(i) Condition 1 (No Damage Found). If no damage is detected, repeat the general visual inspection of the map light assemblies and adjacent insulation blankets required by paragraph (a)(2) of this AD thereafter every 700 flight hours.

(ii) Condition 2 (Damage Found). If any damage is detected, before further flight, do the actions specified in either paragraph (a)(2)(ii)(A) or (a)(2)(ii)(B) of this AD per the service bulletin.

(A) Option 1 (Replace Damaged Map Light Assemblies). Replace the map light assembly with a new or serviceable light assembly. Repeat the general visual inspection of the map light assemblies and adjacent insulation blankets required by paragraph (a)(2) of this AD thereafter every 700 flight hours.

(B) Option 2 (Deactivate Damaged Map Light Assemblies). Disconnect, coil, and stow power wires to each damaged Captain, First Officer, and Right Observer map light assembly, until the requirements of paragraph (a)(2)(ii)(A) of this AD have been done.

(3) For Group 2 airplanes identified in McDonnell Douglas Alert Service Bulletin MD11–33A069, March 10, 2000: Do a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies, and do the actions specified in either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable, at the time(s) indicated in that paragraph.

Note 4: For Group 2 airplanes identified in McDonnell Douglas Alert Service Bulletin MD11–33A069, dated March 10, 2000: Modification and reidentification of the insulation blankets are not required. Prior to delivery of Group 2 airplanes, the insulation blankets were modified.

New Actions Required by This AD

(b) For Groups 3 and 4 airplanes, equipped with Skybunks, identified in Boeing Alert Service Bulletin MD11–33A069, Revision 01, dated November 30, 2000: Within 60 days after the effective date of this AD, do the actions specified in either paragraph (b)(1) or (b)(2), per Boeing Alert Service Bulletin MD11–33A069, Revision 01, including Appendix, dated November 30, 2000.

Option 1 (Deactivate Reading Light Assemblies)

(1) Disconnect, coil, and stow power wires to each reading light assembly, ensure that deactivated reading lights do not illuminate, and install an inop ring on the circuit breaker.

Note 5: Repetitive inspections of the deactivated reading light assemblies are not required.

Option 2 (Inspect/Replace/Deactivate Reading Light Assemblies-Skybunk)

(2) Do a general visual inspection to detect damage (i.e., cracks, damaged or broken

components, or chafed or damaged reading light assembly wires) of the reading light assemblies.

Note 6: Where there are differences between the referenced service bulletin and the AD, the AD prevails.

(i) Condition 1 (No Damage Found). If no damage is detected, ensure that reading lights do illuminate, and repeat the general visual inspection of the reading light assemblies required by paragraph (b)(2) of this AD thereafter every 700 flight hours.

(ii) Condition 2 (Damage Found). If any damage is detected, before further flight, do the actions specified in either paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B) of this AD in accordance with the service bulletin.

(A) Option 1 (Replace Damaged Reading Light Assemblies). Replace the reading light assembly with a new or serviceable light assembly, and ensure that the operative reading lights illuminate. Repeat the general visual inspection of the reading light assemblies required by paragraph (b)(2) of this AD thereafter every 700 flight hours.

(B) Option 2 (Deactivate Damaged Reading Light Assemblies). Disconnect, coil, and stow power wires to any damaged reading light assembly, and ensure that the deactivated reading lights do not illuminiate, until the requirements of paragraph (b)(2)(i)(A) have been done.

Alternative Methods of Compliance

(c) 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 Aircraft Certification Office (ACO), FAA. 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 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) 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.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A069, March 10, 2000, or Boeing Alert Service Bulletin MD11–33A069, Revision 01, including Appendix, dated November 30, 2000; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin

MD11–33A069, Revision 01, including Appendix, dated November 30, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–33A069, March 10, 2000, was approved previously by the Director of the Federal Register as of April 20, 2000 (65 FR 17763, April 5, 2000).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 17, 2001.

Issued in Renton, Washington, on December 22, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–33336 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–349–AD; Amendment 39–12063; AD 2000–26–13]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Dornier Model 328–300 series airplanes. This action requires inspections of all three hydraulic accumulators for signs of leaks, corrective actions if necessary, and eventual installation of an additional locking device to secure the nuts in the hydraulic accumulators, which will terminate the repetitive inspections. This action is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This action is necessary to prevent possible loss of one or more of the hydraulic accumulators, which could result in a complete loss of the hydraulic system and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 17, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 2001.

Comments for inclusion in the Rules Docket must be received on or before February 1, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–349–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–349–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Dornier Model 328–300 series airplanes. The LBA advised that it has received a total of four reports of hydraulic leaks, discovered during inspection or discovered because ''Hydraulic Low Quantity'' was indicated on the engine indication and crew alerting system (EICAS). Further investigation revealed loose nuts in the hydraulic accumulators. The cause of the loose nuts has not been determined. This condition, if not corrected, could result in possible loss of one or more of the hydraulic accumulators, which could then result in a complete loss of the hydraulic system and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin ASB–328J–29–006, dated August 31, 2000, which describes procedures for repetitive detailed visual inspections to detect leakage in the area around the three hydraulic accumulators. The service bulletin also describes procedures for a modification, which involves installing an additional locking device to secure the nuts at all three hydraulic accumulators. The modification is recommended as corrective action for leakage, and would eliminate the need for repetitive inspections. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 2000–314, dated September 14, 2000, in order to ensure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent possible loss of one or more of the hydraulic accumulators, which could result in a complete loss of the hydraulic system and consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the previously described service bulletin.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public 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 shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** 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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 Number 2000–NM–349–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–26–13 Dornier Luftfahrt GMBH: Amendment 39–12063. Docket 2000–NM–349–AD.

Applicability: All Model 328–300 series airplanes, 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, unless accomplished previously.

To prevent possible loss of one or more of the hydraulic accumulators, which could result in a complete loss of the hydraulic system and consequent reduced

controllability of the airplane, accomplish the following:

Inspections

(a) Within 3 days after the effective date of this AD, perform a detailed visual inspection of the area around the three hydraulic accumulators for signs of leakage, in accordance with Dornier Alert Service Bulletin ASB–328J–29–006, dated August 31, 2000.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no leakage is found: Before further flight, retorque the affected nuts in accordance with the service bulletin and repeat the inspection at least every 5 days thereafter until the requirements of paragraph (b) of this AD have been accomplished.

(2) If leakage is found: Before further flight, perform the modification as specified by paragraph (b) of this AD.

Terminating Modification

(b) Except as required by paragraph (a)(2) of this AD, within 30 days after the effective date of this AD, install an additional locking device to secure the nuts in all three hydraulic accumulators, in accordance with Dornier Alert Service Bulletin ASB–328J–29–006, dated August 31, 2000. Accomplishment of this modification terminates the repetitive inspections required by paragraph (a) of this AD.

Spare Parts

(c) As of the effective date of this AD, no person shall install a hydraulic accumulator tee fitting, part number NAS1764K040404, on any airplane.

Alternative Methods of Compliance

(d) 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, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) 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.

Incorporation by Reference

(f) The actions shall be done in accordance with Dornier Alert Service Bulletin ASB–328J–29–006, dated August 31, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directive 2000–314, dated September 14, 2000.

Effective Date

(g) This amendment becomes effective on January 17, 2001.

Issued in Renton, Washington, on December 22, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–33337 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–34–AD; Amendment 39–12053; AD 2000–03–19]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; Removal.

SUMMARY: This amendment removes Airworthiness Directive (AD) 2000–03–19, which currently applies to all Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes that are equipped with pneumatic deicing boots. AD 2000–03–19 requires revising the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots. Since FAA issued AD 2000–03–19, I.A.M. has shown the language currently included in the AFM and the airplane configuration are satisfactory to address the conditions identified in AD 2000–03–19. Therefore, this action removes AD 2000–03–19.

EFFECTIVE DATE: This removal is effective January 2, 2001.

FOR FURTHER INFORMATION CONTACT: Larry Werth, Airworthiness Directive Coordinator, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4147; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? Reports of in-flight incidents and an accident (on airplanes other than I.A.M. Piaggio Model P–180 airplanes), that occurred in icing conditions where the airframe pneumatic deicing boots were not activated, caused FAA to issue AD 2000–03–19, Amendment 39–11578 (65 FR 7717, February 16, 2000). This AD currently requires revising the Airplane Flight Manual (AFM) to include requirements for activating the airframe pneumatic deicing boots on all I.A.M. Model Piaggio P–180 airplanes that are equipped with pneumatic deicing boots.

The actions of AD 2000–03–19 are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice build-up. Without this information, flightcrews could experience reduced control of the aircraft because of adverse aerodynamic effects of ice adhering to the airplane before the first deicing cycle.

After issuing AD 2000–03–19, I.A.M. asserted that the wording within the AFM (without the revision) and the configuration of the airplane deice system provide for safe operation of the affected airplanes. Therefore, I.A.M. requests FAA remove the final rule because the AD requirements are redundant. The FAA has since evaluated all information related to the subject matter of AD 2000–03–19 and has determined the actions included in AD 2000–03–19 are redundant and not necessary.

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to remove AD 2000–03–19. This proposal was published in the **Federal Register** as a Notice of proposed rulemaking (NPRM); removal of final rule on October 19, 2000 (65 FR 62650).

Was the public invited to comment? Interested persons were afforded an opportunity to participate in the making of the action. No comments were received on the proposed rule.

FAA's Determination

What is FAA's Final Determination on this Issue? Based on the above information, FAA has determined there is no need for AD 2000–03–19 and that it should be removed.

This action removes AD 2000–03–19. Removal of AD 2000–03–19 will not preclude FAA from issuing another action in the future, nor will it commit us to any course of action in the future.

Regulatory Impact

Does this action involve a significant rule or regulatory action? Since this action only removes an AD, it is not an AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Removal

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. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–03–19, Amendment 39–11578 (65 FR 7717, February 16, 2000).

Issued in Kansas City, Missouri, on December 19, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–32935 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 66

[USCG 2000–7466]

RIN 2115–AF98

Allowing Alternatives to Incandescent Light in Private Aids to Navigation

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: On October 4, 2000, the Coast Guard published a direct final rule that notified the public of the Coast Guard's intent to remove the requirement to use only tungsten-incandescent lighting for private aids to navigation. This would have enabled private industry and owners of private aids to navigation to take advantage of recent changes in lighting technology-specifically, to use lanterns based on light-emitting diodes (LEDs). Because we received an adverse comment objecting to this rule, we withdraw the rule.

DATES: The direct final rule published at 65 FR 59124 on October 4, 2000, is withdrawn; the withdrawal is made as of January 3, 2001.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2000–7466 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this direct final fule, call Dan Andrusiak, G–OPN–2, U.S. Coast Guard, telephone 202–267–0327. For questions on viewing material in the docket, call Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Discussion of Comment

On October 4, 2000, the Coast Guard published [65 FR 59124] a direct final rule. We received one comment, which expressed the following issues of concern: Absent standards for the performance of LEDs, the reliability of private aids to navigation might decrease; absent such standards, the color of many ''white'' LEDs might not conform to current standards; the rule does not provide for a backup source, such as a lampchanger; and the rule does not address the degradation of output over time. The comment indicated that, unless the rule resolves these issues, the performance and reliability of private aids to navigation might suffer.

A comment counts as adverse if it challenges a rule's underlying premise or approach, or explains why the rule would be ineffective or unacceptable, or otherwise inappropriate, without a change. This comment counts as adverse.

The Coast Guard has decided to withdraw the rule at this time so it can consider the issues raised by the adverse comment and can consider ways to resolve these issues.

Dated: December 26, 2000.

Terry M. Cross,

U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 00–33456 Filed 12–28–00; 10:26 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 5056; FRL–6922–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of VOC and NO_X RACT Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. The revisions impose reasonably available control technology (RACT) on 16 major sources of volatile organic compounds (VOCs) and/or nitrogen oxides (NO_X) located in the Virginia portion of the Metropolitan Washington, D.C. ozone nonattainment area. The intent of this action is to approve the Commonwealth's SIP revision requests in accordance with the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on February 1, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, at (215) 814–2061, or by e-mail at chalmers.ray@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182 and 184 of the Clean Air Act (CAA), States are required to implement RACT for major sources of VOCs and/or NO_X which are: (1) Located in those areas which have not attained the National Ambient Air Quality Standard for ozone (ozone nonattainment areas) which are classified in 40 CFR Part 81 as having moderate or above nonattainment problems, or (2) located in the Ozone Transport Region (OTR), which was established by section 184 of the CAA. A source is defined as major if its VOC and/or NO_X emissions exceed specified

levels, defined in sections 182 and 184 of the CAA, which vary depending upon the ozone air quality designation and classification of the area where the source is located, and whether or not the source is located in the OTR. Pursuant to the CAA's requirements, the Commonwealth of Virginia (the Commonwealth) submitted revisions to its SIP consisting of regulations pertaining to RACT requirements for major NO_X and VOC sources located in ozone nonattainment areas including its portion of the OTR.

The Commonwealth's regulation pertaining to RACT requirements for so called non-CTG major VOC sources (a non-CTG source is defined as one not otherwise required to comply with RACT under a SIP-approved regulation developed pursuant to an EPA-issued Control Technique Guideline (CTG) for a specific source category) was approved by EPA on March 12, 1997 (62 FR 11332). This regulation provides for the subject non-CTG major sources of VOC sources to obtain case-by-case RACT determinations. The Commonwealth's regulation pertaining to RACT requirements for major NO_X sources, for which EPA granted conditional limited approval on April 28, 1999 (64 FR 22789), provides that sources with steam generating units, process heaters, or gas turbines either accept specified RACT limits for these units or request case-by-case RACT determinations for them. The regulation also provides that sources with other types of emission units must obtain case-by-case RACT determinations for those units. When EPA granted conditional limited approval of the Commonwealth's NO_X RACT regulation, EPA established the condition that the Commonwealth was required to submit its case-by-case RACT determinations for NO_X sources to EPA for approval as source-specific SIP revisions.

This final rulemaking action pertains to the Commonwealth's case-by-case RACT SIP submittals for 16 sources. The Commonwealth's SIP submittals consist of operating permits and/or consent agreements which contain the RACT requirements for each source, as well as supporting documentation. In some cases these submittals contain both RACT and non-RACT related requirements. EPA is acting on only those portions of the submittals which pertain to RACT requirements. The 16 sources, their types and locations, the pollutants they emit for which RACT requirements are established, and the dates of the Commonwealth's RACT SIP submittals for them are listed in the table below, entitled, ''VIRGINIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES.''

On October 10, 2000 (65 FR 60141), EPA published a notice of proposed rulemaking (NPR) proposing to approve the Commonwealth's RACT SIP submittals for these 16 sources. At the time of this proposal, EPA provided a description of the Commonwealth's RACT determinations and our rationale for proposing to approve them. EPA received comments on the October 19, 2000 proposed approval from the EarthJustice Legal Defense Fund, an environmental group. EPA summarizes the comments and provides its responses to them in Section II of this document.

VIRGINIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Date of submittal	Source type	''Major source'' pollutant
Cellofoam North America, Inc.—Falmouth Plant.	Stafford	9/22/98	Polystyrene Insulation Production Plant.	VOC
CNG Transmission Corp.—Leesburg Compressor Station.	Loudoun	5/23/00	Natural Gas Compressor Station	NO_X and VOC
Columbia Gas Transmission Corporation—Loudoun County Compressor Station.	Loudoun	5/24/00	Natural Gas Compressor Station.	
District of Columbia's Department of Corrections—Lorton Prison.	Fairfax	4/20/00	Prison	NO_X and VOC
Michigan Cogeneration Systems, Inc.—Fairfax County I–95 Landfill Facility.	Fairfax	5/12/00	Landfill Gas Fired Electric Power Generation.	NO_X and VOC
Metropolitan Washington Airports Authority—Ronald Reagan Washington National Airport.	Arlington	5/22/00	Airport	NO_X
Nomen M. Cole, Jr., Pollution Control Plant.	Fairfax	4/27/00	Wastewater Treatment Plant with Sewage Sludge Incinerators.	NO_X
Ogden Martin Systems of Alexandria/Arlington, Inc.	Arlington	9/14/98	Municipal Waste Combustion Plant	NO_X
Ogden Martin Systems of Fairfax, Inc	Fairfax	8/31/98	Municipal Waste Combustion Plant	NO_X
U.S. Department of Defense—Pentagon Reservation.	Arlington	5/19/00	Pentagon Office Building	NO_X
Potomac Electric Power Company—Potomac River Generating Station.	Alexandria	9/3/98 (NO_X) 5/9/00 (VOC)	Electric Power Plant	NO_X and VOC
United States Marine Corps.—Quantico Base.	Prince William and Stafford	5/25/00	Marine Corps. Base	NO_X
Transcontinental Gas Pipe Line Corporation—Compressor Station #185.	Prince William County	5/5/97	Natural Gas Compressor Station	NO_X
U.S. Army Garrison—Fort Belvoir	Fairfax	5/17/00	Fort Belvoir Army Base	NO_X
Virginia Power—Possum Point Plant	Prince William County	8/31/00 (NO_X) 4/2/96 (VOC)	Electric Power Plant	NO_X and VOC
Washington Gas Light Company—Springfield Operations Center.	Fairfax	5/20/98	Natural Gas Fired Cogeneration Plant	NO_X

II. Public Comments and EPA's Responses

A. General Comments Pertaining to All of the RACT SIP Submittals

Comment: The commenter notes that RACT is defined as ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility,'' and asserts that the Commonwealth failed to demonstrate that the proposed emissions limits meet this test. The commenter also asserts that the EPA had failed to adequately evaluate the Commonwealth's submittals.

EPA's Response: EPA disagrees with these comments. Under the Commonwealth's EPA approved RACT regulations a sources which is required to obtain a case-by-case RACT determination, or which chooses to exercise the option of requesting such a determination, are required to submit RACT proposals to the Commonwealth, and the Commonwealth is then obligated to either approve or disapprove the submittal. Of the sources to which this rulemaking pertains, Cellofoam North America, Nomen M. Cole Pollution Control Plant, Ogden Martin Systems, Inc. (Alexandria Plant), Ogden Martin Systems, Inc. (Fairfax Plant), Potomac Electric Power Company's Potomac River Station, Transcontinental Gas, Virginia Power's Possum Point Plant, and Washington Gas Light Company submitted proposed RACT determinations to the Commonwealth, and supported their determinations by providing RACT analyses of the technological and economic feasibility of controls. The Commonwealth affirmed in its SIP revision submittals for these companies that it had reviewed the companies' proposed RACT determinations and their supporting analyses and had determined them to be acceptable as RACT. By reviewing these companies' RACT proposals/analyses and determining them to be acceptable as RACT, the Commonwealth met its obligations under its SIP-approved RACT regulations. The sources' RACT proposals and analyses are in the Commonwealth's public record for these SIP revisions and in EPA rulemaking docket approving them. The Commonwealth imposed RACT for all of these sources, except for Potomac Electric Power Company's Potomac River Station (for VOC), and Virginia Power's Possum Point Plant (for NO_X), in Consent Agreements. In these Consent Agreements the Commonwealth documented that it had met with and/or corresponded with all of these sources regarding their RACT proposals prior to approving them as RACT determinations. In the cases of the Potomac Electric Power Company's Potomac River Station (for VOC), and of Virginia Power's Possum Point Plant (for NO_X), the Commonwealth established RACT requirements through permits, and in these cases the Commonwealth provided a ''Statement of Basis'' and/or a ''RACT Review Memorandum'' in which it set forth the basis for its RACT determinations.

With regard to the other sources to which this rulemaking pertains, the Commonwealth initially interpreted the CAA's provisions for RACT as there being no need to impose RACT for sources or emissions units which it had recently permitted, because it had required that those sources to meet Best Available Control Technology (BACT) requirements. The EPA informed the Commonwealth that a RACT does apply for these sources. The Commonwealth did, therefore, issue case-by-case RACT determinations for these sources and emission units. Also, the Commonwealth's regulation requiring RACT for NO_X sources, as it was originally promulgated, did not require a NO_X RACT demonstration for any steam generating unit, process heater or gas turbine with a rated capacity of less than 100 MMBTU/ hour, or for any combustion unit with a rated capacity of less than 50 MMBTU/hour. When the EPA approved Virginia's regulation requiring RACT for NO_X emitting sources, these provisions were not among those which EPA approved. Accordingly, the Commonwealth issued RACT determinations for these sources. For many of these sources, the Commonwealth provided its own RACT analyses for its RACT determination. In certain cases, the Commonwealth's submittal provided both its own rationale for its RACT determination and the RACT proposal and analysis submitted by the source. In all of these cases where the Commonwealth not only made the RACT determination but performed and provided some or all of the RACT analyses supporting the determination, the Commonwealth set forth the basis for its RACT determination in a ''Statement of Basis'' and/or a ''RACT Review Memorandum.'' Of the sources to which this rulemaking action pertains, the Commonwealth made RACT determinations and provided a RACT analysis supporting its RACT determinations for CNG Transmission Corporation, Columbia Gas Transmission Company, the District of Columbia's Lorton Prison, Michigan Cogeneration Systems, Inc., the Metropolitan Washington Airport Authority's National Airport, the U.S. Department of Defense's Pentagon Building, the Potomac Electric Power Company's Potomac River Station (for VOC), the Quantico Marine Corps. Base, the U.S. Army Garrision at Fort Belvoir, and Virginia Power's Possum Point Plant (for NO_X).

With regard to the comment that EPA has an independent obligation to determine whether the control strategies for each source meet the Clean Air Act's requirements. EPA believes it has fulfilled this obligation. EPA disagrees that it is required to perform a new and independent RACT analysis for the sources to which this rulemaking pertains. EPA did, however, review the Commonwealth's RACT SIP submittals to determine if the RACT determinations appeared to be reasonable and well supported. EPA's commitment to assuring the adequacy of the Commonwealth's submittals is evidenced by the fact that when the Commonwealth held public hearings and requested comments on its proposed case-by-case RACT SIPs for the sources to which this rulemaking action applies, EPA submitted written comments to the public records. The Commonwealth summarized EPA's comments and provided its responses. The summary of public comments the Commonwealth received and its responses were included in formal SIP revisions submittals for these requested RACT SIP revisions, and as such are included in EPA's rulemaking docket for this rulemaking action.

Comment: The commenter states that the CAA ''required compliance by all of the sources for which the Commonwealth had submitted case-by-case RACTs by May 31, 1995, and is concerned that EPA might be approving an extension of this compliance date.

EPA's Response: The Commonwealth's EPA-approved RACT regulations, found at 9 VAC 5–40–300 and 310, require all sources for which the CAA requires RACT to be in compliance by the May 31, 1995 deadline specified in the CAA.[1] Virginia has not extended the Act's compliance

[1] Consistent with the Act, the Commonwealth's RACT regulations require facilities in the Northern Virginia Emissions Control Area which have a theoretical potential to emit of 50 tons per year (TPY) or greater of NO_X or VOCs to comply by May 31, 1995. To obtain additional emission reductions beyond those mandated by the Act, the Commonwealth also required VOC sources with a theoretical potential to emit 25 TPY or greater, but less than 50 TPY, to apply RACT. The Commonwealth set a compliance deadline for these sources of May 31, 1996.

date for those major sources mandated to comply by May 31, 1995, and by approving the Commonwealth's case-by-case SIP revisions, EPA is not approving an extension of this deadline. To the extent that Virginia's consent agreements and permits require additional reductions beyond the mandated compliance deadline for meeting RACT, these requirements are not considered to be part of the RACT determinations.

Comment: The commenter notes that public hearings are required for all SIP revisions, and asks whether or not proper hearings were held with respect to the Commonwealth's RACT SIP submittals.

EPA's Response: The Commonwealth has met all of the CAA's requirements for amending its SIP. Included in each of Virginia's RACT SIP submittals is its formal certification that it provided public notice and held public hearings. The Commonwealth also provided a copy of the public hearing notice, a summary of any comments it received, and its response to those comments in each of the SIP submittals for these sources.

Comment: The commenter states that ''[t]he Act and EPA's guidance requires the SIP to include legally enforceable procedures to require continuous monitoring and recording of emissions,'' and concluded that ''EPA cannot approve the proposed SIP revision unless it includes monitoring requirements for each emission unit that fully comply with EPA rules and guidance, and that assure continuous compliance with all emission limits.''

EPA's Response: The Commonwealth's approved SIP does include the legally enforceable procedures to require continuous monitoring and recording of emissions which are required by 40 CFR 51.214. These requirements are found in Virginia's SIP-Approved Regulations for the Control and Abatement of Air Pollution at 9 VAC 5–40–40 and 5–40–41. All sources in the Commonwealth which are subject to RACT, including those which are issued consent decrees and or permits imposing case-by-case RACT under the Commonwealth's approved RACT regulations are subject to 9 VAC 5–40–40 and 5–40–41.

Comment: The commenter notes that ''Virginia is proposing to exempt specific emission units on the ground that they are exempt under the State's RACT rules,'' and concludes that this is not acceptable.

EPA's Response: Virginia's EPA-approved regulations requiring NO_X RACT do contain provisions exempting several types of sources considered to be low NO_X emitters from the requirement to obtain a NO_X RACT determination. These exemptions were discussed in detail in EPA's rulemaking approving the Commonwealth's NO_X RACT regulation (see EPA's January 26, 1999 proposed rule 64 FR 3893). That rulemaking also included EPA's rationale for approving those exemptions. EPA received no comments on its proposed rule approving the Commonwealth's NO_X RACT regulation. EPA published its final rule on April 28, 1999 and that approval was effective on May 28, 1999.

It is, therefore, neither timely nor appropriate to comment on the provisions of the Commonwealth's NO_X RACT regulations itself, including the exemption provisions, at the time EPA conducts rulemaking approve the case-by-case RACT determinations issued by the Commonwealth pursuant to that rule. It should be noted that emissions units for which a RACT determination is not required remain subject to the general requirements of the Commonwealth's regulations. One of those requirements, found at 9 VAC 5–20–180, is that ''at all times, including periods of startup, shutdown and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment or monitoring equipment, in a manner consistent with good air pollution control practice of minimizing emissions.''

Comment: As part of any SIP revisions incorporating the above rules, the state must provide commitments of adequate funding and personnel to implement and enforce the rules. 42 U.S.C. 7410(a)(2)(E); 40 CFR 51.280. The state must also detail a program for enforcement of the rules. 42 U.S.C. 7410(a)(2)(C). None of these requirements were addressed in [the] **Federal Register** notice or TSD.

EPA's Response: EPA disagrees with the commenter's assertion that states must provide such information with each SIP revision. Although 42 U.S.C. 7410(a)(2)(E) and 7410(a)(2)(C) do contain these provisions cited by the commenter, section 7410(a)(2)(H) is the statutory provision which governs requirements for individual plan revisions which States may be required to submit from time to time. There are no cross-references in section 7410(a)(2)(H) to either 7410(a)(2)(E) or 7410(a)(2)(C). Therefore, EPA concludes that Congress did not intend to require States to submit an analysis of adequate funding and enforcement with each subsequent and individual SIP revision submitted under the authority of section 7410(a)(2)(H). Similarly, 40 CFR part 51, Appendix V contains the list of information which States must submit with each plan revision in order for EPA to conduct a review of completeness under section 7410(k)(1). The list in part 51, Appendix V contains no cross-reference to or cite of the provisions of 40 CFR 51.280 as a criterion for determining completeness. Thus, in following Congress' intent, EPA has further determined that the requirements of 40 CFR 51.280 do not apply to each individually-submitted State plan revision. Nevertheless, EPA notes that Virginia had previously submitted such commitments as part of the 1982 SIP for the Northern Virginia portion of the Metropolitan Washington, DC Ozone Nonattainment area. In a final rulemaking action published on February 25, 1984 (49 FR 3063), EPA approved Virginia's financial and manpower resource commitments, after having proposed approval of these commitments on February 3, 1983 (48 FR 5124 at 5127). EPA is satisfied that the Commonwealth continues to have adequate funding and personnel to implement and enforce the current RACT rules. However, EPA does have the authority under the CAA to make findings regarding implementation failures or other SIP deficiencies and take appropriate action in such situations. Should EPA find that Virginia lacks adequate resources to pursue any violation of the ozone SIP, or if Virginia's enforcement response is inadequate, EPA will take appropriate action under its CAA authority.

B. Comments Pertaining to RACT Submittals for Specific Sources

Comment: The commenter questions the RACT determination for Columbia Gas Transmission Corporation's Loudoun County Compressor Station. The commenter notes that the Commonwealth's proposed limits for the gas turbines range from 76 to 142 ppmvd, and states that these are substantially higher than RACT limits set elsewhere. The commenter says that the Commonwealth has not shown that the lower limits achieved elsewhere are not reasonably achievable at this source.

EPA's Response: EPA disagrees with this comment. The Commonwealth addresses the issue in its ''RACT Review Memorandum'' contained in its SIP submittal. The Commonwealth states reports that on August 21, 1990, it had issued a State Air Pollution Control Board permit to install, modify, and operate to Columbia Gas Transmission Corp. to allow the modification of eight existing natural gas fired turbines, each rated at 14.46×10^6 BTU/hr, and one

natural gas-fired turbine, rated at 39.72 $\times 10^6$ BTU/hr. The Commonwealth states that it had determined when it issued this permit that the required controls and emission limits for the turbines were BACT. The Commonwealth states that it had concluded when it issued the permit that ''the low-NO_X combustion technology utilized in the turbines selected represents the state of the art in dry controls and that selective catalytic reduction, and steam or water injection would not be reasonable for a gas pipeline installation.'' The Commonwealth states that the control technology evaluation document supporting issuance of the 1990 permit had indicated that more advanced dry low NO_X controls would not be commercially available for four or five years. The Commonwealth determines that it was therefore ''reasonable to assume that had a RACT analysis been required and conducted for the facility at the time others were in 1993, the conclusion would have been the same as for the BACT analysis.'' The Commonwealth further states that while its BACT determination appears to have been valid, it was lacking a quantitative analysis of cost-effectiveness of alternative controls. The Commonwealth therefore cites its examination of EPA's Alternative Control Technology—NO_X Emissions from Stationary Gas Turbines document (EPA—453/R–93–007) which shows that two technologies might be cost effective for the larger Centaur T–4500 turbine. Steam and water injection is marginally cost effective, but the BACT analysis eliminated that option as infeasible for a rural gas-pipeline pumping station. The other possibility is a lean pre-mix combustor. The Commonwealth states that the Company provided information showing that the cost of retrofitting the larger turbine would have cost approximately $4,000 per ton of NO_X reduced, more than the Commonwealth considered reasonable. The cost of retrofitting the smaller turbines would have been even higher on a cost per ton of NO_X removed basis. EPA finds that the Commonwealth has adequately justified its RACT determination for s for this source.

Comment: The commenter believes that RACT requirements should always be expressed in terms of emission limits. The commenter therefore objects to the determinations that RACT for various types of combustion units located at the Metropolitan Washington Airports Authority's Ronald Reagan National Airport, the Nomen M. Cole, Jr., Pollution Control Plant, the U.S. Marine Corps' Quantico Base, the Transcontinental Gas Pipeline Corporation's Compressor Station #185, and the U.S. Army Garrison at Fort Belvoir consists of good management practices and operating procedures. The commenter also requests further details regarding the ''low emission combustion technology'' which had been specified as RACT for Transcontinental Gas Company's Station 185, what emissions limits were associated with it, and when it would be implemented.

EPA's Response: The Commonwealth determined that RACT for two incinerators at the Nomen M. Cole, Jr., Pollution Control Plant consists of operating the incinerators within specified temperature and percent oxygen ranges, and in accordance with good management practices and operating procedures. The Commonwealth established these RACT requirements because the Nomen M. Cole, Jr., Pollution Control Plant demonstrated that there are no technically and economically feasible controls for the incinerators. At Transcontinental Gas Company's Station 185 the Commonwealth determined that RACT for ten 2050 horsepower Ingersol Rand 412-KVS engines consisted of use of low emission combustion (LEC) technology. LEC technology consists of extensive modifications to an internal combustion engine which enable the engine to operate at a higher air to fuel ratio, which results in lower combustion temperatures and lower NO_X formation. A detailed discussion of LEC technology is provided in the EPA publication entitled, ''Alternative Control Techniques Document—NO_X Emissions from Stationary Reciprocating Internal Combustion Engines.'' The Commonwealth did not establish emission limits associated with implementation of this technology. However, EPA considers this acceptable given that LEC involves the physical modification of the engine itself, which will result in a permanent reduction in the each engine's physical potential to emit NO_X.

The Commonwealth determined that RACT for certain combustion units at the Metropolitan Washington Airports Authority's Ronald Reagan National Airport, the Marine Corps' Quantico Base, the Transcontinental Gas Pipeline Corporation Compressor Station 185, and the U.S. Army's Garrison at Fort Belvoir consisted of good management practices and operating procedures because of the small size of these units. EPA has approved RACT SIP regulations for other States in which NO_X RACT for small combustion units is defined as proper operation and maintenance or an annual evaluation and adjustment of the combustion process. For example, EPA has approved provisions in Pennsylvania's RACT SIP regulations which define RACT for combustion units with a rated heat input equal to or greater than 20 MMBTU/hour and less than 50 MMBTU/hour as an annual adjustment or tune-up on the combustion process, and which define RACT for combustion units with a rated heat input of less than 20 MMBTU/hour as proper operation and maintenance. EPA approved these provisions in Pennsylvania's RACT SIP regulations because Pennsylvania had provided information stating that there are no technically or economically feasible controls. As in the case of Pennsylvania, the Commonwealth's has determined that RACT consists an annual evaluation and adjustment of the combustion process and of proper operation and maintenance for combustion units with rated inputs of less than 50 MMBTU/hour.

Comment: The commenter states that EPA cannot lawfully approve the Commonwealth's RACT proposal pertaining to PEPCO's Alexandria Generating Station, because the proposal involves an emissions averaging plan in which emissions from the Alexandria Generating Station would be offset by reductions at two other PEPCO plants in Maryland. The commenter said that the Act requires RACT at each source within the nonattainment area, and does not allow companies to pick and choose which facilities will comply with RACT. The commenter also said that the proposal was not acceptable because Virginia would have no authority to enforce the emission limits established for the PEPCO sources located in Maryland. The commenter also objects to the averaging proposal on the basis that it assumes that the ''offsetting reductions'' at the Maryland power plants are ''surplus'' or ''excess'' reductions that are not otherwise needed. The commenter notes that the Washington area is delinquent in meeting the serious area attainment deadline, and still lacks an approved attainment SIP. The commenter states that ''If any additional emission reductions are achievable at the Maryland plants, they are needed to bring the area closer to attainment—they cannot be used to offset reductions that are otherwise mandated by the Act.''

EPA's Response: EPA disagrees with this comment. Under the Emission Trading Policy (see December 4, 1986, 51 FR 43814) stationary sources of criteria air pollutants located within the same nonattainment area may comply

with their requirements, including RACT, in the most cost effective manner via emissions trading. Under that policy, surplus emissions are those not otherwise required to meet an applicable emission limitation under the CAA. At the time RACT was required to be determined and complied with under the CAA, the Commonwealth and the State of Maryland made RACT determinations for these PEPCO facilities and negotiated a memorandum of understanding (MOU) to implement those determinations by means of a RACT averaging plan. The signed MOU provides for both the Commonwealth and Maryland to enforce the averaging plan. That MOU was formally submitted to EPA as part of the SIP revision. At such time as the need for additional reductions (beyond those that have been achieved by implementing the CAA's applicable Part D requirements) are determined to be necessary to demonstrate rate-of-progress and/or attainment in an ozone nonattainment area, a state has the flexibility to decide what additional control measures it shall implement to achieve those reductions. The comment implies that a state must revisit RACT to secure those reductions. EPA does not agree. More to the point, on December 15, 2000, EPA signed a final rule approving the one-hour ozone attainment demonstration SIP for the Metropolitan Washington, D.C. ozone nonattainment area and approved a compliance date extension to 2005.

Comment: The commenter objects to the Commonwealth's decision to establish RACT emissions limits for Boilers 3, 4, and 5 at Virginia Power's Possum Point Station which are consistent (in terms of allowable lbs of NO_X per million BTU heat input) with the limits in the Commonwealth's EPA approved RACT regulations. The commenter notes that the requirements in the Commonwealth's EPA approved RACT regulations which are applicable to Boilers 3, 4, and 5, which are specified in Table 4–4C of 9 VAC 5–40–311, are less stringent than currently-recognized RACT. The commenter also objects to the fact that the Commonwealth allowed compliance with the limits to be demonstrated through the use of 30 day averaging. The commenter notes that the EPA-approved RACT regulations require the use of daily averaging.

EPA's Response: With regard to the comments on the requirements of the SIP-approved NO_X regulation itself, its provisions were discussed in detail in EPA's rulemaking approving the Commonwealth's NO_X RACT regulation (see EPA's January 26, 1999 proposed rule 64 FR 3893). That rulemaking also included EPA's rationale for approving the regulation. EPA received no comments on its proposed rule approving the Commonwealth's NO_X RACT regulation. EPA published its final rule on April 28, 1999 and that approval was effective on May 28, 1999. It is, therefore, neither timely nor appropriate to comment on the provisions of the Commonwealth's NO_X RACT regulations itself.

The Commonwealth's regulations requiring sources of NO_X to obtain case-by-case RACT determinations required sources to be in compliance by May 31, 1995, and the Commonwealth's regulations are intended to reflect RACT as of that time. Accordingly, the Commonwealth's RACT SIP submittals also require RACT as of May 31, 1995. With respect to the averaging time used to demonstrate compliance, the Commonwealth requires that compliance by Boilers 3 and 4 be demonstrated through the use of daily averaging. For Boiler 5, the Commonwealth allows 30 day averaging. In its ''Statement of Basis'' for this SIP revision, the Commonwealth explains its reasons for allowing 30 day averaging for Boiler 5. The Commonwealth's Department of Environmental Quality (DEQ) submittal states that Unit #5 has historically been used only sparingly, during times of peak power demand. The DEQ further states that the continuous emissions monitors (CEMs) on the flue have shown that during the few times it has operated at full load, the unit has not demonstrated a continuous ability to meet the 0.25 lb-NO_X/10^6 BTU limit in 9 VAC 5–40–311. The Commonwealth's RACT analysis states that due to the infrequency of full load operation, if emissions and heat input were averaged over a 30 day period, the unit likely would meet the 0.25 limit. DEQ states that a daily review of an emission rate averaged over the previous 30 days, *i.e.*, a 30 day rolling average may be acceptable for a compliance demonstration with 9 VAC 5–40–311. It also states, however, in other instances its regulation has been interpreted to require a calendar day averaging period for a compliance demonstration, so a case-by-case specific analysis was required to justify that either a less stringent limit or a longer averaging period is in order. That analysis includes an examination of cost of getting fuel oil with a guaranteed lower fuel-bound nitrogen content than is currently burned. The analysis uses some conservative assumptions to show that the cost-to-benefit ratio is prohibitively excessive. Likewise, the Commonwealth's analysis determines that other control options, such as selective catalytic reduction (SCR), are too expensive for a reduction from 0.27 to 0.25 lb-NO_X/10^6 BTU, which is all that is required during the worst-case scenario, full load operation. EPA has reviewed this analysis and has determined that it complies with the requirements of the CAA.

III. Final Action

EPA is approving the Commonwealth of Virginia's case-by-case RACT SIP revision submittals for the 16 sources listed in the table found in Section I, above, entitled, ''VIRGINIA—VOC AND NO_X RACT DETERMINATIONS FOR INDIVIDUAL SOURCES'' as revisions to the Commonwealth's SIP.

IV. General Information Pertaining to SIP Submittals From the Commonwealth

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes

granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 5, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth's case-by-case RACT SIP revisions for 16 sources may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: December 15, 2000.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

2. In Section 52.2420, the table in paragraph (d) is amended by adding the entries for ''Cellofoam North America, Inc.—Falmouth Plant [Consent Agreement]'', ''CNG Transmission Corporation—Leesburg Compressor Station [Permit]'', ''Columbia Gas Transmission Company—Loudoun County Compressor Station [Permit]'', ''District of Columbia's Department of Corrections—Lorton Prison [Permit]'', ''Michigan Cogeneration Systems, Inc.—Fairfax County I–95 Landfill [Permit]'', ''Metropolitan Washington Airports Authority—Ronald Reagan Washington National Airport [Permit]'', ''Nomen M. Cole, Jr., Pollution Control Plant [Consent Agreement]'', ''Ogden Martin Systems of Alexandria/Arlington, Inc. [Consent Agreement]'', ''Ogden Martin Systems of Fairfax, Inc. [Consent Agreement]'', ''U.S. Department of Defense—Pentagon Reservation [Permit]'', ''Potomac Electric Power Company (PEPCO)—Potomac River Generating Station [Consent Agreement containing NO_X RACT requirements.]'', ''Potomac Electric Power Company (PEPCO)—Potomac River Generating Station [Permit containing VOC RACT requirements]'', ''United States Marine Corps.—Quantico Base [Permit]'', ''Transcontinental Gas Pipeline Corporation—Compressor Station #185 [Consent Agreement]'', ''U.S. Army Garrison at Fort Belvoir [Permit]'', ''Virginia Power (VP)—Possum Point Generating Station [Consent Agreement containing VOC RACT requirements]'', ''Virginia Power (VP)—Possum Point Generating Station [Permit containing NO_X RACT requirements]'', and ''Washington Gas Light Company—Springfield Operations Center [Consent Agreement]'' at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
* *	* *		*	* *
Cellofoam North America, Inc.—Falmouth Plant [Consent Agreement].	Registration #40696	8/10/1998	January 2, 2001 [page citation]	52.2420(d).
CNG Transmission Corporation—Leesburg Compressor Station [Permit].	Registration #71978	5/22/2000	January 2, 2001 [page citation]	52.2420(d).
Columbia Gas Transmission Company—Loudoun County Compressor Station [Permit].	Registration #72265	5/23/2000	January 2, 2001 [page citation]	52.2420(d).
District of Columbia's Department of Corrections—Lorton Prison [Permit].	Registration #70028	12/10/1999	January 2, 2001 [page citation]	52.2420(d).
Michigan Cogeneration Systems, Inc.—Fairfax County I–95 Landfill [Permit].	Registration #71961	5/10/2000	January 2, 2001 [page citation]	52.2420(d).
Metropolitan Washington Airports Authority—Ronald Reagan Washington National Airport [Permit].	Registration #70005	5/22/2000	January 2, 2001 [page citation]	52.2420(d).
Nomen M. Cole, Jr., Pollution Control Plant [Consent Agreement].	Registration #70714	12/13/1999	January 2, 2001 [page citation]	52.2420(d).
Ogden Martin Systems of Alexandria/Arlington, Inc. [Consent Agreement].	Registration #71895	7/31/1998	January 2, 2001 [page citation]	52.2420(d).
Ogden Martin Systems of Fairfax, Inc. [Consent Agreement].	Registration #71920	4/3/1998	January 2, 2001 [page citation]	52.2420(d).
U.S. Department of Defense—Pentagon Reservation [Permit].	Registration #70030	5/17/2000	January 2, 2001 [page citation]	52.2420(d).
Potomac Electric Power Company (PEPCO)—Potomac River Generating Station [Consent Agreement containing NO_X RACT requirements.].	Registration #70228	5/31/1998	January 2, 2001 [page citation]	52.2420(d). **Note:** the non-RACT related provisions found in subsections 2 and 3 of Section E are not incorporated by reference.
Potomac Electric Power Company (PEPCO)—Potomac River Generating Station Permit containing VOC RACT requirements].	Registration #70228	5/8/2000	January 2, 2001 [page citation]	52.2420(d).
United States Marine Corps.—Quantico Base [Permit].	Registration #70267	5/24/2000	January 2, 2001 [page citation]	52.2420(d).
Transcontinental Gas Pipeline Corporation—Compressor Station #185 [Consent Agreement].	Registration #71958	9/5/1996	January 2, 2001 [page citation]	52.2420(d).
U.S. Army Garrison at Fort Belvoir [Permit].	Registration #70550	5/16/2000	January 2, 2001 [page citation]	52.2420(d).
Virginia Power (VP)—Possum Point Generating Station [Permit containing NO_X RACT requirements].	Registration #70225	7/21/2000	January 2, 2001 [page citation]	52.2420(d).

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS—Continued

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
Virginia Power (VP)—Possum Point Generating Station [Consent Agreement containing VOC RACT requirements].	Registration #70225	6/12/1995	January 2, 2001 .. [page citation]	52.2420(d).
Washington Gas Light Company—Springfield Operations Center [Consent Agreement].	Registration #70151	4/3/1998	January 2, 2001 .. [page citation]	52.2420(d).

§ 52.5450 [Amended]

3. Section 52.2450(f) is removed and reserved.

[FR Doc. 00–33165 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–6925–5]

Clean Air Act Full Approval of Operating Permits Program in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to fully approve the operating permits program submitted by the State of Washington. Washington's operating permits program was submitted in response to the directive in the Clean Air Act that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction. EPA granted interim approval to Washington's air operating permit program on November 9, 1994 (59 FR 55813); EPA repromulgated final interim approval on one issue, and a notice of correction for Washington's operating permits program, on December 8, 1995 (60 FR 62992). The state and local agencies that implement the Washington operating permits program have revised their programs to satisfy the conditions of the interim approval and this action approves those revisions.

DATES: This direct final rule is effective on March 5, 2001 without further notice, unless EPA receives adverse comment by February 1, 2001. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect. The public comments will be addressed in a subsequent final rule based on the proposed rule published in this **Federal Register**.

ADDRESSES: Copies of the State of Washington's submittal and other supporting information used in developing this final full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

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I. Background

A. What Is the Title V Air Operating Permits Program?

The Clean Air Act (CAA) Amendments of 1990 required all state and local permitting authorities to develop operating permits programs that meet certain Federal criteria. In implementing the operating permits programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permits program is to improve enforcement by issuing each source a permit that consolidates all the applicable CAA requirements into a Federally enforceable document. By consolidating all the applicable requirements for a source in a single document, the source, the public, and regulators can more easily determine what CAA

requirements apply to the source and whether the source is in compliance with those requirements.

Sources required to obtain an operating permit under the title V program include ''major'' sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter; those that emit 10 tons per year or more of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' major sources include those with the potential to emit 50 tons per year or more of volatile organic compounds or nitrogen oxides.

B. What Is the Status of Washington's Title V Air Operating Permits Program?

The State of Washington (Washington or State) originally submitted its application for the title V air operating permits program to EPA in 1993. In Washington, the air operating permits program is implemented by the Washington Department of Ecology (Ecology), the Washington Energy Facility Site Evaluation Council (EFSEC); and the following seven local air pollution control authorities:

- The Benton County Clean Air Authority (BCCAA) [formerly known as the Benton-Franklin Counties Clean Air Authority (BFCCAA)];
- The Northwest Air Pollution Authority (NWAPA);
- The Olympic Air Pollution Control Authority (OAPCA);
- The Puget Sound Clean Air Agency (PSCAA) [formerly known as the Puget Sound Air Pollution Control Agency (PSAPCA)];
- The Spokane County Air Pollution Control Authority (SCAPCA);
- The Southwest Clean Air Agency (SWCAA) [formerly known as the Southwest Air Pollution Control Authority (SWAPCA)]; and
- The Yakima Regional Clean Air Authority (YRCAA) [formerly known as the Yakima County Clean Air Authority (YCCAA)].

Where an operating permits program substantially, but not fully, meets the criteria outlined in the implementing regulations codified in 40 Code of Federal Regulations (CFR) part 70, EPA is authorized to grant interim approval contingent on the state revising its program to correct the deficiencies. Because the operating permits program originally submitted by Washington in 1993 substantially, but not fully, met the requirements of part 70, EPA granted interim approval to Washington's program in an action published on November 9, 1994 (59 FR 55813). The interim approval notice identified the conditions that Washington must meet in order to receive full approval of its title V air operating permits program. On December 8, 1995 (60 FR 62992), EPA published a second final interim approval revising one of the conditions that Washington needed to meet to receive full approval of its program and making other minor corrections and revisions to the interim approval.

This document describes the changes the Washington permitting authorities have made to their programs since we granted Washington's program interim approval and the action EPA is taking in response to those changes.

II. What Changes Have the Washington Permitting Authorities Made To Address the Interim Approval Issues?

On June 5, 1996, Ecology sent a letter to EPA addressing the interim approval issues and requesting full program approval of Washington's air operating permits program. EPA received additional submittals from Ecology addressing the interim approval issues on October 3, 1996, August 25, 1998, and May 24, 1999. The submittals from Ecology included submittals from NWAPA, OAPCA, PSCAA, SCAPCA, and YRCAA.[1]

EPA has reviewed the program revisions submitted by the Washington permitting authorities and has determined that the Washington program now qualifies for full approval. This section describes the interim approval issues identified by EPA in granting the Washington program interim approval and the changes the Washington permitting authorities have made to address those issues.

A. Maximum Criminal Penalty Authority

In granting Ecology interim approval, we stated that Ecology must revise RCW 70.94.430(1) to clarify that the maximum criminal penalty authority of $10,000 applies per day per violation, as required by 40 CFR 70.11(a)(3)(ii). *See* 59 FR at 55818. The statute authorizing criminal penalty actions in Washington for title V violations authorizes a penalty of up to $10,000 per violation, but does not specify whether the maximum penalty can be assessed for each day that a violation continues. EPA identified this same interim approval issue for NWAPA, OAPCA, PSCAA, and SCAPCA, the permitting authorities that had provisions addressing criminal penalties in their local regulations.

To address this issue, Ecology submitted an analysis from the Washington Attorney General's office stating that RCW 70.94.430(1), when read in conjunction with RCW 70.94.431(1), allows the State to collect a criminal penalty for each day that a violation continues. RCW 70.94.431(1), which addresses civil penalty authority, provides that ''Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.'' Ecology has committed to following this interpretation when Ecology participates in, or provides a recommendation regarding, a criminal prosecution to be taken under Chapter 70.94 RCW.

Based on the information submitted by Ecology, we are deferring to the State's determination that RCW 70.94.430(1) and 70.94.431(1) authorizes the State to collect up to $10,000 per day per violation for criminal violations, as required by 40 CFR 70.11(a)(3)(ii). EPA notes, however, that 40 CFR 70.4(b)(7) requires a permitting authority with an approved title V program to submit at least annually information regarding its enforcement activities, and 40 CFR 70.10(c)(iii) authorizes EPA to withdraw program approval where a permitting authority fails to enforce its title V program consistent with the requirements of part 70. To ensure that RCW 70.94.430(1) does not impermissibly limit Washington's authority to bring criminal enforcement actions seeking up to $10,000 per day per violation, EPA intends to monitor Washington's enforcement programs closely during implementation and will consider withdrawing approval of Washington's title V program if EPA later determines that Washington lacks adequate criminal penalty authority. EPA urges Washington to clarify through legislative changes at the earliest opportunity that RCW 70.94.430(1) authorizes the assessment of criminal

[1] In granting Washington interim approval, EPA did not identify any specific changes that needed to be made to the operating permit programs for EFSEC, BCCAA, and SWAPCA. *See* 59 FR 55818–55819.

penalties in the maximum amount of not less than $10,000 per day per violation.

With respect to the local air authorities, NWAPA has revised NWAPA section 132.1 to specifically provide for maximum criminal penalties of up to $10,000 per day per violation. *See* NWAPA section 132.1(1997). SCAPCA has revised its regulations to provide for criminal fines and imprisonment ''as provided by Chapter 70.94 RCW for each separate violation'' and to clarify that ''Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.'' *See* SCAPCA Reg. 1, section 2.11(A)(1)(1997). OAPCA and PSCAA, whose regulations on this matter contain the same language as RCW 70.94.430(1) and 70.94.431(1), are relying on the interpretation of the Washington Attorney General's Office and have expressly committed to following this interpretation in implementing their respective programs. *See* OAPCA Reg. 1, sections 3.26(b)(1998) and 3.27(a)(1)(1998); PSCAA Reg. 1, sections 3.11(a) (1999) and 3.13(a) (1999). Therefore, for the reasons discussed above with respect to the Department of Ecology, we are satisfied that these local permitting authorities have authority to assess criminal penalties in the maximum amount of not less than $10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

B. False Statements

In granting Ecology interim approval, we stated that Ecology must revise State law to provide for criminal penalties of up to $10,000 per day per violation against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, as required by 40 CFR 70.11(a)(3)(iii). *See* 59 FR at 55818. EPA identified this same interim approval issue for NWAPA, OAPCA, PSCAA, and SCAPCA, the four local permitting authorities that have specific provisions addressing criminal penalties in their local regulations.

To address this issue, Ecology revised WAC 173–400–105 by adding a new subsection (7), which states that ''No person shall make any false materials (sic) statement, representation or certification in any form, notice or report required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.'' As confirmed by a submittal from the Washington Attorney General's office, knowing violation of this provision would subject the violator to criminal liability under RCW 70.94.430(1).

With respect to the local permitting authorities, NWAPA and SCAPCA have revised their local regulations to include a false statements provision corresponding to 40 CFR 70.11(a)(3)(iii). *See* NWAPA section 132.6 (1997); SCAPCA Reg. 1, section 208(E)(1997). OAPCA and PSCAA have not revised their regulations to include this provision but are instead relying on WAC 173–400–105(7) which, as discussed above, now contains this requirement and applies throughout the State of Washington. Knowing violation of this provision would subject the violator to criminal liability under RCW 70.94.430(1) and local criminal provisions. *See* OAPCA Reg. 1, section 3.27(b)(1)(1998); PSCAA Reg 1, section 3.13(a) (1999). Based on these changes and the submittal from the Washington Attorney General's office, EPA has determined that Ecology and the local permitting authorities have addressed the false statements provision of 40 CFR 70.11(a)(3)(iii).

C. Tampering

In granting Ecology interim approval, we stated that Ecology must revise State law to provide for criminal penalties of up to $10,000 per day per violation against any person who knowingly renders inaccurate any required monitoring device or method, as required by 40 CFR 70.11(a)(3)(iii). *See* 59 FR at 55818. EPA identified this same interim approval issue for NWAPA, OAPCA, PSCAA, and SCAPCA, the four local permitting authorities that have specific provisions addressing criminal penalties in their local regulations.

To address this issue, Ecology revised WAC 173–400–105 by adding a new subsection (8), which states that ''No person shall render inaccurate any monitoring device or method required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.'' As confirmed by a submittal from the Washington Attorney General's office, knowing violation of this provision would subject the violator to criminal liability under RCW 70.94.430(1).

With respect to the local permitting authorities, NWAPA and SCAPCA have revised their local regulations to include a provision corresponding to the tampering provision of 40 CFR 70.11(a)(3)(iii). *See* NWAPA section 132.5(1997); SCAPCA Reg. 1, section 208(F) (1997). OAPCA and PSCAA have not revised their regulations to include this provision but are instead relying on WAC 173–400–105(8) which, as discussed above, now contains this requirement and applies throughout the State of Washington. Knowing violation of this provision would subject the violator to criminal liability under RCW 70.94.430(1) and local criminal provisions. *See* OAPCA Reg. 1, section 3.27(b)(1)(1998); PSCAA Reg 1, section 3.13(a) (1999). Based on these changes and the submittal from the Washington Attorney General's office, EPA has determined that Ecology and the local permitting authorities have addressed the tampering provision of 40 CFR 70.11(a)(3)(iii).

D. Writ of Mandamus

In granting Ecology interim approval, we identified a problem with Ecology's regulations for providing a cause of action in state court for a permitting authority's failure to take final action on a permit within the specified time period, as required by 40 CFR 70.4(b)(3)(xi). *See* 59 FR at 55818. We stated that Ecology must delete WAC 173–401–735(3) entirely or revise it so that it refers to RCW 34.05.570(4)(b), rather than RCW 7.16.360. To address this interim approval issue, Ecology has revised WAC 173–401–735(3) so that it now refers to RCW 34.05.570(4)(b). We have reviewed this change and determined that it resolves this interim approval issue.

E. Insignificant Emission Units

Another interim approval issue identified by EPA relates to Ecology's provisions for insignificant emission units and activities (IEUs). Part 70 authorizes EPA to approve as part of a state program a list of insignificant activities and emission levels which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. *See* 40 CFR 70.5(c). Washington's regulations contain criteria for identifying IEUs. *See* WAC 173–401–200(16), –530, –532, and –533. Sources that are subject to a Federally-enforceable requirement other than a requirement of the State Implementation Plan that applies generally to all sources in Washington (a so-called ''generally applicable requirement'') are not deemed ''insignificant'' under Washington's program even if they otherwise qualify under one of the five lists. *See* WAC 173–401–530(2)(a). Washington's regulations also expressly

state that no permit application can omit information necessary to determine the applicability of, or to impose any applicable requirement. *See* WAC 173–401–510(1). In addition, WAC 173–401–530(1) and (2)(b) provide that designation of an emission unit as an IEU does not exempt the unit from any applicable requirements and that the permit must contain all applicable requirements that apply to IEUs. The Washington program, however, specifically exempts IEUs from monitoring, recordkeeping, reporting, and compliance certification requirements except where such requirements are specifically imposed in the applicable requirement itself. *See* WAC 173–401–530(2)(c) and (d).

EPA does not believe that part 70 exempts IEUs from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6, but instead provides only a limited exemption from permit application requirements for IEUs. EPA therefore determined that Ecology must revise its IEU regulations as a condition of full approval. *See* 60 FR at 62993–62997 (final interim approval of Washington's operating permits program based on exemption of IEUs from certain permit content requirements); 60 FR 50166 (September 28, 1995) (proposed interim approval of Washington's operating permits program on same basis).

The Western States Petroleum Association, together with several other companies and industry associations, filed a petition with the United States Court of Appeals for the Ninth Circuit seeking review of this IEU condition of EPA's final interim approval of Washington's operating permits program. *Western States Petroleum Association (WSPA)* v. *EPA*, No. 95–70034.[2] The State of Washington intervened in the petition on the side of the industry petitioners. Industry petitioners and the State challenged EPA's identification of this IEU exemption as grounds for interim approval, asserting that such an exemption was allowed by part 70 and that EPA had acted inconsistently by approving other title V programs with similar exemptions. On June 17, 1996, the Ninth Circuit found in favor of the petitioners. *WSPA* v. *EPA*, 87 F.3d 280 (9th Cir. 1996). The Ninth Circuit did not opine on whether EPA's position was consistent with part 70. It did, however, find that EPA had acted inconsistently in its title V approvals, and had failed to explain the departure from precedent that the Court perceived in the Washington interim approval. The Court then remanded the matter to EPA, instructing EPA to give full approval to Washington's IEU regulations. EPA petitioned the Court for rehearing on the Court's decision to order EPA to approve Washington's IEU regulations. The Court denied EPA's request for rehearing on November 17, 1996. *WSPA* v. *EPA*, No. 95–70034 (9th Cir. October 17, 1996).

In light of the Court's order in the WSPA case, EPA must give full approval to Washington's IEU regulations in this action. EPA maintains its position, however, that part 70 does not allow the exemption of IEUs subject to generally applicable requirements from the monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6. *See, e.g.,* 61 FR 64463, 64465–64467 (December 5, 1996) (final interim approval of Alaska title V program); 61 FR 49091, 49095–49097 (September 18, 1996) (proposed interim approval of Alaska title V program); 61 FR 39335, 39336–39339 (July 29, 1996) (final interim approval of Tennessee title V program). EPA believes that 40 CFR 70.5 authorizes a permitting authority to grant certain relief for insignificant emission units from title V permit application requirements so long as no application omits any information necessary to determine the applicability of or to impose any applicable requirement or any required fee. Nothing in part 70, however, authorizes a permitting authority to exempt from the title V permit applicable requirements that apply to insignificant emission units; any monitoring, recordkeeping, or reporting necessary to assure compliance with those applicable requirements; and the requirement to certify compliance with all permit terms and conditions, including those that apply to insignificant emission units.

Since issuance of the Court's order in WSPA case, EPA has carefully reviewed the IEU provisions of those eight title V programs identified by the Court as inconsistent with EPA's decision on Washington's regulations. EPA has determined that three of the title V programs identified by the WSPA Court (Massachusetts, North Dakota, Knox County, and Tennessee) are in fact consistent with EPA's position that insignificant sources subject to applicable requirements may not be exempt from permit content requirements. *See* 61 FR 39338 (July 29, 1996). With respect to the other five programs cited by the Ninth Circuit as inconsistent with EPA's decision on Washington's program (Florida, Hawaii, Ohio, North Carolina, and Jefferson County, Kentucky), EPA has been working with these permitting authorities to make changes to their IEU provisions and to get those provisions submitted as title V program revisions. *See, e.g.,* 65 FR 38744, 38745 (June 22, 2000) (giving full approval to Forsyth County, North Carolina's IEU regulations after the regulations had been revised to address the deficiencies identified by EPA after publication of the WSPA decisions).[3] EPA also intends to work with Washington's permitting authorities to ensure Washington's IEU regulations are revised to conform with the requirements of part 70 and intends to issue a notice of deficiency in another rulemaking action if the deficiencies in Washington's IEU regulations are not promptly addressed.

F. NWAPA: Penalty Authority for Multiple Standards

In granting NWAPA interim approval, we stated that NWAPA must revise NWAPA section 133.1 to ensure it had authority to assess civil penalties of not less than $10,000 per day per violation in the case of violations of multiple standards by a single emissions unit, as required by 40 CFR 70.11(a)(3). *See* 59 FR at 55819. At that time, section 133.1 appeared to cap penalties for violations of multiple standards by a single emissions unit at $10,000 per day. NWAPA has revised section 133.1 to delete the restriction on penalties for violation of multiple standards by a single emissions unit.

G. OAPCA: Potential To Emit

In granting OAPCA interim approval, EPA stated that OAPCA must revise the definition of ''potential to emit'' in OAPCA Reg. 1, section 6.00, to provide that any physical or operational limitation on the capacity of a source to emit a pollutant shall be treated as part of its design only if the limitation is Federally enforceable, as required by 40 CFR 70.2 (definition of potential to emit.)). *See* 59 FR at 55819. OAPCA has made this change. *See* OAPCA Reg. 1, section 6.00 (1998).

[2] The petitioners originally filed a petition on January 6, 1995, in response to EPA's initial final interim approval of Washington's title V program. *See* 59 FR 55813 (November 9, 1995). In response to that petition, EPA moved for vacatur and remand of its decision, which the Court granted on July 7, 1995. On remand, EPA again rejected Washington's exemption of IEUs from part 70's permit compliance requirements and clarified the basis for its decision. *See* 60 FR 62992 (September 28, 1995). Petitioners then renewed their challenge to EPA's action on the IEU provisions of Washington's title V program.

[3] The regulations of Florida and the other North Carolina permitting authorities have been revised at the state level to address the IEU deficiencies, although EPA has not yet taken final action on the revisions.

H. SCAPCA: Limitation on Criminal Authority

In granting SCAPCA interim approval, we stated that SCAPCA must revise SCAPCA Reg. 1, section 2.04(B), to eliminate the limitation on the control officer's authority to request criminal penalties to cases in which a violator has failed to correct the violation after a ''reasonable and/or required period of time.'' 59 FR at 55819. SCAPCA has eliminated this restriction on its criminal penalty authority. *See* SCAPCA Reg. 1, section 2.04(B)(1997)

I. YRCAA: Knowing Violations

In granting YRCAA interim approval, we stated that YRCAA must revise YRCAA Reg. 1, section 2.01, to delete the requirement that civil violations be ''knowing'' because 40 CFR 70.11 (a)(3)(i) prohibits a permitting authority from including a mental state as an element of proof for civil violations. 59 FR at 55819. YRCAA has revised its regulations to delete this requirement. YRCAA Regulation 1, 5.02 (D)(1) (2000).

III. What Other Changes Has Washington Made to Its Program—Outside of Addressing the Interim Approval Issues?

Washington permitting authorities have made several other minor changes to their operating permits programs since EPA granted Washington interim approval in 1995. These changes, as well as EPA's action on the changes, are discussed below.

A. Compliance Assurance Agreement

In a letter dated August 25, 1998, Ecology requested that the current Compliance Assurance Agreement be part of the program approval package for the Washington State air operating permits program. This Compliance Assurance Agreement was negotiated between Ecology, Washington's local air authorities, EFSEC, the Washington Department of Health, and EPA. The last signatory party signed the document on December 23, 1999. EPA has included the Compliance Assurance Agreement in the docket for this action.

B. SWAPCA Regulations

In a May 23, 1997 letter to EPA, SWAPCA stated that it was repealing its operating permits rule, SWAPCA ch. 401, and was relying on the state-wide rule as authority for its operating permits program. SWAPCA made this change effective November 14, 1997. SWAPCA ch. 401 was a local rule that restated WAC ch. 173–401, the Ecology's operating permit rule. This revision only results in a change to the authority SWAPCA is relying on in issuing its title V permits and is not a substantive change to the permit issuance process or the terms of title V permits issued by SWAPCA. Therefore, EPA is approving this change.

C. RCW Ch. 43.05

In 1995, the Washington Legislature enacted the Regulatory Reform Act of 1995, codified at RCW ch. 43.05. In general, RCW ch. 43.05 precludes Ecology from assessing a civil penalty except where (1) the violation is of a specific permit term or condition; (2) the violation is a repeat violation; (3) the violator does not come into compliance within a specified time period; or (4) the violation ''has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars.'' *See* RCW 43.05.050; 43.05.070. RCW 43.05.901 provides that if a regulatory agency determines any part of the statute conflicts with Federal law or program requirements or with Federal requirements prescribed as a condition to the allocation of Federal funds to the State of Washington, the conflicting part of the statute is inoperative to the extent of the conflict.

In letters dated June 10, 1997, and November 20, 1997, EPA advised Ecology that RCW ch. 43.05. conflicted with the necessary enforcement authority required for authorization or approval of Federal environmental programs to Ecology, including the title V operating permits program. On December 10, 1997, in accordance with RCW 43.05.902, Ecology formally notified the Governor of Washington that a conflict existed between the Regulatory Reform Act and the requirements for EPA authorization or approval of certain Federal environmental programs to Ecology, including the title V operating permits program. As a result of this determination of an existing conflict, RCW 43.05.040, .050, .060(3), and .070, which prohibits Ecology from issuing civil penalties except under certain circumstances, do not apply to Washington's title V program. Counsel for the PSCAA has provided EPA with a legal opinion stating that the Regulatory Reform Act does not apply to local air pollution control authorities in Washington because local air pollution control authorities are not ''regulatory agencies'' within the meaning of the Act. EPA has reviewed the statutory and regulatory authority relied on by PSCAA's counsel in reaching this conclusion and agrees that the Act does not constrain the enforcement authority of local air pollution control authorities and therefore does not pose a bar to delegation of Clean Air Act programs to local air pollution control agencies in Washington.

In addition, EPA is relying on the State's interpretation of another technical assistance law, RCW 43.21A.085 and .087, to conclude that the law does not impinge on the State's authority to administer Federal environmental programs, including the title V program. The Washington Attorney Generals' Office has concluded that RCW 43.21A.085 and .087 do not conflict with Federal authorization requirements because these provisions implement a discretionary program. EPA understands from the State's interpretation that technical assistance visits conducted by the State will not be conducted under the authority of RCW 43.21A.085 and .087.

D. YRCAA Regulations

YRCAA has recently revised its air regulations. *See* YRCAA Regulation 1 (2000). As part of these revisions, YRCAA has adopted a regulation specifically addressing title V air operating permits, YRCAA Reg. 1, section 4.04, and has also revised its regulations addressing general authority for its title V program, such as the YRCAA records and enforcement provisions. In section 4.04, YRCAA specifically incorporated Ecology's state-wide operating permit regulation by reference. This revision only results in a change to the authority YRCAA is relying on in issuing its title V permits and not a substantive change to the permit issuance process or the terms of title V permits issued by YRCAA. Therefore, EPA is approving this change.

EPA has also reviewed the provisions of YRCAA Regulation 1 addressing YRCAA's general authority for its title V program, including sections 1.03 (Policy), 1.06 (Records), 1.07 (General Provisions), 2.02 (Authority to Collect Fees), 2.03 (Applicable State and Federal Regulations), 2.04 (Public Participation), 2.05 (Appeals), 5.01 (General Information), 5.01 (Additional or Alternative Enforcement), 5.02 (Penalties). In some instances, these regulations closely follow the comparable Ecology regulations, but have been rewritten in an attempt to be more easily understood by the general public. *Compare* YRCAA Reg. 1, 1.06, *with* RCW (70.94.205). The general provisions of the revised YRCAA regulations which state that the YRCAA regulations are intended to ''ensure equity and consistency with'' the

Federal Clean Air Act and the Washington Clean Air Act. *See* YRCAA Reg. 1, 1.03(A)(7); *see also* YRCAA Reg. 1, 1.06(B) (stating that the YRCAA records regulation is ''To provide access to any information available under federal or state law concerning the business of the authority.'') EPA therefore understands that, to the extent the YRCAA regulations referenced above are closely modeled after comparable Ecology regulations, the changes to these YRCAA regulations were not intended to effect a change in meaning. On that basis, EPA has determined that the regulations referred to above, in conjunction with the other provisions of Washington law that apply to sources in YRCAA's jurisdiction, provide adequate authority for YRCAA's operating permits program.

IV. Final Action

EPA is granting full approval of the State of Washington's operating permits program implemented by Ecology, EFSEC, and the seven local air authorities in Washington. Except with respect to non-trust lands within the 1873 Survey Area of the Puyallup Reservation,[4] this approval does not extend to ''Indian Country'', as defined in 18 U.S.C. 1151. *See* 64 FR 8247, 8250–8251 (February 19, 1999); 59 FR at 55815, 55818; 59 FR 42552, 42554 (August 18, 1994).

V. What Happens If EPA Gets Comments on This Federal Register?

EPA has reviewed the State of Washington's submittal and has determined that the Washington operating permits program now qualifies for full approval. Accordingly, EPA is taking final action to fully approve the air operating permits programs for Ecology, EFSEC, and all seven of the local air authorities in Washington.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full approval of the title V operating permits program submitted by the State of Washington should adverse comments be filed. This rule will be effective March 5, 2001 without further notice unless the Agency receives adverse comments by February 1, 2001.

If EPA receives such comments, then EPA will publish a notice withdrawing this final rule and informing the public that this rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 5, 2001 and no further action will be taken on the proposed rule.

VI. Are There Any Administrative Requirements That Apply to This Action?

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), this final approval is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this final rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this final approval also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084, 63 FR 27655 (May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, 64 FR 43255 (August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This final approval also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

As this in not a ''major'' rule as defined by 5 U.S.C. 804(2), EPA will not submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**, as specified in the Congressional Review Act, 5 U.S.C. 801 *et seq.*

As required by section 3 of Executive Order 12988, 61 FR 4729, (February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630, 53 FR 8859 (March 15, 1988), by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 5, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 15, 2000.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

40 CFR part 70, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. In appendix A to part 70, the entry for Washington is amended by revising paragraphs (a), (b), (c), (d), (e), (f), (g), (h), and (i) to read as follows:

[4] As these terms are defined in the Agreement among the Puyallup Tribe of Indians, local governments in Pierce County, the State of Washington, the United States, and certain private property owners dated August 27, 1988.

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Washington

(a) Department of Ecology (Ecology): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(b) Energy Facility Site Evaluation Council (EFSEC): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(c) Benton County Clean Air Authority (BCCAA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(d) Northwest Air Pollution Authority (NWAPA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(e) Olympic Air Pollution Control Authority (OAPCA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(f) Puget Sound Clean Air Agency (PSCAA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(g) Spokane County Air Pollution Control Authority (SCAPCA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(h) Southwest Clean Air Agency (SWCAA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

(i) Yakima Regional Clean Air Authority (YRCAA): submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on March 5, 2001.

* * * * *

[FR Doc. 00–33302 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6926–8]

Florida: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule-response to comments.

SUMMARY: On September 18, 2000, EPA published an action to grant Florida final authorization for several changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA) (65 FR 56256). These revisions consisted of the Corrective Action provisions contained in rules promulgated on July 15, 1985 (HSWA Codification Rule; HSWA Corrective Action), December 1, 1987 (HSWA Codification Rule: Corrective Action Beyond the Facility Boundary), February 16, 1993 (Corrective Action Management Units and Temporary Units), and December 6, 1994, as amended May 19, 1995, September 9, 1995, November 13, 1995, February 9, 1996, June 5, 1996, and November 25, 1996 (Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers). As was indicated in this document, EPA accepted written comments on this action until October 18, 2000. EPA received five written comments. Two of the commenters supported EPA's decision to grant Florida final authorization but offered recommendations regarding Florida's proposed manner of administration and implementation of the HSWA corrective action program. One commenter expressed the concern that the additional responsibilities the State would assume could negatively impact Florida's implementation of the RCRA program. EPA explained to this commenter that a Capability Assessment was performed on the State's program which concluded that Florida is capable of administering the Corrective Action and subpart CC programs. Another commenter was concerned that authorizing Florida for the subpart CC rules would relinquish EPA's oversight authority. EPA's response to this commenter explained that federal regulations are in place that give the Agency oversight responsibilities to evaluate the State's performance in administering the RCRA program. Finally, EPA received a written letter from a commenter that supported the intended delegation in principle, but expressed concern that the Final Authorization application, including the proposed Memorandum of Agreement, did not incorporate the RCRA Reforms which were announced on July 8, 1999, and which provide for ''faster, focused, and more flexible cleanups.'' To this commenter, EPA responded that ''The RCRA Reforms do not constitute rulemaking for which Florida is obliged to seek authorization. The purpose of the authorization process is to show equivalence to federal statutes and regulations to demonstrate the State's ability to carry out its program responsibilities once it is authorized.'' Further, the proposed language in the Memorandum of Agreement states that ''The State will conduct its hazardous waste program in a manner equivalent to the EPA program policies and guidance.'' EPA and the State interpret this to include all guidance published by EPA's Office of Solid Waste including the July 8, 1999, directive and any other appropriate guidance. EPA has communicated with Florida reemphasizing the importance of Florida's continued support and implementation of the corrective action program in a manner consistent with the RCRA Reforms. Florida acknowledges the importance of the Reforms and has reaffirmed its commitment to implementation of the Reforms. EPA has revised the attachment to the proposed Memorandum of Agreement to include more specific program guidance references which reflect the Reforms. EPA has determined that the addition of specific references to the proposed Memorandum of Agreement does not constitute a substantive change to the authorization document. In view of the fact that such guidance and policy was cited in a comprehensive way in the MOA, EPA made a decision to not withdraw the Immediate Final rule that grants Florida authorization as published in the September 18, 2000, **Federal Register**.

DATES: This final authorization became effective on November 17, 2000.

FOR FURTHER INFORMATION CONTACT: Narindar M. Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION: EPA, through this final action, retains its decision to authorize revisions to Florida's Hazardous Waste Management Program as published on September 18, 2000 (65 FR 56256).

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926,6974(b).

Dated: December 1, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–33427 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6923–5]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for Final authorization of its revisions to its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize the State of Louisiana Department of Environmental Quality's (LDEQ) changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** (FR) withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This immediate final rule is effective March 5, 2001 unless EPA receives adverse written comments by February 1, 2001. If EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Written comments, referring to Docket Number LA–00–2 should be sent to Alima Patterson Region 6 Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1145 Ross Avenue, Dallas, Texas 75202–2733. Copies of the Louisiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday, at the following addresses: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, (225)765–0397 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that receive final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 270, 273, and 279.

B. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Louisiana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. Louisiana has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Do inspections, and require monitoring, tests, analyses or reports, (2) enforce RCRA requirements and suspend or revoke permits, and (3) take enforcement actions regardless of whether the State has taken its own actions. This action does not impose additional requirements on the regulated community because the regulations for which Louisiana is being authorized by today's action are already effective, and are not changed by today's action.

C. What Is the History of Louisiana's Final Authorization and Its Revisions?

The State of Louisiana initially received final authorization on February 7, 1985 (50 FR 3348), to implement its base Hazardous Waste Management Program. Louisiana received authorization for revisions to its program on January 29, 1990 (54 FR 48889); August 26, 1991 (56 FR 41958) August 26, 1991, November 7, 1994 (59 FR 55368) effective January 23, 1995; December 23, 1994 (59 FR 66200) effective March 8, 1995; there were technical corrections made on January 23, 1995 (60 FR 4380), effective January 23, 1995 and another technical correction was made on April 11, 1995 (60 FR 18360). We authorized the additional following revisions: October 17, 1995 (60 FR 53704) effective January 2, 1996; March 28, 1996 (61 FR 13777) effective June 11, 1996; December 29, 1997 (62 FR 67572) effective March 16, 1998; October 23, 1998 (63 FR 56830) effective December 22, 1998; August 25, 1999 (64 FR 46302) effective October 25, 1999; September 2, 1999 (64 FR 48099) effective November 1, 1999; and February 28, 2000 (65 FR 10411) effective April 28, 2000. On September 1, 2000, Louisiana applied for approval of its program revisions for RCRA Cluster IX. In this application, Louisiana is seeking approval of RCRA Cluster IX in accordance with 40 CFR 271.21(b)(3).

Since 1979, the State of Louisiana, through the Louisiana Department of Natural Resources, has conducted an effective program designed to regulate those who generate, transport, treat, store, dispose or recycle hazardous waste. During the 1983, Regular Session of the Louisiana Legislature, Act 97 was adopted which amended and reenacted Louisiana Revised Statutes (LRS) 30:1051 *et seq.*, or the Environmental Affairs Act. This Act created the new Department. During the 1999 Regular Session of Louisiana Legislature, Act 303 revised the LRS 30:2011 *et seq.,* allowing Department of Environmental Quality (LDEQ) to re-engineer the Department to perform more efficiently and to meet its strategic goals.

Act 97, which amended and reenacted LRS 30:1051 *et seq.*, or the Environmental Affairs Act, transferred the duties and previous responsibilities delegated to the Department of Natural Resources, Office of Environmental Affairs, to the new Department. The LDEQ and the Department of Natural Resources, Office of Conservation, has a memorandum of understanding that outlines the protocol for activities

associated with the exploration, development, or production of oil, gas, or geothermal resources. The LDEQ has lead agency jurisdictional authority for administering the RCRA Subtitle C program in Louisiana. Also the LDEQ is designated to facilitate communication between the EPA and the State.

The State law governing the generation, transportation, treatment, storage and disposal of hazardous waste can be found in LRS 30:2171–2205. This part may be cited as the ''Louisiana Hazardous Waste Control Law.'' The laws governing hazardous waste should be viewed as part of larger framework of environmental laws specified in Title 30, Subtitle II Louisiana Revised Statutes. The State of Louisiana has adopted the Federal regulations for Cluster IX promulgated from July 1, 1998, through June 30, 1999; the State of Louisiana regulations became effective March 20, 1999, February 20, and July 20, 2000.

D. What Changes Are We Authorizing With Today's Action?

Louisiana applied for final approval of its revision to its hazardous waste program in accordance with 40 CFR 271.21. Louisiana's revisions consist of regulations which specifically govern RCRA Cluster IX rules. Louisiana requirements are included in a chart with this document. The EPA is now making a final decision, subject to receipt of written adverse comments that oppose this action, that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Louisiana final authorization for the following program revisions:

Federal citation	State analog
1. Petroleum Refining Process Wastes, [63 FR 42110] August 6, 1998. (Checklist 169).	Louisiana Revised States (LRS) 30: § 2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §§ 109.Hazardous Waste.2.d.iii, 109.Hazardous Waste.4.b.ii.(b),109.Hazardous Waste.4.e, amended March 20, 1999, effective March 20, 1999; 105.D.1.l.i, amended February 20, 2000, effective February 20, 2000; 105.D.1.l.ii, 105.D.1.r, 105.D.1.r.i, amended March 20, 1999, effective March 20, 1999; 105.D.1.r.ii, amended February 20, 2000, effective February 20, 2000; 105.D.1.s, amended March 20, 1999, effective March 20, 1999; 4105.B.11, amended September 20, 1996, effective September 20, 1996; 4105.B.12, 4901.B.b.Table 1, 4901.C.Table .2, 4901.G.Table 6, 2218.A , 2218.B, 2218.B.1, 2218.B.2, 2218.B.3, 2218.B.4, amended March 20, 1999, effective March 20, 1999; 3001.B.3, amended September 20, 1999, effective September 20, 1999; 2218.B.5, 2218.C, and Chapter 22.Table 2, amended March 20, 1999, effective March 20, 1999. LAC 33:V.3001.B.3 is more stringent than 40 CFR 266.100(b)(3) because LDEQ does not acknowledge conditionally exempt small quantity generators. If a person generates ''greater than 100 kg of hazardous waste but less than 1000 kg'' in this state, the generator is the equivalent of a large quantity generator and would follow the more stringent regulations for LQG.
2. Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment [63 FR 46332] August 31, 1998. (Checklist 170).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 109.Solid Waste.3.c amended March 20, 1999, effective March 20, 1999; 109.Solid Waste.Table 1, amended March 20, 1999, effective March 20, 1999; 109.Solid Waste.5.a.iii, amended February 20, 2000, effective February 20, 2000; 105.D.1.p, amended March 20, 1999, effective March 20, 1999; 105.D.1.p.v, amended February 20, 2000, effective February 20, 2000; 105.D.2.h.iii, amended February 20, 2000, effective February 20, 2000; 105.D.2.h.iii.(a), amended February 20, 2000, effective February 20, 2000; 1109.E.1.e, amended September 20, 1998, effective September 20, 1998; 2203.A.Hazardous Debris, amended February 20, 2000, effective February 20, 2000; 2203.A. Soil, amended February 20, 2000, effective February 20, 2000; 2245.Generator Paperwork Requirements Table, amended February 20, 2000, effective February 20, 2000; 2247.B.2.a, amended March 20, 1999, effective March 20, 1999; 2247.C.4, amended February 20, 2000, effective February 20, 2000; 2246.D.2, amended February 20, 2000, effective February 20, 2000; 2246.D.3, amended February 20, 2000, effective February 20, 2000; 2223.I, amended February 20, 2000, effective February 20, 2000; 2223.J, amended March 20, 1999, effective March 20, 1999; Chapter 22.Table 2, amended February 20, 2000, effective February 20, 2000; Chapter 22.Table 7, amended February 20, 2000, effective February 20, 2000; 2236.C, amended March 20, 1999, effective March 20, 1999; 2236.C.3.a, amended February 20, 2000, effective February 20, 2000; and 2236.C.3.b, amended February 20, 2000, effective February 20, 2000.

Federal citation	State analog
3. Emergency Revisions of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production, [63 FR 47410] September 4, 1998. (Checklist 171).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 109.Solid Waste.3.c, amended March 20, 1999, effective March 20, 1999; 109.Solid Waste. Table 1, amended March 20, 1999, effective March 20, 1999; 109.Solid Waste.5.a.iii, amended February 20, 2000, effective February 20, 2000; 105.D.1.p, amended March 20, 1999, effective March 20, 1999; 105.D.1.p.v, amended February 20, 2000, effective February 20, 2000; 105.D.2.h.iii, amended February 20, 2000, effective February 20, 2000; 105.D.2.h.iii.(a), amended February 20, 2000, effective February 20, 2000; 1109.E.1.e, amended September 20, 1998, effective September 20, 1998; 2203.A, Hazardous Debris, amended February 20, 2000, effective February 20, 2000; 2203.A. Soil amended February 20, 2000, effective February 20, 2000; 2245.Generator Paperwork Requirements Table amended February 20, 2000, effective February 20, 2000; 2247.B.2.a, amended March 20, 1999, effective March 20, 1999; 2247.C.4, 2246.D.2, 2246.D.3, 2223.G; 2223.H, amended February 20, 2000, effective February 20, 2000; 2223.J, amended March 20, 1999, effective March 20, 1999; Chapter 22. Table 2 amended February 20, 2000, effective February 20, 2000; Chapter 22. Table 7, amended February 20, 2000, effective February 20, 2000; 2236.C, amended March 20, 1999, effective March 20, 1999; 2236.C.3.a, amended February 20, 2000, effective February 20, 2000; and 2236.C.3.b, amended February 20, 2000, effective February 20, 2000.
4. Land disposal Restrictions Phase IV-Extension of Compliance Date for Characteristic Slags, [63 FR 48124] September 9, 1998. (Checklist 172).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 2216.B, 2216.C, 2216.D, 2216.E, 2216.F, amended March 20, 1999, effective March 20, 1999.
5. Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule, [63 FR 51254] September 24, 1998. (Checklist 173).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 2221.F.3, amended February 20, 2000, effective February 20, 2000; and Chapter 22. Table 2, amended February 20, 2000, effective February 20, 2000.
6. Post-Closure Permit Requirement and Closure Process, [63 FR 56710] October 22, 1998. (Checklist 174).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 305. A, 305.H, 519, 528, 3301.F, 3301.G., 3301.G.1, 3301.G.2, 3501.D, 3501.D.1, 3501.D.2, 3511.B.8, 3511.C.5, 3523.B.4, 3523.D.2.d, 3701.D, 3701.D.1, 3701.D.2, 4367.E, 4367.E.1, 4367.E.2, 4377.C, 4377.D, 4377.D.1, 4377.D.2, 4381.B.8, 4381.C.1.d, 4391.C.4, 4391.C.5, 4391.D.1.c, 4396.A, 4396.A.1, 4396.A.2, 4396.A.3, 4396.B.1, 4396.B.1.a, 4396.B.1.b, 4396.B.1.c, 4396.B.2, 4396.B.3, 4397.D, 4397.D.1, and 4397.D.2, amended March 20, 1999, effective March 20, 1999.
7. Hazardous Remediation Waste Management Requirements (HWIR-Media), [63 FR 65874] November 30, 1998 (Checklist 175).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 109, amended March 20, 1984, effective March 20, 1984, 109. Corrective Action Management Unit (CAMU), 109. Miscellaneous Unit, 109. Remediation Waste, 109. Remediation Waste Management Site, 109. Staging Pile, 105.D.9, 105.D.9.a, 105.D.9.b.i, 105.D.9.b.ii, 105.D.9.b.iii, 1501.H, 1501.H.1,1501.H.2, 1501.H.3, 1501.H.3.i, 1501.H.3.ii, 1501.H.4, 1501.H.5, 1501.H.6, 1501.H.7, 1501.H.8, 1501.H.9, 1501.H.10, 1501.H.11, 1501.H.12, 1501.H.13, 1529.B.20, 3322.E, 2601.A, 2601.A.1, 2601.A.2, 2603.A, 2605, 2605.A, 2605.B, 2605.C, 2605.C.1, 2605.C.2, 2605.C.3, 2605.D, 2605.D.1, 2605.D.1.a, 2605.D.1.b, 2605.D.1.c, 2605.D.2, 2605.D.2.a, 2605.D.2.b, 2605.D.2.c, 2605.D.2.d, 2605.D.2.e, 2605.D.2.f, 2605.E.

Federal citation	State analog
Checklist 175 Conds	2605.E.1, 2605.E.1.a, 2605.E.1.b, 2605.E.2, 2605.F, 2605.F.1, 2605.F.2, 2605.F.3, 2605.G, 2605.H, 2605.I, 2605.I.1, 2605.I.1.a, 2605.I.1.b, 2605.I.2, 2605.J, 2605.J.1, 2605.J.1.a, 2605.J.1.b, 2605.J.1.c, 2605.J.2, 2605.J.3, 2605.K, 2605.K.1, 2605.K.2, 2605.L, 2605.L.1, 2605.L.1.a, 2605.L.1.b, 2605.L.2, 2605.L.3, 2605.L.4, 2605.M, 4301.B, 2203.A. Land Disposal, 2205.H,513.A.1, 513.A.2, 322.D.3.g, 322.N.3, 540, 4305.F.1, 545, 550.A, 550.B, 550.C, 550.D, 550.D.1, 550.D.2, 550.E, 550.F, 555.A, 555.A.1, 555.A.2, 555.B, 555.C, 560,565; 565; 570; 575, 580,570, 575, 580.A,580.A.1, 580.A.2, 580.A.3, 580.A.4, 580.A.5,.a, 580.A.5.b, 580.A.5.c, 580.A.6, 580.A.6.a,580.A.6.b, 580.A.6.c, 580.A.7, 580.A.8, 580.A.9,585, 590, 595, 600.A, 600.B, 605, 605.A, 605.A.1, 605.A.2, 605.A.2.a, 605.A.2.b, 606.A.2.c, 605.A.3, 610.A, 610.A.1, 610.A.2, 610.A.2.a, 610.A.2.b, 610.A.2.c, 610.A.2.d, 610.A.3, 615.A, 615.A.1, 615.A.2, 615.A.3, 615.A.4, 615.B, 615.C, 615.C.1, 615.C.2, 615.C.3, 615.C.4, 615.C.5, 615.C.6, 615.C.7, 615.C.B.615.C.9, 615.D, 15.D.1, 615.D.2, 615.D.3, 620.A, 620.B, 620.C, 620.D, 620.E, 620.F, 620.F.2, 620.F.3, 620.F.4, 620.F.5, 620.F.6, 620.F.7, 620.G, amended February 20, 2000, effective February 20, 2000; 625.A, 625.B, 630, 630.A, 630.C, 630.1.A, 630.A.2 630.A.3, 635, and 640, amended July 20, 2000, effective July 20, 2000; 645.A, 645.A.1, 645.A.2, 645.A.3, 645.A.4, 645.A.5, 645.A.6, 645.A.7, 645.A.8, 645.B, 645.C, 650.A, 650.B, 655, amended February 20, 2000, effective February 20, 2000; 660.A, 660.B, amended July 20, 2000, effective July 20, 2000; 665, 670, 675, 680.A, 680.A.1, 680.A.2, 685.A, 685.B, 685.C, 690.A, 690.B, 695, 695.A,699.B, 699.C, 699.D, 699.D.1, 699.D.2, 699.D.3, 699.D.4, 699.E,699.E.1, and 699.E.2, amended February 20, 2000, effective February 20, 2000 and LA R.S. 30:2024(A) as amended July 20, 2000, effective July 20, 2000.
8. Universal Waste Rule—Technical Amendment, [63 FR 71225] December 24, 1998. (Checklist 176).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§4145.A, 4145.A. Table 4145.B, 4145.B.1, 4145.B.1.a, 4145.B.1.b, 4145.B.1.c, 4145.B.1.d, 4145.B.1.e, 4145.B.1.f, 4145.B.1.g, 4145.B.1.b, 4145.B.1.c, 4145.B.1.d, 4145.B.1.e, 4145.B.1.f, 4145.B.1.g, 4145.B.2.a, 4145.B.2.b, 4145.B.2.c, 4145.B.2.d, 4145.B.2.e, 4145.B.2.f, 4145.B.2.g, 3813. Small Quantity Handler of Universal Waste, amended February 20, 2000, effective February 20, 2000.
9. Organic Air Emission Standards: Clarification and Technical Amendments, [64 FR 3382] January 21, 1999. (Checklist 177).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§1109.E.1.a.i, 1109.E.1.a.ii, 1703. Equipment 1703. Open-ended valve or line, 1703. Sampling Connection System, 1747.B.5, 1747.A.1.a, 1753.A.1.b, 1753.B.1.a, 1753.B.1.b, 1755.H.3, 1755.H.3.a, 1755.H.3.b, 1759.E.6, 4727B.1.a, 4727.B.1.b February 20, 2000, effective February 20, 2000, 1719 (1747.B.5), 1727.A.1.a, 4727.A.1.b, 2000; 4727.A.3.b.ii, 1727.A.3.b.iv, 4727.A.3.c, 4727.B.1.a, 4727.B.1.b, 4727.B.1.b.ii, 4727.B.3.b.iv,4727.B.3.c, 4729 (1755.H.3), 4729 (1755.H.3.a), 4729 (1755.H.3.b), and 4733 (1759.E.6), amended February 20, 2000, effective February 20, 2000.
10. Petroleum Refining Process Waste—Leachate Exemption, [64 FR 6806] February 11, 1999. (Checklist 178).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§105.D.2.p, 105.D.2.p.i105.D.2.p.ii, 105.D.2.p.iii, 105.D.2.p.iv, 105.D.2.p.v, amended February 20, 2000, effective February 20, 2000.
11. Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards, [64 FR 25408] May 11, 1999. (Checklist 179).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§109 Solid Waste.3.c, 109. Solid Waste Table 1, amended March 20, 1999, effective March 20, 1999, 109 Solid Waste.5.a.iii, amended February 20, 2000, effective February 20, 2000, 105.D.1.p, amended March 20, 1999, effective March 20, 1999, 105.D.1.p.v, 105.D.2.h.iii, 105.D.2.h.iii.(a), amended February 20, 2000, effective February 20, 2000, 1109.E.1.e amended September 20, 1998, effective September 20, 1998; 2236.C, and 2236.C.3.a, as amended March 20, 1999; effective March 20, 1999.
Checklist 179 Conds	2203.A. Hazardous Debris, 2203.A.Soil, 2245. Generator Paperwork Requirement Table, 2247.B.2.a, amended March 20, effective March 20, 1999; 2247.C.4, 2246.D.2, 2246.D.3, amended February 20, 2000, effective February 20, 2000; 2236.C, amended March 20, 1999, effective March 20, 1999; 2236.C.3.a, amended February 20, 2000, effective February 20, 2000; and 2223.I, amended February 20, 2000, effective February 20, 2000; 2223.J amended March 20, 1999, effective March 20, 1999; Chapter 22. Table 2, amended February 20, 2000, effective February 20, 2000; Chapter 22. Table 7, amended February 20, 2000, 2236.C.3.b., amended February 20, 2000, effective February 20, 2000.

Federal citation	State analog
12. Test Procedures for the Analysis of Oil and Grease and Non-Polar Material, [64 FR 26315] May 14, 1999. (Checklist 180).	LRS 30:2180 *et seq,* as amended June 14, 1991, effective June 14, 1991; LHWR §§ 110.A.11, amended February 20, 2000, effective February 20, 2000; and 110.A.17, amended February 20, 2000, effective February 20, 2000.

E. What Is the Relationship Between the Resource Conservation and Recovery Act and the Hazardous Waste Combustor MACT? How Does This Affect Delegation of This Standard to LDEQ's Authorization?

In this authorization document, the State of Louisiana is also seeking authorization for the Post-Closure Permit Requirement and Closure Process (Checklist 174). On September 30, 1999, the EPA finalized the National Emission Standards for Hazardous Air Pollutants (NESHAP) for three categories waste comubustors (HWCs): incinerators, cement kilns and light-weight aggregate kilns (64 FR 52828). The EPA promulgated this rule under joint authority of the Clean Air Act (CAA) and (RCRA). Before this rule went into effect, the air emissions from these three types of HWCs was primarily regulated under the authority of RCRA (see 40 CFR parts 264, 265, 266, and 270). However, with the release of the final HWC NESHAP (see 40 CFR part 63 subpart EEE), the air emissions from these sources is now regulated under RCRA and the CAA. Even though both statutes give us the authority to regulate these emissions, we determined that having emissions standards and permitting requirements in both sets of implementing regulations would be duplicative. For this reason, using the authority provided by section 1006(b) of RCRA, we deferred the RCRA requirements for HWC emission controls to the CAA requirements of 40 CFR part 63 subpart EEE.

Therefore, with today's authorization of the State of Louisiana for the RCRA provisions of the September 30, 1999 HWC NESHAP rule, the RCRA waste management standards for air emissions from these units will no longer apply after the facility has demonstrated compliance with 40 CFR part 63 subpart EEE. One notable exception concerns section 3005(c)(3) of RCRA, which requires that each RCRA permits contain the terms and conditions necessary to protect human health and the environment. Under this provision of RCRA, if a regulatory authority determines that more stringent conditions than the HWC NESHAP are necessary to protect human health and environment for a particular facility, then the regulatory authority may impose those conditions in the facility's RCRA permit. (See the HWC MACT rule preamble discussion on the interrelationship of the MACT rule with the RCRA Omibus provision and site specific risk assessment at 64 FR 52828, pages 52839–52843, September 30, 1999, and RCRA Site-Specific Risk Assessment Policy for Hazardous Waste Combustion Facilities dated June 2000 for more information.

F. What Decision Has EPA Made?

We conclude that Louisiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Louisiana final authorization to operate its hazardous waste program with the changes described in the authorization application. Louisiana has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Louisiana, including issuing permits, until the State is granted authorization to do so.

G. How Do the Revised State Rules Differ From the Federal Rules?

The EPA considers the following State requirements to be more stringent than the Federal: LAC 33:V.3001.B.3. is more stringent than 40 CFR 266.100(b)(3) because LDEQ does not acknowledge conditionally exempt small quantity generators. If a person generates ''greater than 100 kilo grams of hazardous waste but less than 1000 kilo grams'' in the State, the generator is the equivalent of a large quantity generator and would follow the more stringent regulations for large quantity generators. In this authorization of the State of Louisiana's program revisions for RCRA cluster IX, there are no provisions that are broader in scope. Broader in scope requirements are not part of the authorized program and EPA can not enforce them.

H. Who Handles Permits After This Authorization Takes Effect?

The EPA will administer any RCRA permits or portions of permits it has issued to facilities in the State until the State becomes authorized. At the time the State program is authorized for new rules, EPA will transfer all permits or portions of permits issued by EPA to the State. The EPA will not issue any more permits or portions of permits for the provisions listed in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which the State is not yet authorized.

I. Why Wasn't There a Proposed Rule Before Today's Notice?

The EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and we expect no comments that oppose this action. The EPA is providing an opportunity for public comment now. In addition, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State changes. If EPA receives comments opposing this authorization, that document will serve as a proposal to authorize the changes.

J. Where Do I Send My Comments and When Are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number LA–00–2. We must receive your comments by February 1, 2001. You may not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

K. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments opposing this action, we will publish a second **Federal Register** document before the

immediate final rule takes effect. The second document may withdraw the immediate final rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes or the document may identify the issues raised, respond to comments, and affirm that the immediate final rule will take effect March 5, 2001.

L. When Will This Approval Take Effect?

Unless EPA receives comments opposing this action, this final authorization approval will become effective without further notice on March 5, 2001.

M. Where Can I Review the State's Application?

You can view and copy the State of Louisiana's application from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, (504) 765–0397 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

N. How Does Today's Action Affect Indian Country in Louisiana?

Louisiana is not authorized to carry out its Hazardous Waste Program in Indian country within the State. This authority remains with EPA. Therefore, this action has no effect on Indian country.

O. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. The EPA does this by referencing the authorized State rules in 40 Code of Federal Regulations part 272. The EPA reserves the amendment of 40 CFR part 272, subpart T for this codification of Louisiana's program changes until a later date.

Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirement for the purpose of RCRA 3006 and impose no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it dos not contain any unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has compiled with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney Generals' Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 7, 2000.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 00–33158 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6923–6]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Oklahoma has applied for Final authorization of the changes to its Hazardous Waste Program under the Resource Conservation and

Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize the Oklahoma Department of Environmental Quality's (ODEQ) changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This immediate final rule is effective on March 5, 2001 unless EPA receives adverse written comments by February 1, 2001. If EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Written comments, referring to Docket Number OK–00–3, should be sent to Alima Patterson Region 6 Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of Oklahoma program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180 and EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that receive final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 270, 273, and 279.

B. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Oklahoma subject to RCRA will have to comply with the authorized State requirements (in portions of RCRA Cluster VIII and RCRA Cluster IX listed in this document) instead of the equivalent federal requirements in order to comply with RCRA. Oklahoma has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Do inspections, and require monitoring, tests, analyses or reports, (2) enforce RCRA requirements and suspend or revoke permits, and (3) take enforcement actions regardless of whether the State has taken its own actions. This action does not impose additional requirements on the regulated community because the regulations for which Oklahoma is being authorized by today's action are already effective, and are not changed by today's action.

C. What Is the History of Oklahoma's Final Authorization and Its Revisions?

Oklahoma initially received Final Authorization on January 10, 1985, (49 FR 50362) to implement its base hazardous waste management program. We authorized the following revisions: Oklahoma received authorization for revisions to its program on June 18, 1990 (55 FR 14280), effective November 27, 1990; (55 FR 39274) effective June 3, 1991; (56 FR 13411) effective November 19, 1991; (56 FR 47675) effective December 21, 1994; (59 FR 51116–51122) effective April 27, 1995; (60 FR 2699–2702) effective October 9, 1996; (61 FR 52884–52886), Technical Correction effective March 14, 1997 (62 FR 12100); effective February 8, 1999 (63 FR 67800–67802); (65 FR 16528) effective April 28, 2000 and effective July 10, 2000 (65 FR 29981–29985). The authorized Oklahoma RCRA program was incorporated by reference into the CFR effective December 13, 1993 (58 FR 52679–52682); and (63 FR 23673–23678) effective July 14, 1998. On August 3, 2000, Oklahoma submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21.

Oklahoma statutes provide authority for a single State agency, the Oklahoma Department of Environmental Quality (ODEQ,) to administer the provisions of the State Hazardous Waste Management Program. These statutes are the Oklahoma Department of Environmental Quality Act, 27 O.S. Supplement (Supp) 1999 §§ 1–1–101 *et seq.* General provisions of the Oklahoma Environmental Quality Code which may affect the Hazardous Waste Program are 27A O.S. Supplement (Supp). 1999 §§ 2–1–101 through 2–3–507; and the Oklahoma Hazardous Waste Management Act (OHWMA), 27A O.S. Supp. 1999 §§ 2–7–101 *et seq.* No amendments were made to the above statutory authorities during the 2000 legislative session which will substantially affect the State Hazardous Waste Management Program.

The Oklahoma Board adopted RCRA Cluster IX rules on February 25, 2000, as permanent rules. These permanent rules became effective on June 12, 2000, to implement the State hazardous waste program, which are codified in OAC 252:205 *et seq.*

These rules include provisions, found at OAC 252:205–3–1 through 252:205–3–6, to incorporate by reference, in accordance with the Guidelines For State Adoption of Federal Regulations By Reference, the following EPA Hazardous Waste Management Regulations as amended through July 1, 1999. The provisions of Title 40 CFR part 124 which are required by 40 CFR part 271.14 as well as parts 124.19 (a) through (c) and (e), 124.31, and 124.32 and 124.33; 40 CFR parts 260–266, with the exception of 40 CFR parts 260.20 through 260.22, 264.1(f), 264.149, 264.150, 264.301(1), the Appendix VI to part 264, 265.1(c)(4), and 265.149 and 265.150; 40 CFR part 268 except 268.5, 268.5, 268.6, 268.10, 268.11, 268.12, 268.13, 268.42(b), 268.44 (a), through (g) and 268.44 (m) through (p); 40 CFR part 270 except 270.14(b)(18); 40 CFR part 273; and 40 CFR part 279). Additionally, the rules adopt the new or superseding amendments to 40 CFR found in 64 FR 36465–36490 published July 6, 1999, dealing with hazardous waste lamps as a universal waste.

The ODEQ remains the official agency of the State of Oklahoma, as designated by 27A O.S. Supp. 1999 Section 2–7–105(13) to cooperate with Federal agencies for purposes of hazardous waste regulation. The OHWMA delegates authority to the ODEQ to administer the State hazardous waste

program, including the statutory and regulatory provisions necessary to administer the RCRA Cluster IX provisions. Included in this **Federal Register** notice also are portions of RCRA Cluster VIII rules (Checklists 166, 167 A, 167 B, 167 C & C.1, and 167 E) that were not authorized when the State was granted authorization for RCRA Cluster VIII effective July 10, 2000. However, the RCRA Cluster VIII regulations were effective in the State on June 11, 1999. The DEQ is the sole State agency responsible for administering the provisions of the OHWMA.

At the present, the Oklahoma Corporation Commission (OCC) regulates certain aspects of the oil and gas production and transportation industry in Oklahoma, including certain waste generated by pipelines, bulk fuel sales terminals and certain tank farms. The ODEQ and the OCC have in place a ODEQ/OCC Jurisdictional Guidance Document that reflects the current state of affairs between the two agencies. The current ODEQ/OCC jurisdictional Guidance Document was amended and signed on January 27, 1999. The ODEQ exclusively hazardous regulates waste in Oklahoma (excluding Indian lands) and OCC does not regulate hazardous waste in Oklahoma.

The revisions of the State program to include administration of the provisions of portions of RCRA Cluster VIII and RCRA Cluster IX will not require a change in responsibility for administration of the State hazardous waste program.

D. What Changes Are We Approving With Today's Action?

On August 3, 2000, the State of Oklahoma submitted a final complete program application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate Final decision, subject to receipt of written comments that oppose this action, that the State of Oklahoma's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. The State of Oklahoma revisions consist of regulations which specifically govern Federal Hazardous Waste promulgated from July 1, 1998 to June 30, 1999 (RCRA Cluster IX) and also portion of RCRA Cluster VIII promulgated from July 1, 1997 to June 30, 1998. Oklahoma requirements are included in a chart with this document.

Federal citation	State analog
1. Recycled Used Oil Management Standards; Technical Correction and Clarification, [63 FR 24963] May 6, 1998. (Checklist 166).	27A O.S. Supp. 1998 § 2–2–104 Added by Laws 1994, effective July 1, 1994, Annotated Oklahoma Statutes 27 A. O.S. Supp. 1998 § 2–2–106 Amended by Laws 1993, effective July 1, 1993, Rules 252:205:3–1 through 252:205–3–7 permanent effective date June 11, 1999.
2. Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes, [63 FR 28556] May 26, 1998. (Checklist 167 A).	27A O.S. Supp, 1998 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1998 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–7 permanent effective date June 11, 1999.
3. Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions, [63 FR 28556] May 26, 1998. (Checklist 167 B).	27A O.S. Supp, 1998 § 2–2–104 Added by Laws, 1994, effective July 1, 1994; 27A O.S. Supp, 1998 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–7 permanent effective date June 11, 1999.
4. Land Disposal Restrictions Phase IV—Corrections, [63 FR 28556] May 26, 1998. (Checklist 167 C and 167.C.1).	27A O.S. Supp. 1998 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1998 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252–205–3–1 through 252:205–3–7 permanent effective date June 11, 1999.
5. Bevill Exclusion Revisions and Clarification, [63 FR 28556] May 26, 1998. (Checklist 167 E).	27A O.S. Supp. 1998 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1998 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–7 permanent effective date June 11, 1999.
6. Petroleum Refining Waste Process, [63 FR 42110] August 6, 1998 (Checklist 169).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.
7. Petroleum Refining Waste Process, [63 FR 54356] October 9, 1998. (Checklist 169.1).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.
8. Land Disposal Restrictions—Phase IV, [63 FR 46332] August 31, 1998. (Checklist 170).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.
9. Emergency Revisions of LDR Treatment Standards, [63 FR 47409] September 4, 1998. (Checklist 171).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.
10. Emergency Revisions of LDR Treatment Standards, [63 FR 48124] September 9, 1998. (Checklist 172).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.
11. Land Disposal Restrictions Treatment Standards (Spent Potliners), [63 FR 51254] September 24, 1998. (Checklist 173).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.

Federal citation	State analog
12. Standards Applicable to Owners and Operators of Closed/Closing Facilities, [63 FR 56710] October 22, 1998. (Checklist 174).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.
13. Hazardous Remediation Waste Management Requirements (HWIR–Media), [63 FR 65874] November 30, 1998. (Checklist 175).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.
14. Universal Waste Rule; Technical Amendment (Conditionally Optional), [63 FR 71225] December 24, 1998. (Checklist 176).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.
15. Organic Air Emission Standards, [64 FR 3381] January 21, 1999. (Checklist 177).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.
16. Petroleum Refining Process Wastes, [64 FR 6806] February 11, 1999. (Checklist 178).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.
17. Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards, [64 FR 25408] May 11, 1999. (Checklist 179).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.
18. Test Procedures for the Analysis of Oil and Grease Non-Polar Material, [64 FR 26315] May 14, 1999. (Checklist 180).	27A O.S. Supp. 1999 § 2–2–104 Added by Laws 1994, effective July 1, 1994; 27A O.S. Supp, 1999 § 2–7–106 Amended by Laws 1993, effective July 1, 1993; Rules 252:205–3–1 through 252:205–3–6 permanent effective date June 12, 2000.

E. What Is the Relationship Between the Resource Conservation and Recovery Act and the Hazardous Waste Combustor MACT? How Does This Effect Delegation of This Standard to ODEQ's Authorization?

In this authorization document, the State of Oklahoma is also seeking authorization for the Post-Closure Permit Requirement and Closure Process, (Checklist 174). On September 30, 1999, the EPA finalized the National Emission Standards for Hazardous Air Pollutants (NESHAP) for three categories waste combustors (HWCs): incinerators, cement kilns and light-weight aggregate kilns (64 FR 52828). The EPA promulgated this rule under joint authority of the Clean Air Act (AA) and (RCRA). Before this rule went into effect, the air emissions from these three types of HWCs was primarily regulated under the authority of RCRA (see 40 CFR parts 264, 265, 266, and 270). However, with the release of the final HWC NESHAP (see 40 CFR part 63 subpart EEE), the air emissions from these sources is now regulated under RCRA and the CAA. Even though both statutes give us the authority to regulate these emissions, we determined that having emissions standards and permitting requirements in both sets of implementing regulations would be duplicative. For this reason, using the authority provided by section 1006(b) of RCRA, we deferred the RCRA requirements for HWC emission controls to the CAA requirements of 40 CFR part 63 subpart EEE.

Therefore, with today's authorization of the State of Oklahoma for the RCRA provisions of the September 30, 1999 HWC NESHAP rule, the RCRA waste management standards for air emissions from these units will no longer apply after the facility has demonstrated compliance with 40 CFR part 63 subpart EEE. One notable exception concerns section 3005(c)(3) of RCRA, which requires that each RCRA permits contain the terms and conditions necessary to protect human health and the environment. Under this provision of RCRA, if a regulatory authority determines that more stringent conditions than the HWC NESHAP are necessary to protect human health and environment for a particular facility, then the regulatory authority may impose those conditions in the facility's RCRA permit. (See the HWC MACT rule preamble discussion on the interrelationship of the MACT rule with the RCRA Omibus provision and site specific risk assessment at (64 FR 52828, pages 52839–52843, September 30, 1999, and RCRA Site-Specific Risk Assessment Policy for Hazardous Waste Combustion Facilities dated June, 2000 for more information.

F. What Decisions Has EPA Made?

We conclude that Oklahoma's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Oklahoma final authorization to operate its hazardous waste program with the changes described in the authorization application . Oklahoma has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Oklahoma, including issuing permits, until the State is granted authorization to do so.

G. How Do the Revised State Rules Differ From the Federal Rules?

In this authorization of the State of Oklahoma's program revisions for portions of RCRA Cluster VIII and RCRA Cluster IX, there are no provisions that are more stringent or broader in scope. Broader in scope requirements are not part of the authorized program and EPA can not enforce them.

H. Who Handles Permits After This Authorization Takes Effect?

The State of Oklahoma will issue permits for all the provisions for which

it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more permits or new portions of permits for the provisions listed in that Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Oklahoma is not yet authorized.

I. Why Wasn't There Not Proposed Rule Before Today's Notice?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval because we believe this action is not controversial. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

J. Where Do I Send My Comments and When Are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number OK–00–3. We must receive your comments by February 1, 2001. You may not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

K. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

L. When Will This Approval Take Effect?

Unless EPA receives comments opposing this action, this final authorization approval will become effective without further notice on March 5, 2001.

M. Where Can I Review The State's Application?

You can review and copy the State of Oklahoma's application from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180 and EPA, Region 6 , 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

N. Does Today's Action Affect Indian Country in Oklahoma?

Oklahoma is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect on Indian Country.

O. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, Subpart LL for this codification of Oklahoma's program changes until a later date.

Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirement for the purpose of RCRA 3006 and impose no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988(61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has compiled with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney Generals' Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 7, 2000.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 00–33155 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6926–7]

Florida: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule; extension of comment period and effective date.

SUMMARY: On September 18, 2000 (65 FR 56256), EPA published an action to grant Florida final authorization for several changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). One of the changes was the authorization of Florida for the February 16, 1993, Corrective Action Management Unit (CAMU) rule. With this action, EPA is extending the comment period and effective date for the authorization of Florida for the CAMU rule to provide additional information to the public.

DATES: This final authorization will become effective on March 5, 2001 unless EPA receives adverse written comment by February 1, 2001. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW Atlanta, GA, 30303–8960; (404) 562–8440. We must receive your comments by February 1, 2001. You can view and copy Florida's application from 8 a.m. to 3:45 p.m. at the EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number (404) 562–8190, Kathy Piselli, Librarian.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW Atlanta, GA, 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION: As a result of the September 18, 2000, Notice to grant final authorization to Florida (see 65 FR 56256) for the February 16, 1993, Corrective Action Management Unit (CAMU) rule, the State will be eligible for interim authorization-by-rule for the proposed amendments to the CAMU rule, published on August 22, 2000, at 65 FR 51080. Florida will also become eligible for conditional authorization if that alternative is chosen by EPA in the final CAMU amendments rule. This extension of the comment period and effective date only applies to the authorization of Florida for the CAMU rule, and not the other rules contained in the September 18, 2000, **Federal Register**.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 1, 2000.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 00–33425 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 90

[WT Docket No. 99–87; RM–9332; RM–9405; RM–9705; FCC 00–403]

Revised Competitive Bidding Authority

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules and policies to implement changes to its statutory auction authority. This revision of the Commission's auction authority affects its determinations of which wireless telecommunications services licenses are potentially auctionable and its determinations of the appropriate licensing scheme for new and existing services.

DATES: Effective March 2, 2001, except § 90.621 which contains information collection requirement that has not been approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for this section.

FOR FURTHER INFORMATION CONTACT: Leora Hochstein or William Huber, Attorneys, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660. For additional information concerning the information collection contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This a summary of a *Report and Order* in WT Docket No. 99–87, adopted on November 9, 2000, and released on November 20, 2000. The complete text of the *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 445 12th Street, SW, Room CY–B400, Washington, DC 20554, (202) 314–3070. The *Report and Order* is also available on the Internet at the Commission's web site: *http://www.fcc.gov/wtb/documents.html*.

Synopsis of the Report and Order

I. Introduction and Executive Summary

1. In the *Report and Order*, we adopt rules and policies to implement sections 309(j) and 337 of the Communications Act of 1934 (''Communications Act''), as amended by the Balanced Budget Act of 1997 (''Balanced Budget Act''), which was signed into law on August 5, 1997. The Balanced Budget Act significantly revised section 309(j) of the Communications Act, which is the principal statutory provision that governs the Commission's auction authority for the licensing of radio services. With the *Notice of Proposed Rule Making* in this docket No. 99–87, we initiated this proceeding and requested comment on changes to the Commission's rules and policies to

implement our revised auction authority. *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz, WT Docket No. 99–87, RM–9332, RM–9405, *Notice of Proposed Rule Making*, (*NPRM*), 64 FR 23571 (May 3, 1999).

2. Specifically, the *Report and Order* sets out the general framework for exercise of the Commission's auction authority in light of the Balanced Budget Act's revisions to section 309(j) of the Communications Act. First, we examine how the Balanced Budget Act revised the statutory language of section 309(j). In particular, we consider amended section 309(j)(1)'s directive to use competitive bidding to resolve mutually exclusive license applications for those radio services that do not fall within one of section 309(j)(2)'s auction exemptions. These statutory changes are considered in light of our continuing obligation under section 309(j)(6)(E) to avoid mutual exclusivity and to fulfill the public interest objectives enumerated in section 309(j)(3).

3. In the *Report and Order*, we conclude that in non-exempt services, the Commission's authority under the Balanced Budget Act continues to permit it to adopt licensing processes that result in the filing of mutually exclusive applications where the Commission determines that such an approach would serve the public interest. We do not, however, make any changes to license assignment procedures in existing services that preclude or limit the likelihood of mutually exclusive applications, nor do we make any specific determination about what licensing procedures to adopt for future services. Rather, we will reserve for future service-specific rulemaking proceedings the question of what type of licensing mechanism to use in each case, *e.g.,* geographic area licensing, site-by-site licensing, or any other licensing process. Moreover, any consideration of whether we should use licensing procedures in a particular service that increase the likelihood of mutually exclusive applications will be based on careful analysis of the public interest considerations of section 309(j)(3) as they apply to the specific characteristics, uses, and demands of the service.

4. We also conclude that in addition to other licensing mechanisms we have used previously, we should consider the use of band manager licensing as a future option for private as well as commercial services. We used the band manager concept for the first time in the 700 MHz guard bands, and believe that it has the potential in other new spectrum allocations to provide private users with greater flexibility to access spectrum in amounts of bandwidth, periods of time, and geographic areas that best suit their needs. *See* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to 27 of the Commission's Rules, WT Docket No. 99–168, *Second Report and Order*, (''*700 MHz Second Report and Order*'') 65 FR 17594 (April 4, 2000). For example, we have recently initiated a proceeding to reallocate 27 MHz of spectrum in bands below 3 GHz from Federal Government to non-government use, and have sought comment on whether this spectrum could address demand in the congested private radio bands. *See,* Reallocation of 27 Megahertz of Spectrum Transferred from Government Use, ET Docket No. 00–221, RM–9267, RM–9692, RM–9797, RM–9854, *Notice of Proposed Rule Making*, FCC 00–395, (November 20, 2000) (''*27 MHz Reallocation Order*''). In that proceeding, we seek comment on the possibility of using band managers for some of those bands, as well as other licensing options.

5. We also define the scope of the Balanced Budget Act's exemption from auctions for licenses and permits issued for ''public safety radio services.'' We conclude that this ''public safety'' exemption from auctions was intended to apply not only to traditional public safety services such as police, fire, and emergency medical services, but also to spectrum usage by entities such as utilities, railroads, transit systems, and others that provide essential services to the public at large and that need reliable communications in order to prevent or respond to disasters or crises affecting their service to the public. We also conclude, however, that the public safety exemption applies only to services in which these public safety uses, *i.e.,* protection of safety of life, health, and property within the meaning of section 309(j)(2)(A), comprise the dominant use of the spectrum. Thus, services in which such uses are not dominant (and in which mutual exclusivity occurs) will not be exempt from auctions, even if some individual licensees in the service use the spectrum for public safety purposes as defined by the statute.

6. The *Report and Order* also addresses a number of proposals to amend our licensing and eligibility rules for existing private services. In general, we conclude that the existing rules should be retained. Specifically, we decline a request to establish geographic area licensing and competitive bidding rules in the 450–470 MHz band. We also decline the request to create a separate radio pool of private land mobile frequencies for entities that do not qualify for the existing Public Safety Radio Pool spectrum, but that fall within the broader ''public safety'' exemption established by section 309(j)(2)(A).

7. We do make a limited change, however, to our use restrictions affecting 800 MHz Business and Industrial/Land Transportation (''BI/LT'') channels, which currently prohibit commercial use by licensees. We conclude that subject to certain safeguards, BI/LT licensees should be allowed to modify their licenses to permit commercial use, or to assign or transfer their licenses to CMRS operators for commercial use. To prevent trafficking, we will not allow such modifications, assignments, or transfers until five years after the initial grant date of the license, and we will prohibit a licensee who modifies or transfers a license under this provision from obtaining new BI/LT spectrum in the same location for one year.

8. In addition, we address issues relating to the awarding of licenses under section 337 of the Communications Act, which allows public safety entities (defined more narrowly than in section 309(j)(2)(A)) to apply for ''unassigned'' spectrum not otherwise allocated for public safety use. We conclude that where the Commission has proposed rules for the licensing of particular spectrum by auction, requests for licensing under section 337 should not be deemed in the public interest once the competitive bidding process has begun except under extraordinary circumstances. Moreover, we conclude that section 337 relief should only be available if the applicant demonstrates that there is no available public safety spectrum in any band in the geographic area where the public safety use is proposed.

9. Finally, in the *Further Notice of Proposed Rule Making*, we seek comment on a petition for rulemaking filed by AMTA proposing that certain part 90 licensees be required to employ new spectrum-efficient technologies. In particular, we seek further comment on the effectiveness of the part 90 rules that have been adopted in the course of the Commission's *Refarming* proceeding, PR Docket No. 92–235, *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92–235, *Report and Order and Further Notice of Proposed*

Rule Making, (''*Refarming Report and Order and Further Notice*''), 60 FR 43720 (August 23, 1995) and 60 FR 37148 (July 19, 1995); *Memorandum Opinion and Order*, 62 FR 6027 (January 15, 1997); *Second Report and Order*, 62 FR 18834 (April 17, 1997); *Second Memorandum Opinion and Order*, 64 FR 36258 (July 6, 1999); *Third Memorandum Opinion and Order*, 64 FR 50257 (September 16, 1999); and *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 16,673 (2000) (collectively, the ''*Refarming Proceeding*'') the current pace of migration to narrowband technology, and on whether enough time has elapsed to allow us to evaluate the effectiveness of our current rules. We also seek comment on whether to permit 900 MHz BI/LT licensees to modify their licenses to permit CMRS use.

II. Background

A. Commission Implementation of the 1993 Auction Standard

10. The Omnibus Budget Reconciliation Act of 1993 (''1993 Budget Act'') added section 309(j) to the Communications Act, authorizing the Commission to award licenses for use of the electromagnetic spectrum through competitive bidding where mutually exclusive applications are filed. The 1993 Budget Act expressly authorized, but did not require, the Commission to use competitive bidding to choose among mutually exclusive applications for initial licenses or construction permits. As we described in detail in the *NPRM*, the Commission in a series of rulemaking proceedings adopted rules and policies to implement section 309(j). *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Second Report and Order*, (''*Competitive Bidding Second Report and Order*''), 59 FR 22980 (May 4, 1994); Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Second Memorandum Opinion and Order*, (''*Competitive Bidding Second M O & O*''), 59 FR 44272 (August 26, 1994).

11. Pursuant to the 1993 Budget Act, section 309(j)(1), ''General Authority,'' only permitted the Commission to use competitive bidding for subscriber-based services if mutual exclusivity existed among initial license applications. Section 309(j)(6)(E) also made clear that the Commission was not relieved of its obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations and other means to avoid mutual exclusivity. The Commission has determined that applications are ''mutually exclusive'' if the grant of one application would effectively preclude the grant of one or more of the other applications. Where the Commission receives only one application that is acceptable for filing for a particular license that is otherwise auctionable, there is no mutual exclusivity, and thus no auction. Therefore, mutual exclusivity is established when competing applications for a license are filed.

12. Section 309(j)(1) also restricted the use of competitive bidding to applications for ''initial'' licenses or permits. In addition, section 309(j)(2) set forth conditions beyond mutual exclusivity that had to be satisfied in order for spectrum to be auctionable. Generally speaking, these conditions subjected to auction those services in which the licensee was to receive compensation from subscribers for the use of the spectrum. Former section 309(j)(2) further directed the Commission, in evaluating the ''uses to which bidding may apply,'' to determine whether ''a system of competitive bidding will promote the [public interest] objectives described in [section 309(j)(3)].'' Employing these criteria, the Commission identified a number of services and classes of services that were auctionable and not auctionable under the 1993 Budget Act, provided mutually exclusive applications were filed. As we explained in the *NPRM*, the services deemed nonauctionable under the 1993 Budget Act were non-subscriber based, private and noncommercial offerings operating on a variety of frequency bands.

B. The Balanced Budget Act of 1997

13. In 1997, Congress revised the Commission's auction authority. Specifically, the Balanced Budget Act of 1997 amended section 309(j)(1) to require the Commission to award mutually exclusive applications for initial licenses or permits using competitive bidding procedures, except as provided in section 309(j)(2). Sections 309(j)(1) and 309(j)(2) now state:

(1) General Authority.—If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.

(2) Exemptions.—The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission—

(A) For public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—

(i) Are used to protect the safety of life, health, or property; and

(ii) Are not made commercially available to the public;

(B) For initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses; or

(C) For stations described in section 397(6) of this title.

Prior to the Balanced Budget Act of 1997, sections 309(j)(1) and 309(j)(2) granted the Commission the authority to use competitive bidding to resolve mutually exclusive applications for initial licenses or permits if the principal use of the spectrum was for subscription-based services and competitive bidding would promote the objectives described in section 309(j)(3). As amended by the Balanced Budget Act of 1997, section 309(j)(1) states that the Commission *shall* use competitive bidding to resolve mutually exclusive initial license or permit applications, unless one of the three exemptions provided in the statute applies.

14. The Balanced Budget Act of 1997 left unchanged the restriction that competitive bidding may only be used to resolve mutually exclusive applications. Moreover, the general auction authority provision of section 309(j)(1) now references the obligation under section 309(j)(6)(E) to use engineering solutions, negotiation, threshold qualifications, service regulations, or other means to avoid mutual exclusivity where it is in the public interest to do so. In addition, the portion of the Conference Report that accompanies this section of the legislation emphasizes that notwithstanding the Commission's expanded auction authority, its determinations regarding mutual exclusivity must still be consistent with and not minimize its obligations under section 309(j)(6)(E).

15. Section 309(j)(2), as amended by the Balanced Budget Act of 1997, exempts from auctions licenses and construction permits for public safety

radio services, digital television service licenses and permits given to existing terrestrial broadcast licensees to replace their analog television service licenses, and licenses and construction permits for noncommercial educational broadcast stations and public broadcast stations. The Commission has found that the list of exemptions from our general auction authority set forth in section 309(j)(2) is exhaustive, rather than merely illustrative, of the types of licenses or permits that may not be awarded through a system of competitive bidding. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97–234, *First Report and Order*, (''*Commercial Broadcast Competitive Bidding First Report & Order*''), 63 FR 48615 (September 11, 1998). Left unchanged by the Balanced Budget Act of 1997 is section 309(j)(3)'s directive to consider the public interest objectives in identifying classes of licenses and permits to be issued by competitive bidding.

16. The Conference Report for section 3002(a) of the Balanced Budget Act of 1997 states that the exemption for public safety radio services includes ''private internal radio services'' used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, such as the American Automobile Association (''AAA''). The Conference Report also notes that the exemption is ''much broader than the explicit definition for 'public safety services'' included in section 337(f)(1) of the Communications Act, for the purpose of determining eligibility for licensing in the 24 MHz of spectrum reallocated for public safety services.

5. The statutory changes to the Commission's auction authority brought about by Balanced Budget Act primarily affect those classes of radio service that are referred to generically as ''private services.'' Our use of the term ''private services'' in the context of the 1993 Budget Act's auction exemption referred to those radio services ''that did not involve the payment of compensation to the licensee by subscribers, *i.e.*, that were for internal use.'' *See Competitive Bidding Second Report and Order*. Generally, the private radio services are used by government or business entities to meet their own internal communications needs or by individuals for personal communications, rather than to provide communications services to others. In the *Report and Order*, we use the term ''private services'' broadly to refer to the family of non-broadcast, non-subscriber based fixed or mobile radio services (*i.e.*, radio services that are for internal uses). Broadly speaking, the category of ''private services'' includes the Private Land Mobile Radio Services; parts of the Maritime and Aviation Services; the Private Operational Fixed Service; Amateur and Personal Radio Services. When used in this general sense, ''private services'' also includes the public safety radio services (which fall within the three aforementioned service classifications) as well as frequencies allocated to the Public Safety Radio Pool The *Report and Order* does not revisit any determinations made pursuant to the 1993 Budget Act of those radio services subject to competitive bidding. Rather, here we establish a framework for our future determinations of which radio services may be subject to competitive bidding. For example, we intend to use this framework to guide our decisions in regard to the spectrum bands that are the subject of a separate *Notice of Proposed Rule Making* in which we are proposing to reallocate 27 MHz of spectrum in bands below 3 GHz from Federal Government to non-government use.

C. Framework for Determining Whether Licenses Are Subject to Auction

18. In the *Report and Order*, we evaluate the scope of our spectrum auction authority under section 309(j) and establish a framework for determining whether licenses are subject to auction. First, we consider how the Balanced Budget Act's revision of our auction authority under section 309(j) of the Communications Act affects future determinations of which services may be subject to auction. In particular, this analysis focuses on the application of the public interest factors enumerated in section 309(j)(3) and the Commission's section 309(j)(6)(E) obligation in the public interest to avoid mutual exclusivity in application and licensing proceedings for those radio services that are not specifically exempt from auction under section 309(j)(2). We also recognize the potential for band manager licensing of auctionable private radio services where that licensing mechanism is likely to serve the public interest and otherwise satisfy the Commission's overall spectrum management responsibilities and obligations under the Communications Act.

i. Obligation to Avoid Mutual Exclusivity

19. *Background*. In the *NPRM*, the Commission sought comment broadly on how the Balanced Budget Act's amendments to section 309(j) affect its determinations of which services may be subject to auction. In particular, we asked whether the express reference in section 309(j)(1) to the Commission's obligation to avoid mutual exclusivity under section 309(j)(6)(E) changes the scope or content of that obligation. We also asked how we should apply the public interest factors in section 309(j)(3) in establishing licensing schemes or methodologies under the Balanced Budget Act for both new and existing, commercial and private services. We inquired whether the Commission's previous analysis of its obligation under section 309(j)(6)(E) is still appropriate in view of the revisions to section 309(j)(1) and 309(j)(2), i.e., whether we should continue to evaluate our obligation to avoid mutual exclusivity by weighing the public interest objectives of section 309(j)(3). With respect to services currently using licensing schemes in which mutually exclusive applications are not filed, we asked whether Congress, in emphasizing our obligation to avoid mutual exclusivity, intended that we give greater weight to that obligation and less to other public interest objectives.

20. *Discussion*. Private radio service interests generally argue that the Balanced Budget Act has not expanded the Commission's auction authority, particularly as it applies to private wireless services. They argue that the added reference in section 309(j)(1) to the Commission's obligation under section 309(j)(6)(E) to consider alternatives to mutual exclusivity requires the Commission to give greater weight to the goal of avoiding mutual exclusivity and less to other public interest objectives in determining which wireless services are potentially auctionable. Under these commenters' proposed interpretation, the Commission's first objective in establishing a licensing mechanism for any non-auction exempt service must be to seek a method that avoids mutual exclusivity. In the view of these commenters, only if the Commission determines that mutual exclusivity cannot be avoided, i.e., that the service can only be licensed through processes that result in the filing of mutually exclusive applications, can it consider the public interest factors set forth in section 309(j)(3) for purposes of determining the appropriate

methodology to award licenses through competitive bidding.

21. We disagree with the interpretation of amended section 309(j)(1) advanced by these commenters. The obligation to consider alternatives to mutual exclusivity set forth in section 309(j)(6)(E) has existed since the Commission was first authorized to conduct auctions of spectrum licenses by the 1993 Budget Act. The Commission has consistently interpreted this provision to mean that it has an obligation to attempt to avoid mutual exclusivity by the methods prescribed therein only when doing so would further the public interest goals of section 309(j)(3). See, e.g., Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 GHz and 38.6–40.0 GHz Bands, PR Docket No. 93–253, *Memorandum Opinion and Order*, 64 FR 45891 (August 23, 1999); Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18; Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PR Docket No. 93–253, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 64 FR 33762 (June 24, 1999); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, *Second Report and Order*, 62 FR 41190 (July 31, 1997); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order on Reconsideration*, 62 FR 41225 (July 31, 1997). We conclude that the amendment of section 309(j)(1) by the Balanced Budget Act to add a cross-reference to section 309(j)(6)(E) serves to underscore the Commission's pre-existing obligation, but did not change its fundamental scope or content. More specifically, we conclude that the Balanced Budget Act amendments to section 309(j) do not preclude the Commission from using licensing mechanisms for private services that permit the filing of mutually exclusive license applications if the Commission determines that it is in the public interest to do so.

22. We base our conclusion on several factors. First, nothing in the statutory language suggests that Congress intended to narrow the Commission's discretion to use licensing mechanisms based on mutual exclusivity. The addition of a cross-reference to section 309(j)(6)(E) does not turn avoidance of mutual exclusivity into the paramount goal of the statute, but simply underscores that the Commission should continue to consider alternatives to mutual exclusivity as it did prior to the Balanced Budget Act, i.e., based on whether such alternatives would promote the public interest objectives in section 309(j)(3). Moreover, Congress did not change the language of section 309(j)(6)(E) itself, indicating that it did not intend to change the scope of the Commission's obligation under that provision. Indeed, section 309(j)(6)(E) itself continues to state—as it did prior to the Balanced Budget Act—that the Commission has the ''obligation in the *public interest* * * * to avoid mutual exclusivity, which underscores that the Commission is required to avoid mutual exclusivity only if it is in the public interest to do so.

23. Finally, the plain language of section 309(j)(3) negates the contention that Congress intended that section to be subordinate to section 309(j)(6)(E). Specifically, section 309(j)(3) directs the Commission to consider the public interest objectives specified therein in ''identifying classes of licenses and permits to be issued by competitive bidding, in specifying the eligibility and other characteristics of such licenses and permits, and in designing methodologies for use under this subsection.'' This language makes clear that the public interest objectives of section 309(j)(3) apply broadly to the threshold issue of which licenses should be subject to auction, which necessarily requires consideration in each case of whether to adopt a licensing mechanism based on mutual exclusivity.

24. Our interpretation of section 309(j) is also supported by the legislative history of the Balanced Budget Act. In the Conference Report, Congress explicitly stated that the Balanced Budget Act *expanded* the scope of the auction authority previously conferred by the 1993 Budget Act. However, Congress also expressed concern that the Commission not interpret its expanded auction authority in a way that would reduce its section 309(j)(6)(E) obligations. This language from the Conference Report makes clear that Congress sought continuity rather than change in the Commission's application of section 309(j)(6)(E). Contrary to the assertions of some private services commenters, Congress did not intend to create a new and greater obligation to avoid mutual exclusivity, but rather sought to ensure that in exercising its expanded auction authority, the Commission would continue to give section 309(j)(6)(E) the same weight it had prior to the Balanced Budget Act.

25. We also conclude that this interpretation of the Balanced Budget Act is consistent with the Commission's spectrum management responsibilities. Section 309(j)(3)(D) requires the Commission to promote efficient use of the spectrum, which is a valuable and finite public resource. To accomplish these objectives, the Commission must have the freedom to consider all available spectrum management tools and the discretion to evaluate which licensing mechanism is most appropriate for the services being offered. *See* Amendment of the Commission's Rules Regarding Multiple Address Systems, WT Docket No. 97–81, Report and Order, (''*MAS Report and Order*''), 65 FR 17445 (April 3, 2000). Thus, as the D.C. Circuit has recognized, the Commission is not required to adopt a licensing process that avoids mutual exclusivity but undermines the public interest goals embodied in the statute. Subsequent to the adoption of the Balanced Budget Act, the D.C. Circuit concluded that the section 309(j)(6)(E) obligation does not foreclose new licensing schemes that are likely to result in mutual exclusivity. If the Commission finds such schemes to be in the public interest, the court states, it may implement them ''without regard to [S]ection 309(j)(6)(E) which imposes an obligation only to minimize mutual exclusivity 'in the public interest' and 'within the framework of existing policies.' '' We conclude that the Balanced Budget Act did not change the nature of the public interest analysis required of the Commission when deciding the licensing process for a particular service. Therefore, in establishing processes for assigning initial licenses, the Commission will continue to fulfill its obligation under section 309(j)(6)(E) and consider the public interest goals of section 309(j)(3).

26. We emphasize that our conclusion applies to decisions regarding the licensing of existing services as well as future services. We recognize that many private wireless licensees contend that we should avoid auctioning private wireless spectrum that is currently licensed through processes that avoid mutual exclusivity. These commenters assert that where the Commission has used licensing methods in the private services that avoid the filing of mutually exclusive applications (e.g., first-come, first-served licensing, shared use, frequency coordination), the Balanced Budget Act requires us to continue

using these methods and prohibits us from converting to licensing methods that would result in mutual exclusivity.

27. We reject this interpretation of the statute. Prohibiting the Commission from considering changes to licensing methodologies applicable to existing services would contravene the intent of the Balanced Budget Act and restrict the Commission's ability to act in the public interest. Thus, we believe it remains fully within the Commission's authority to convert from a licensing method that avoids mutual exclusivity to one that is based on mutual exclusivity and auctions, as we have done in the case of certain services in the past. *See Second Report and Order*, and Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order and Second Notice of Further Rule Making*, (''*39 GHz Report and Order*''), 63 FR 6079 (February 2, 1998) and 63 FR 3075 (January 21, 1998). At the same time, we believe that in order for this option to be considered in any service, the Commission, as part of its public interest analysis, should give significant consideration to the effectiveness of existing licensing mechanisms that avoid mutual exclusivity, and should weigh the potential costs of changing such mechanisms against the potential benefits.

ii. License Scope

28. *Background*. In the *NPRM*, the Commission sought comment on whether the use of geographic area licensing for non-exempt private radio services would further the public interest goals of section 309(j)(3). We solicited comment on the costs and benefits of implementing geographic area licensing in the private radio frequency bands and asked whether licensing schemes other than geographic area licensing would better serve the public interest. In deciding if geographic area licensing would be appropriate for a given radio service or class of frequencies, we asked whether we should consider the actual purpose for which the spectrum is used or proposed to be used, as well as the purpose for which the spectrum is currently allocated. We inquired whether the use of geographic area licensing would speed the assignment of new channels and facilitate further build-out of wide-area systems. We also suggested that the shared private service bands may be so heavily used that adopting a geographic area licensing scheme may not serve any purpose because so little ''white space'' would be available to geographic area licensees that there would be no interest in applying for the geographic area licenses. The Commission further sought comment on the likely effects of geographic area licensing on incumbent systems and potential new entrants for private radio services.

29. *Discussion*. The Commission has previously concluded with respect to many commercial services that geographic area licensing is a highly efficient licensing scheme. *See, e.g.*, Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, *Second Report and Order and Further Notice of Proposed Rulemaking*, 62 FR 11616 and 62 FR 11638 (March 12, 1997). In addition, in the rule making proceeding implementing competitive bidding to award licenses in the 39 GHz band, the Commission concluded that predetermined service areas provide a more orderly structure for the licensing process and foster efficient utilization of the spectrum in an expeditious manner. *See 39 GHz Report and Order. See also 800 MHz Second Report and Order*, 62 FR 41190 (July 31, 1997). Among other benefits, it facilitates aggregation by licensees of smaller service areas into seamless regional and national service areas, allows development of strategic and regional business plans, provides licensees with greater build-out flexibility and is efficient for the Commission to administer. Our decisions to establish geographic area licensing in commercial services have been based on our commitment to serve the public interest as required by section 309(j)(3).

30. As discussed earlier, we have concluded that section 309(j)(6)(E) does not prevent the Commission from adopting licensing processes, such as geographic area licensing, that serve the public interest but happen to result in the filing of mutually exclusive license applications. Furthermore, even where we decide in a specific service that it is in the public interest to continue site-by-site licensing, such a decision does not necessarily preclude the use of auctions where competing applicants seek to operate at the same site on the same frequency. *See Commercial Broadcast Competitive Bidding First Report and Order*. We have also rejected commenters' arguments that the Commission is required by the Balanced Budget Act to retain current site-based licensing schemes in existing private services. Nonetheless, we recognize, as many commenters have pointed out, that the decision to convert from current site-based licensing methods to geographic licensing should not be made unless it is clear that the benefits of making the change outweigh the costs. Based on the record in this proceeding, we see no reason to make such an across-the-board change to existing licensing processes in private services. Therefore, we will not adopt geographic area licensing rules for existing private services in this rulemaking. Instead, with respect to private services, the Commission will continue to make determinations on a service-by-service basis of whether to adopt geographic area licensing, site-by-site licensing, or any other licensing scheme based on its obligation under section 309(j)(6)(E) and the public interest considerations of section 309(j)(3).

iii. Band Manager Licenses

31. *Background*. In the *NPRM*, we sought comment on whether to establish a new class of licensee called a ''band manager'' in the private radio services. We described band managers in the *NPRM* as a class of Commission licensee that engages in the business of making its spectrum available for use by others through private, written contracts. We solicited comment on a broad range of issues relating to how band manager licenses should be defined, and whether the public interest would be served by using band manager licensing to address current and projected needs for private internal radio services. We inquired whether the concept of a band manager fits within the Commission's overall spectrum management responsibilities and obligations under the Communications Act. We also asked a number of questions about whether and when a band manager licensing approach may be more effective relative to alternative methods of licensing private internal communications services. Finally, we sought comment on a full range of license implementation issues, including whether it would be necessary to have more than one band manager in each geographic license area and what types of ownership and control requirements might be appropriate for band managers in the private services.

32. *Discussion*. As discussed in the following paragraphs, we believe that band manager licensing is a viable mechanism that should be considered for licensing in spectrum allocated for the private services. We also regard band manager licensing as an option to be considered in spectrum in which commercial services are authorized, as evidenced by our recent decision to license band managers in the 700 MHz guard bands. (The lessees of 700 MHz guard band spectrum may be either commercial service providers or private

users.) In addition, we have sought comment on whether band managers licensing would be appropriate in the 3650–3700 MHz band (and in the 4.9 GHz band should we find that the public interest supports the pairing of these bands). *See* Amendment of the Commission's Rules With Regard to the 3650–3700 MHz Government Transfer Band, ET Docket No. 98–237; 4.9 GHz Band Transferred from Federal Government Use, WT Docket No. 00–32, *First Report and Order and Second Notice of Proposed Rule Making*, 65 FR 69451 and 65 FR 69612 (November 17, 2000). However, because licensees in commercial services typically operate with fewer restrictions and in a more market-driven environment than private licensees, there may be less need in some commercial services to designate band managers as a specific ''class'' of licensees. Instead, a potential issue is the degree to which all commercial licensees should have the option to use some or all of their spectrum in the same manner as a band manager, *i.e.,* to make spectrum available to third party users without the need for prior Commission approval, while retaining primary responsibility for compliance with the Commission's rules. We plan to address this issue more broadly in our upcoming secondary markets proceeding, which will address issues related to spectrum leasing in wireless services generally. *See* Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00–230, *Notice of Proposed Rule Making*, FCC 00–402 (adopted Nov. 9, 2000) (''*Secondary Markets Notice*'') (Commission initiative to develop rules and policies to promote secondary markets in radio spectrum). Therefore, we defer further discussion of band managers in the commercial services context to that proceeding. The *Report and Order* sets forth a framework to guide our determination in future proceedings concerning private services as to the circumstances under which we might use band manager licensing as an alternative or an addition to other licensing methods. We also review some of the considerations that we might take into account in defining a band manager's rights and responsibilities in the context of particular services. We emphasize that the *Report and Order* does not adopt band manager licensing in any existing private service, nor do we make any specific decision to do so in any future service. Rather, we reserve for future service-specific rulemaking proceedings the question of whether to use band manager licensing in each case. Such determinations will be based on careful analysis of the public interest considerations of section 309(j) of the Communications Act as they apply to the specific characteristics, uses, and demands of the service.

33. Since the *NPRM* was adopted, we have implemented a form of band manager licensing for the first time in the *700 MHz Second Report and Order*. In that proceeding, we concluded that band manager licensing would be an effective and efficient way to manage the 700 MHz Guard Band spectrum while minimizing the potential for harmful interference to public safety operations in adjacent bands. We also found that band manager licensing in the 700 MHz guard bands would enable parties to more readily acquire spectrum with a minimum of Commission involvement. We adopted licensing rules for Guard Band Managers that were based on specific policy objectives that we considered relevant to those bands. To ensure that Guard Band Managers would make their spectrum available to third parties, we required that Guard Band Managers act solely as spectrum brokers, prohibited them from using spectrum for their own private internal communications or to provide telecommunications services, and limited the amount of spectrum that they may lease to affiliated entities. To further our objective of making the 700 MHz guard band spectrum available to a wide range of users, we adopted certain requirements to ensure fair and nondiscriminatory access to the spectrum by potential users.

34. Our recent adoption of Guard Band Manager licensing in the 700 MHz proceeding should help guide us in evaluating whether to adopt band manager licensing in future proceedings. There may be instances where we determine that band manager licensing is not appropriate, and where band manager licensing is adopted, we may adopt rules governing band manager activity that differ from those applicable to Guard Band Managers. However, we reject the view that band managers are inappropriate for private services generally.

35. A principal argument advanced by opponents of band manager licensing in private services is that in comparison to other licensing methods, band manager licensing will necessarily make it more difficult and costly for private spectrum users to obtain spectrum. We do not agree. Band manager licensing is a potential response to the underlying scarcity of spectrum for private radio services. Repeatedly, we have recognized this problem and have attempted to address it through regulatory initiatives aimed at increasing spectral and economic efficiencies in the use of private radio spectrum. In the absence of market-based mechanisms to promote efficient spectrum use, however, private radio spectrum has become congested and ''users have little incentive to use that resource more efficiently because any privately initiated attempt to improve efficiency would confer benefits on all users of the shared spectrum, with only a fraction of these benefits accruing to the party undertaking the effort.'' By contrast, band manager licensing is a market-based mechanism that can create incentives for efficient spectrum use. Because band managers would be able to charge private users for spectrum use, users would likely be discouraged from engaging in spectrally inefficient and low value uses. In addition, band managers may realize greater economies of scale than existing private radio licensees. Finally, as in the case of the 700 MHz guard bands, we have the option of licensing more than one band manager in each license area, if we think it important to ensure that potential spectrum users have a choice of band managers. These factors will help ensure that efficiencies and cost savings associated with band manager licensing are passed on to private spectrum users.

36. We also disagree with the view that band manager licensing inevitably results in a concentration of private spectrum in the hands of a few licensees while depleting the spectrum available to others. To the contrary, we believe that band manager licensing can increase the diversity of users of private spectrum. With a band manager, different types of spectrum users would have broad flexibility to satisfy their particular spectrum needs with fewer transactional costs and regulatory burdens than are associated with acquiring a full-term license under the Commission's existing license assignment and partial assignment procedures. Because band manager licensing may result in different types of users being able to access the same spectrum, we believe that this mechanism is consistent with the congressional intent underlying section 309(j)'s directive to encourage diversity in licensing.

37. In addition to allowing for wider variety of users, band manager licensing is intended to facilitate apportionment of spectrum in a more dynamic fashion than existing licensing procedures permit, thus making spectrum more responsive to market demands and technological changes. We note that the marketplace is increasingly responding

to such demands, with system operators increasingly offering services that have historically been provided only over private radio frequencies. Band manager licensing is likely to accelerate this trend toward more efficient use of private radio spectrum. Rather than deplete spectrum, band manager licensing approaches will be developed with the objective of affording spectrum users additional options to access spectrum to meet their particularized needs.

38. Some commenters argue that band manager licensing is an improper delegation of the Commission's spectrum management and licensing authority under the Communications Act. We previously concluded in the 700 MHz guard band proceeding that band manager licensing is fully consistent with our statutory spectrum management obligations. For a number of reasons, we continue to believe that conclusion is correct, and we reiterate it today. First, because band managers are to be licensed and regulated by the Commission, the Commission fulfills its statutory obligation under section 309(a) to determine whether licensing of spectrum will serve the public interest, convenience, and necessity. Second, we do not regard the creation of band managers as an improper delegation of our regulatory authority over the use of spectrum. Band managers must operate and make spectrum available subject to the Commission's rules and oversight. Allowing band managers to make frequencies available to end users is analogous to the present frequency coordination process that requires applicants in some private services to use a frequency coordinator to select a frequency that will most effectively meet the applicant's needs while minimizing interference to licensees already using a given frequency band. We view band managers as engaging in activities similar to those of a coordinator, though with greater rights and responsibilities to manage the spectrum covered by its license, consistent with technical limitations and other regulations for the licensed radio bands.

39. We also reject the view that band manager licensing is inherently inconsistent with the requirements of section 310(d) of the Communications Act. Section 310(d) prohibits the transfer of a radio license or any rights thereunder without Commission approval. Generally speaking, one of the Commission's primary concerns in any analysis under section 310(d) is to determine what party or parties may be held accountable for activities undertaken pursuant to a Commission license. For example, in the case of broadcast auxiliary facilities, the Commission has emphasized that it would hold the broadcast licensee responsible for any interference or misuse of the facilities that occurs during operation by the non-licensed user. *See* Amendment of Part 74, Subpart F of the Commission's Rules to Permit Shared Use of Broadcast Auxiliary Facilities with Other Broadcast and Non-broadcast Entities and to Establish New Licensing Policies for Television Broadcast Auxiliary Stations, BC Docket No. 81–794, *Report and Order,* 48 FR 17081 (April 21, 1983). The principle of licensee responsibility may be found throughout the Commission's rules. *See, e.g.,* Implementation of Section 3(n) of the Communications Act—Regulatory Treatment of Mobile Services, GN Docket No. 93–252, *Second Report and Order,* 59 FR 18493 (April 19, 1994); 47 CFR 90.179(b) (licensee of shared radio station is responsible for assuring that facility is used in compliance with Commission rules); 21.13(f) (licensee must retain effective control where day-to-day management and operation of facilities are carried out by manager). We emphasize, however, that any analysis of *de facto* control over a band manager license must be considered in the context of this unique licensing scheme, and our express authorization of these activities pursuant to a band manager license application. In the *700 MHz Second Report and Order,* we concluded that our Guard Band Manager rules allowing licensees to lease spectrum to third parties were consistent with the requirement that licensees retain ultimate control of their licenses. For example, we provided Guard Band Managers with full authority and the duty to take whatever actions are necessary to ensure third-party compliance with the Act and our rules. We also stated that a Guard Band Manager has the right to suspend or terminate its lessee's operations if the lessee's system is causing harmful interference or otherwise violating Commission rules. We believe that the approach taken in the 700 MHz Guard Band proceeding demonstrates that band manager licensing can be implemented consistently with the requirements of section 310(d). To the extent that we adopt alternative models for band manager licensing in future service-specific proceedings, we believe that issues relating to the statutory framework for such models can and should be addressed in those proceedings.

40. While we conclude that band manager licensing should be considered as an option in the licensing of private services, we recognize that there are also arguments in favor of retaining the current site-by-site licensing approach in existing private radio services, as many commenters advocate. Commenters raise legitimate concerns about the costs to spectrum users, both in terms of financial costs and delays in making spectrum accessible, that may be associated with changing a licensing scheme in an existing service. In light of these considerations, we have no plans at this time to implement band manager licensing in existing private radio bands that are licensed on a site-by-site basis. We will continue to evaluate this issue on an ongoing basis. As many of the commenters who oppose band manager licensing acknowledge, demand for private radio spectrum is increasing and available spectrum is scarce. Compared with transactional costs and time periods associated with acquiring a full-term license under the Commission's existing licensing regimes, band manager licensing may have advantages because band managers may be able to complete frequency coordination and authorize wireless operations with significantly lower transactional costs and in less time. We believe that band manager licensing is another method that under some circumstances can help us progress towards greater efficiency in the use of private radio bands.

41. While we are hopeful that band manager licensing can yield efficiencies in existing spectrum use, we also agree with private radio users that this is a complement to rather than a substitute for pursuing new spectrum allocations. We therefore intend to continue to explore the need for new spectrum allocations to address the needs of private and public safety users. We also believe that band manager licensing should be carefully considered as a licensing option for newly-allocated spectrum. For example, we have recently initiated a proceeding to reallocate 27 MHz of spectrum in bands below 3 GHz from Federal Government to non-government use, and have sought comment on proposals for band manager licensing in portions of that spectrum.

42. We also believe that band manager licensing can be structured to prevent the types of problems that some commenters contend will occur, including problems of interference, loss of spectrum efficiency, and inadequacy of user access and service. Although the rights and obligations of band managers may vary somewhat from service to service, we anticipate that band

managers will generally have economic incentives to eliminate interference so as to ensure that end users receive quality service. Band managers will also be required to coordinate the use of frequencies among end user clients to minimize interference, and will be obligated to ensure that their lessees satisfy the interference protection requirements set forth in the Commission's rules both as to incumbent private radio licensees and licensees in adjacent frequency bands. Band managers will also be responsible for resolving interference conflicts among their customers and, in the first instance, among their customers and neighboring users of spectrum licensed to other band managers or other licensees. We have recognized that one way to allow greater flexibility in the use of spectrum is to permit licensees to negotiate arrangements among themselves to control interference rather than rely on mandatory technical rules. *See Spectrum Policy Statement.*

43. Band managers also have the potential to promote more efficient use of their licensed spectrum due to their financial incentive to maximize spectral efficiency and use. This incentive is likely to encourage band managers to reach private commercial agreements with incumbents, other band managers and adjacent licensees on effective spectrum management. The band manager will be responsible for managing a significant portion of spectrum and will attempt to maximize its use by finding additional third party users. In this way, band manager licensing may achieve greater efficiencies than existing licensing schemes in appropriate circumstances. Similarly, we find little merit in assertions that band managers will engage in unfair or discriminatory behavior and warehouse spectrum. We are confident that band managers will have incentives to open the use of the spectrum for all eligible users. Nonetheless, we will consider whether it is appropriate for band managers in other bands to be subject to the same types of rules as 700 MHz Guard Band Managers regarding fair and nondiscriminatory access to the band manager's spectrum, and limits on the type of restrictions that band managers may impose on their customers' use of the spectrum. If circumstances warrant, moreover, the Commission might consider imposing reasonable access standards or other requirements to forestall anticompetitive behavior.

44. In assessing whether a band manager licensing mechanism may be appropriate for a specific private services band, we intend to look at a number of factors. For example, we might consider whether there are entities who can effectively perform the functions of a band manager, and whether other licensing options may be overly cumbersome or inefficient. Our decisions on whether and how to license band managers in other bands may also be guided by our experience with the 700 MHz Guard Bands. However, the band manager rules we adopt in other bands may differ in some or all respects from our Guard Band Manager rules. As an initial matter, if we decide to license band managers in other bands, we will determine whether the spectrum should be licensed exclusively to band managers or to band managers along with other types of licensees. In considering band manager licensing, we will decide whether the band manager may be solely a broker of spectrum or may also use its licensed spectrum for its own internal communications or to provide telecommunications services.

45. If we permit band managers to use their spectrum in addition to leasing it, we will also consider whether rules are needed to ensure that band managers continue to perform their core spectrum management functions. Thus, if we determine that a band manager will not be limited to acting as a spectrum broker, we will also consider whether it is appropriate to limit the amount of spectrum that a band manager may retain for its own use. In addition, we will consider whether to adopt rules concerning the types of entities that may lease spectrum from a band manager. For example, if we decide to limit the amount of spectrum that a band manager may employ for its own communications needs or service offerings, we might advance that regulatory objective by limiting the amount of spectrum that a band manager leases to affiliated entities. We may provide the band manager in a given band flexibility to lease its spectrum for a wide range of uses, including fixed or mobile, private or commercial radio services. Alternatively, we could adopt eligibility restrictions for the band managers similar to those we have historically adopted for licensees in existing private radio services. *See, e.g.,* 47 CFR 90.35(a) (eligibility for part 90 licenses on Industrial/Business Pool frequencies).

46. We believe that the framework outlined presents a workable set of guidelines in our future considerations of whether and how to license band managers in private radio services, and how to advance the policy objectives we establish for the bands under consideration. We emphasize that, where we find band manager licensing to be appropriate, we intend to seek input on how band manager licenses can be most appropriately defined for the service in a manner that affords users the broad flexibility to access spectrum, maximizes efficient use of the spectrum, and yields greater benefits than site-by-site or other traditional licensing techniques.

D. Auction Design for Private Radio Spectrum Deemed Subject to Auction

47. We next discuss issues of auction design and implementation for those services that were not subject to auction under the 1993 Budget Act but may be determined to be subject to auction under our revised auction authority. The services that may be determined to be subject to auction under our expanded auction authority are, by and large, private radio services which are presently licensed under procedures that generally do not result in the filing of mutually exclusive applications. Thus, we next consider issues of auction design and implementation for those services that may be subject to auction in the future.

i. Competitive Bidding Methodology and Design

48. *Background.* We have concluded that section 309(j), as amended by the Balanced Budget Act, gives the Commission authority to conduct auctions in the private services if, subject to its obligation to avoid mutual exclusivity, the Commission determines that the use of competitive bidding would serve the public interest. In the event that the Commission adopts a licensing scheme that results in mutual exclusivity, the Commission seeks to develop a competitive bidding process that is tailored to the specific characteristics of the private radio services, the various purposes for which spectrum in those services is used, and the needs of the various types of entities holding licenses in those services. In the *NPRM,* we stated that § 1.2103(a) of our rules sets forth the various types of auction designs from which we may choose to award licenses for services or classes of services subject to competitive bidding. We also pointed out that under section 309(j) the Commission has authority to design and test other auction methodologies. In light of these options, we sought comment generally on the types of competitive bidding designs and methodologies to be considered for any private radio services that may be determined to be auctionable as a result of the Balanced Budget Act. We also asked about the frequency with which we should

conduct auctions of private radio services spectrum that we determine is auctionable, and whether we should conduct auctions at regularly scheduled intervals. In addition, we asked whether certain procedures such as bidding credits and spectrum caps would be appropriate in the private radio services.

49. *Discussion.* Although we received little public comment on these issues, we believe that the specialized nature of private radio services merits consideration of changes to our general auction design and procedures. We intend to consider proposals to amend our competitive bidding methodology for specific private radio services on a service-by-service basis. We may, for instance, decide to implement procedures such as bidding credits, spectrum caps, and auctions at regularly scheduled intervals. We have provided bidding credits to eligible applicants in many of our previous auctions and believe that applicants for licenses in the auctionable private radio services should also be eligible to receive such financial benefits provided they meet the necessary criteria. *See, e.g.,* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, WT Docket No. 97–82, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94–32, *Third Report and Order and Second Further Notice of Proposed Rule Making (''Part 1 Third Report and Order),* 63 FR 2315 (January 15, 1998) and 63 FR 770 (January 7, 1998) (modified by *Erratum,* DA 98–419 (rel. Mar. 2, 1998)) (adopting small business bidding credits). *See also* 47 CFR 1.2110 (definition of small business designated entities for purposes of FCC's competitive bidding processes). We further believe that scheduling auctions for licenses in the private services at regular intervals would be particularly beneficial to the private wireless industry because private internal radio service licensees may not be able to wait a significant amount of time to obtain authorizations for the frequencies they need to conduct their businesses. In addition, we confirm our determination made in the *Part I Third Report and Order* to continue to define small businesses for purpose of private wireless auction rules based on the characteristics and capital requirements of the specific service.

ii. Eligibility Requirements

50. *Background.* The *NPRM* solicited comment on a broad range of questions relating to eligibility for participation in spectrum auctions for private radio services. In particular, we sought comment on whether to restrict eligibility to participate in auctions for private wireless services so that we might be able to tailor a competitive bidding system to afford private wireless users reasonable opportunities to obtain sufficient spectrum to meet the needs of their day-to-day business operations. We requested comment on whether participation in private wireless spectrum auctions should be limited to certain types of entities, such as small businesses, non-commercial entities or public safety organizations, and whether to afford certain classes of applicants priority status in an auction.

51. *Discussion.* With respect to services that are currently restricted to private radio eligibles, we have no plans to change existing eligibility and use rules. Our decision of whether to use competitive bidding to assign licenses is independent of any determination relating to licensee eligibility.

52. As to newly allocated spectrum, we will make decisions on eligibility at the time we promulgate specific service rules for those bands. In recent years, the Commission has generally favored open eligibility rather than eligibility restricted to particular types of entities. We have taken this approach based on the finding that open eligibility generally promotes efficiency in spectrum markets and results in the award of licenses to those who value them most highly. Nevertheless, we recognize that this general approach may not be appropriate in all cases and we may decide to restrict eligibility in particular cases if such restrictions are consistent with our spectrum management responsibilities under section 309(j).

iii. Processing of New Applications

53. *Background.* In the *NPRM,* we posed a number of questions concerning the implementation of competitive bidding for services in which licenses will be assigned by auction for the first time. In particular, we requested comment on measures that might be necessary to prevent applicants from using the current application and licensing processes to engage in speculative activity prior to our adoption of auction rules, such as temporary application freezes or interim rules imposing shorter time periods for construction or build-out.

54. *Discussion.* In the event we decide to adopt competitive bidding for a private radio service, we will continue to make service-by-service determinations as to whether to temporarily suspend acceptance of applications for new licenses, amendments, or major modifications, or adopt interim rules imposing shorter time periods for construction or build-out. Commenters uniformly oppose the use of application freezes, noting that they can be disruptive to existing operations and can often last longer than initially anticipated. We are mindful that even short-term freezes have the potential to harm incumbents as well as potential new entrants and, by extension, the public.

55. We observe that the Commission has delegated authority to impose application filing freezes in the private wireless services to the Chief of the Wireless Telecommunications Bureau. *See* 47 CFR 0.131; 0.331. While we defer to the Bureau's expertise and experience in making such determinations, we believe that the Bureau should be guided by a principle of using the least restrictive means available to deter speculative applications. Generally, the Bureau has carefully balanced the benefits and costs to incumbent users, new entrants and the public of applying such measures.

E. Exemption from Competitive Bidding for Public Safety Radio Services

56. The following discussion focuses on the scope of section 309(j)(2)(A)'s exemption for ''public safety radio services,'' and mechanisms that may be used in the event we receive mutually exclusive applications for public safety radio services.

i. Scope of Public Safety Radio Services Exemption

57. *Background.* Section 309(j)(2)(A), as amended by the Balanced Budget Act, states that the Commission's auction authority does not extend to licenses and permits issued

(A) For public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—

used to protect the safety of life, health, or property; and

(ii) are not made commercially available to the public;

As we stated in the *NPRM,* this exemption from the Commission's auction authority is of particular importance to determining the auctionability of wireless spectrum. In the *NPRM,* we sought comment on the various elements of the statutory exemption.

58. *Discussion.* As discussed in greater detail in the following paragraphs, we conclude that the statutory exemption for public safety services applies not only to traditional

public safety services such as police, fire, and emergency medical services, but also to services designated for non-commercial use by entities such as utilities, railroads, transit systems, and others that provide essential services to the public at large and that need reliable internal communications in order to prevent or respond to disasters or crises affecting their service to the public. We also conclude that the public safety exemption applies only to services in which these public safety uses comprise the dominant use of the spectrum. Thus, services in which such uses are not dominant (and in which mutual exclusivity occurs) are not statutorily exempt from auctions, even if some individual licensees in the service may choose to use the spectrum for public safety purposes as defined by the statute.

59. In applying this analysis to existing private services, we conclude that spectrum currently allocated to the Public Safety Radio Pool, to the extent it is licensed on an exclusive basis, is within the scope of the statutory exemption. We also conclude that the exemption does not apply to exclusively licensed spectrum in the 220, 800, and 900 MHz bands allocated to Industrial/Land Transportation and Business Radio use, nor does it apply to exclusive private land mobile radio frequencies in the 470–512 MHz band, because the dominant use of these bands is not ''public safety'' use as defined by section 309(j)(2)(A). *See* 47 CFR 90.311(a)(1) (permitting a wide variety of users in the 470–512 MHz band, including Business Radio Service eligibles). With respect to other private services that are not exclusively licensed, we do not need to determine the applicability of the public safety exemption at this time because mutual exclusivity does not occur in these services.

60. We do provide, however, the following guidance regarding our interpretation of the public safety exemption, and discuss the factors we will consider in assessing its applicability to future situations. As a threshold matter, we find that the exemption should be evaluated in terms of its application to particular services rather than to particular classes or groups of licensees within a service. The statutory language provides that the exemption applies to ''public safety radio services.'' While the legislative history of the Balanced Budget Act refers to particular ''users'' as being exempt, we believe that this language is best interpreted as illustrating the types of services that fall within the new statutory term, *i.e.,* services like those used by the entities referenced in the legislative history. Because the applicability of the exemption to any service must be decided before the service is licensed, our analysis in each case must be based on the use and eligibility rules that we establish for the service. We therefore agree with the majority of commenters that delineating the scope of the exemption is a matter of determining whether the rules for a particular service cause it to fall within the definition of a ''public safety radio service,'' rather than attempting to predict the uses of spectrum that will develop after licensing occurs. We therefore conclude that the exemption can apply only to spectrum that the Commission specifically allocates for the particular uses that Congress intended to benefit. We note that the public safety radio services exemption does not preclude the Commission from allocating additional spectrum only for traditional public safety services as defined by part 90 of the Commission's Rules. We discuss each of the elements of the statutory exemption in turn.

61. *Private Internal Radio Services.* The statutory public safety exemption includes ''private internal radio services'' used for public safety purposes. In the *NPRM,* we proposed to define ''private internal radio services'' by adapting the part 90 definition of ''internal system'' to also include fixed services (which are governed by part 101). The commenters broadly support adopting the part 90 definition for purposes of determining this element of the statutory exemption. We therefore adopt this definition, *i.e.,* we define a ''private internal radio service'' as a service in which the licensee does not make a profit, and all messages are transmitted between fixed operating positions located on premises controlled by the licensee and the associated fixed or mobile stations or other transmitting or receiving devices of the licensee, or between mobile stations or other transmitting or receiving devices of the licensee.

62. We also requested comment on whether the ''private internal'' use definition should include services in which licensees operate systems on a not-for-profit basis and under a cost-sharing agreement, on a cooperative basis, or as a multiple-licensed system for internal communications to support their own operations. Consistent with most of the comments addressing this issue, we now decide that once we deem a particular service to be a public safety radio service, the spectrum will be auction-exempt even if some of the users operate their systems under some type of cost-sharing arrangement or through multiple licensing. We note, however, that the services on which such use is permitted currently (*e.g.,* Private Land Mobile Radio Services) are licensed in a manner that does not give rise to mutual exclusivity, so that it is not necessary at this time to consider the applicability of the exemption to these services.

63. *State and Local Governments.* The exemption includes ''private internal radio services'' used by both public and private entities, *i.e.,* ''state and local governments and non-government entities.'' In the *NPRM,* we requested comment on our tentative conclusion that we should presume that all state and local government entities are eligible for licensing in the public safety radio services without any further showing as to eligibility, rather than require all state and local government entities to demonstrate their eligibility for licensing in the public safety radio services. In establishing eligibility for licensing in the public safety spectrum in the 700 MHz band, the Commission concluded that all state and local government entities would be presumed eligible without further showing as to eligibility. *See* The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010, WT Docket No. 96–86, *First Report and Order and Third Notice of Proposed Rule Making,* 63 FR 58645 and 63 FR 58685 (November 2, 1998). The Conference Report accompanying the Balanced Budget Act makes clear that Congress intended the public safety radio services exemption to be broader than the definition of ''public safety services'' eligible for licensing in the 700 MHz band, *i.e.,* to include a larger universe of services. Commenters addressing this issue agree that the Commission should presume eligibility for state and local government entities. Consequently, we conclude that all state and local government entities are eligible for licensing in the public safety radio services without any further showing as to eligibility, subject to the statutory requirements for spectrum to be deemed auction-exempt.

64. *Non-government Entities.* In the *NPRM,* we requested comment on whether we should establish any eligibility criteria for non-government entities (NGOs) to ensure that public safety radio services spectrum licensed to these entities is used to protect the safety of life, health, or property and is not made commercially available to the public. Most commenters addressing this issue oppose the imposition of eligibility restrictions, such as

governmental approval requirements. We agree. A statutory analysis supports this conclusion. The definition for ''public safety services'' in section 337(f) of the Communications Act requires NGOs to be authorized by a governmental entity in order to be eligible for public safety spectrum in the 764–776/794–806 MHz (700 MHz) band, but the public safety radio services exemption in section 309(j)(2) contains no such condition. This distinction indicates that Congress did not intend to subject NGOs to such requirements in order to be eligible for public safety radio service spectrum. Accordingly, we conclude that we shall not establish any eligibility criteria for NGOs separate and apart from the eligibility requirements for each public safety radio service.

65. Section 309(j)(2)(A) also provides that the exemption includes services used by not-for-profit organizations providing emergency road services. The legislative history to the Balanced Budget Act reflects that this service exemption includes ''radio services used by not-for-profit organizations that offer emergency road services, such as the American Automobile Association,'' and explains that the Senate ''included this particular exemption in recognition of the valuable public safety service provided by emergency road services.'' The Conference Report specifies that this exemption was not meant to include ''internal radio services used by automobile manufacturers and oil companies to support emergency road services provided by those parties as part of the competitive marketing of their products.'' The statute makes a specific distinction between for-profit and not-for-profit entities in this context. The statute does not make this distinction in any other context with respect to the exemptions from competitive bidding. We conclude that a radio service used by for-profit entities providing emergency road services is not auction-exempt. The for-profit nature of such entities takes them outside the scope of the emergency road services exemption, even if they arguably otherwise meet the statutory criteria.

66. *Protection of Life, Health, or Property.* Congress requires that the exemption apply to private internal services used by state and local governments and non-government entities to protect life, health, or property. Thus, the most prominent issue in delineating the scope of the exemption is to determine which services are ''used to protect the safety of life, health, or property'' within the meaning of the statute.

67. As a threshold question, we must determine what proportion of users in a given service must be the type of user that Congress intended to be able to make use of exempt spectrum, in order for the service to be deemed a public safety radio service. For example, is a service auction-exempt so long as any of the users within that service are qualified to obtain such spectrum? Or must all, or the majority, of the entities within the service, be qualified to obtain such spectrum? In the Multiple Address System proceeding, we looked to the ''dominant'' or ''primary'' use of each band to determine whether to assign it by competitive bidding. In other words, we examined whether the majority of users within a given band are qualified to obtain auction-exempt spectrum, in order to determine whether that band should be designated as auction-exempt. We will use the same approach here.

68. In order to determine whether a given service is primarily utilized by the type of user Congress intended to exempt from competitive bidding, we must determine what users Congress intended to include within the exemption. In the *NPRM,* we tentatively concluded that Congress intended to include those users of spectrum currently allocated for traditional public safety uses. Specifically, we proposed to designate the following spectrum as exempt from assignment by competitive bidding procedures:

a. Private Land Mobile Radio Services currently assigned to the Public Safety Radio Pool. This pool is comprised of those services formerly housed in the Public Safety Radio Services and the Special Emergency Radio Services. *See* 47 CFR 90.16. The Public Safety Radio Services included the Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, and Emergency Medical Radio Services. *See* 47 CFR part 90, subpart B, Note, former § 90.15 (1997). *See* 47 CFR 90.16. The Special Emergency Radio Service covered the licensing of radio communications of hospitals and clinics, ambulance and rescue services, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, persons or organizations in isolated areas, and emergency standby and repair facilities for telephone and telegraph systems. *See* 47 CFR part 90, subpart C, Note, former § 90.33 (1997).

b. Public safety spectrum in the 700 MHz band.

c. The ten 220 MHz band non-nationwide channel pairs allocated for the exclusive use of Public Safety eligibles.

d. The two contiguous channel pairs in each of the thirty-three inland VHF Public Coast areas set aside for public safety users. *See,* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order,* PR Docket No. 92–257, 63 FR 40059 (July 27, 1998).

We now conclude that the portions of spectrum listed are public safety radio services for purposes of eligibility for the exemption. We also find that the five channel pairs in the 932/941 MHz Multiple Address Systems bands designated for Federal Government and/or public safety use as defined by part 90 of the Commission's rules fall within the exemption.

69. As stated earlier, we believe that Congress intended for the exemption to include a larger universe of uses than traditional public safety and the legislative history of the Balanced Budget Act provides guidance regarding the intended further scope of the exemption. Specifically, the Conference Report states that the exemption for public safety radio services includes the private internal radio services used by ''utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments.'' The inclusion of private ambulances and volunteer fire departments is due to the fact that the services they perform supplement or, in some areas, replace traditional public safety functions ordinarily provided by local governments. Accordingly, we conclude that spectrum bands, the dominant use of which are by entities that use their communications systems to perform such public safety services, should be exempt from auction.

70. However, the other entities identified in the Conference Report—utilities, pipelines, metropolitan transit systems and railroads—do not have, as their primary missions, traditional public safety functions. Utilities and pipelines exist to bring, among other things, gas, water and electricity to consumers; transit systems and railroads exist to transport people and goods. In determining what common characteristics they do have, and thus what other entities Congress intended the exemption to encompass, we find helpful the Final Report of the Public Safety Wireless Advisory Committee (PSWAC), which the Commission, jointly with the National Telecommunications and Information Administration, chartered to provide advice and recommendations on the current and future requirements for public safety communications. PSWAC recommended a definition of ''Public

Services'' as services ''that furnish, maintain, and protect the nation's basic infrastructures which are required to promote the public's safety and welfare.'' It stated, ''Public service providers, such as transportation companies and utilities[,] rely extensively on radio communications in their day-to-day operations, which involve safeguarding safety and preventing accidents from occurring.'' The Commission relied on a similar concept when it established special frequency coordination requirements for spectrum formerly used exclusively by the power, petroleum, and railroad industries because, in these industries, radio is used as a critical tool for responding to emergencies that could impact hundreds or thousands of people. Although the primary functions of these organizations is not necessarily to provide safety services, the nature of their day-to-day operations provides little or no margin for error and in emergencies they can take on an almost quasi-public safety function. Any failure in their ability to communicate by radio could have severe consequences on the public welfare. For example, the failure or inability of trains to communicate with each other or a central dispatcher could result in unsafe conditions and an increased risk of derailment. Also, utility companies need to possess the ability to coordinate critical activities during or following storms or other natural disasters that disrupt the delivery of vital services to the public such as provision of electric, gas, and water supplies. Subsequently in this proceeding, the Commission amended the rules to require that frequencies formerly allocated to the power, petroleum, and railroad industries on either an exclusive or shared basis be coordinated only by the frequency coordinator of the relevant service, or, at the relevant frequency coordinator's discretion, with its written concurrence. Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92–235, *Second Memorandum Opinion and Order, (''Refarming Second MO&O'')* 64 FR 36258 (July 6, 1999). The *Refarming Second MO&O* is currently on reconsideration, and has been stayed with respect to frequencies formerly allocated on a shared basis to these industries. Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Fourth Memorandum Opinion and Order,* 64 FR 50466 (September 17, 1999), (''*Refarming Fourth MO&O*'').

71. Against this background, we observe that the entities identified in the Conference Report which do not use their communications principally for the protection of life, health or property—utilities, railroads, metropolitan transit systems and pipelines—have two characteristics in common. First, these entities have an infrastructure that they use primarily for the purpose of providing essential public services to the population at large. In this context, an infrastructure can be described as fixed physical facilities that extend beyond the licensee's place of business to areas where the public at large live and work and are therefore exposed to adverse results stemming from a breakdown in the licensee's infrastructure. The second common characteristic is that the reliability and availability of the communications systems for these entities is necessary for them, as part of their regular mission, to prevent or respond to a disaster or crisis affecting the public at large. Specifically, the public depends on these services, which affect the daily lives of members of the public and interruption in the service may have dangerous consequences. Accordingly, we conclude that a radio service not allocated for traditional public safety uses will be deemed to protect the safety of life, health or property within the meaning of section 309(j)(2)(A)(i) if the dominant use of the service is by entities that (1) have an infrastructure that they use primarily for the purpose of providing essential public services to the public at large; and (2) need, as part of their regular mission, reliable and available communications in order to prevent or respond to a disaster or crisis affecting the public at large.

72. For instance, an electric utility meets both prongs of the two-part standard. Power lines extend far beyond the utility's power plant and into areas where members of the public live and work. A breakdown in the electric utility's infrastructure or fixed physical facilities (*e.g.,* a live wire) creates a dangerous condition for members of the public. Additionally, a dependable communications system is necessary for an electric utility to respond to an interruption in service that may hinder the delivery of vital services (*e.g.,* without power, a home may lack heat in the winter or air conditioning in the summer). Similarly, a metropolitan transit system meets both parts of the standard. A metropolitan transit system has an infrastructure or fixed physical facilities (*e.g.,* railroad tracks) where a breakdown in the system (*e.g.,* derailment) creates a dangerous condition that would adversely affect the public at large. Moreover, a reliable communications system is essential for a metropolitan transit system to enable quick response to any disruption in service as an interruption can create a dangerous condition and would impede the delivery of vital transportation services to the public.

73. Some commenters argue that all private wireless communications, in some respect, protect the safety of life, health, and property of the public, and therefore all private wireless services should be auction-exempt. They note that individuals in virtually every industry rely upon their private wireless radio systems to ensure the safety of their employees and enhance their productivity and operations and contribute to the continued growth and vibrancy of the economy. As a general matter, we agree with these characterizations. We conclude, however, that extending the exemption to all private wireless services would go beyond the legislative intent. As noted earlier, section 309(j) formerly applied only to subscriber-based services, and thus exempted the private wireless services because these services were generally not subscriber-based. The Balanced Budget Act amended the statute to direct the Commission to use auctions to resolve mutually exclusive applications for all radio services, unless they fall within a specific exemption. To interpret the exemption for public safety radio services in section 309(j)(2)(A) in a manner that effectively negates the changes to section 309(j)(1) would not be reasonable.

74. It is apparent that Congress deemed utilities, railroads, metropolitan transit systems and pipelines to be entities that protect the safety of life, health, or property for purposes of public safety radio services. We agree with the commenters, however, that the list in the Conference Report was presented for illustrative purposes and not as an exhaustive listing. Nonetheless, we believe that only spectrum used for the provision of services similar to those listed in the Conference Report should be included in the exemption, and that only similar entities can satisfy the aforementioned two-part standard. For instance, telephone maintenance, although not specifically mentioned in the Conference Report, meets the two-part standard. In applying the standard, providers of such services have an infrastructure that serves the public where a breakdown in the system (*e.g.,* cut wire) impedes the ability to

communicate by telephone, which is a vital service in today's society. In addition, a reliable communications system is necessary for telephone maintenance to enable quick response to an interruption in the delivery of telephone service in an emergency situation. On the other hand, for example, taxi cabs do not meet both prongs of the two-part standard and are therefore unlike those entities listed in the Conference Report. Although taxi cabs arguably provide essential services to the public, the providers of this service do not have an infrastructure or fixed physical facility where a breakdown in its system (*e.g.,* a disabled taxi cab) adversely affects the public at large.

75. While we will not at this time attempt to provide an extensive list of exempt public safety radio services, we do conclude that the Industrial/Land Transportation and Business Radio categories within the 800 MHz band and 900 MHz band, and the private land mobile radio frequencies in the 470–512 MHz band, shall not be exempt from auction under the public safety radio service exemption. The dominant use of these frequencies is by persons primarily engaged in the operation of a commercial activity, to support day-to-day business operations (such as dispatching and diverting personnel or work vehicles, coordinating the activities of workers and machines on location, or remotely monitoring and controlling equipment). The dominant use is not by entities with an infrastructure that they use primarily for the purpose of providing essential public services to the public at large, and that need, as part of their regular mission, such spectrum to prevent or respond to a disaster or crisis affecting the public at large. Accordingly, we conclude that the 470–512, 800, 900 MHz bands shall be subject to auction to the extent that mutually exclusive applications are filed. However, we emphasize that we will continue to utilize existing licensing approaches for these bands, which tend to avoid mutual exclusivity, thereby minimizing the possibility of competitive bidding.

76. *Noncommercial Proviso.* The public safety radio services exemption requires that the radio services not be made commercially available to the public. We sought comment on how the term ''not made commercially available to the public'' should be defined. The Commission has interpreted similar language in implementing the congressional definition of ''commercial mobile service.'' In that context, the Commission interpreted the term ''for profit,'' which we believe is inherent to ''commercial'' use, as including any service that is provided with the intent of receiving monetary gain. In the Matter of Implementation of sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93–252, *Second Report and Order, (CMRS Second R &O)* 59 FR 18493 (April 19, 1994). The Commission also found that a service is available ''to the public'' if it is offered to the public without restriction as to who can receive it. Because the purpose of that proceeding was to determine the meaning of commercial mobile service, as defined in section 332(d) of the Communications Act, the Commission was required to include in its definition those services ''effectively available to a substantial portion of the public.'' The Commission concluded that if service is provided exclusively for internal use or is offered only to a significantly restricted class of eligible users, it is made available only to insubstantial portions of the public, and cited as an example of this, the Public Safety Radio Services. *See CMRS Second R&O.* While we have held that provision of service to eligibles in the Business Radio Service category is essentially service to the public, this is because the class of eligibles in this pool is extremely broad. Specifically, this pool encompasses users engaged in commercial activities and clergy activities, as well as, those that operate educational, philanthropic, or ecclesiastical institutions, hospitals, clinics and medical associations. *See* 47 CFR 90.31. We shall apply a definition of ''commercially available to the public'' that is consistent with these definitions. Accordingly, for the purposes of the auction exemption under section 309(j) of the Communications Act, we find that ''not made commercially available to the public'' means that the service is not provided with the intent of receiving compensation, and is not available to a substantial portion of the public.

77. In the *NPRM,* we also asked whether commercial service providers intending to provide telecommunications services to public safety entities should be able to apply for auction-exempt spectrum. We agree with the commenters who argue that commercial service providers and public safety agencies have very different goals and incentives regarding spectrum use, and caution that if licenses for scarce public safety radio spectrum are assigned to commercial providers, public safety entities may find it virtually impossible to secure sufficient spectrum for their own internal needs. Also, if we expand eligibility to commercial providers declaring an intent to serve public safety entities, it would be difficult to ensure that the dominant use of this spectrum would be by entities that protect the safety of life, health, or property. In addition, we conclude that permitting such use of public safety radio service spectrum would be contrary to Congress's intent. We believe that Congress created the exemption to give entities that protect the safety of life, health, or property, at a minimum, an opportunity to secure access to spectrum without having to pay for it. Assigning public safety radio service spectrum to commercial providers could conflict with this intention by compelling public safety radio service eligibles to pay for access to auction-exempt spectrum. We agree with commenters that including commercial third-party providers within the exemption would enlarge it beyond all limits of reasonableness. Thus, we believe that creating an opportunity for commercial operators to obtain public safety radio service spectrum would contravene congressional intent.

78. *Restrictions on Use.* Another important issue is the scope of permissible uses for public safety radio services spectrum, and more specifically, whether such licensees are required to use their auction-exempt frequencies exclusively for safety-related purposes. Section 337(f)(1) of the Communications Act defines a ''public safety service'' for determining eligibility for licensing in the 24 MHz of spectrum reallocated for public safety services, as a service the ''sole or principal purpose'' of which is to protect the safety of life, health or property. By contrast, the auction exemption under section 309(j)(2) contains no such restriction.

79. We conclude that because utilities, pipelines and railroads do not use their frequencies exclusively for safety-related purposes, Congress could not have intended that entities using exempt spectrum use that spectrum exclusively for such purposes. Furthermore, it would be overly burdensome to require licensees to differentiate between, and use different frequencies for, pure public safety communications and business communications, which may also serve a safety-related purpose. Accordingly, we agree that we should not, at this time, impose an additional restriction upon licensees in auction-exempt services to limit their use of their assigned frequencies to be exclusively for safety-related purposes. We do, however, expect that licensees making

use of auction-exempt spectrum will be using that spectrum primarily to protect the safety of life, health or property. We also expect users of auction-exempt spectrum to make efficient use of that spectrum for safety-related purposes, and to use other available spectrum, or commercial providers, for more general business-related purposes that are not primarily safety-related.

80. *Eligibility Requirements.* In the *NPRM,* we noted that applicants seeking spectrum for public safety radio services without bidding competitively are able to apply for such designated spectrum or, if they meet the requirements of section 337(f), file a waiver request for unassigned spectrum pursuant to section 337(c). In this connection, we sought comment on whether entities eligible for licenses in the public safety radio services should also be eligible to bid competitively for spectrum that has been designated for private or commercial radio use.

81. We do not believe that it was Congress's intent to forbid entities eligible to be licensed on public safety radio services from voluntarily participating in auctions for spectrum that is not exempted from our competitive bidding authority. Hence, we conclude that entities eligible for licenses in the public safety radio services are eligible to participate in auctions of other spectrum. We note that the licensing mechanisms adopted in the *Report and Order* would not enable entities eligible for public safety radio services to select auctionable spectrum and exercise an exemption privilege. Therefore, those entities eligible for licenses in the public safety radio services that desire to participate in the auction of other spectrum will be required to comply with the same regulations, including filing and payment requirements, to which every other bidder is subject. Accordingly, the Commission will not make any special provisions for entities eligible for the public safety radio services that choose to competitively bid for auctionable spectrum. Further, if a public safety radio service eligible voluntarily chooses to seek licenses in auctionable spectrum, the spectrum will not thereby become auction-exempt.

ii. Resolution of Mutually Exclusive Applications for Services Exempt From Competitive Bidding

82. *Background.* In the *NPRM,* we requested comment on how to resolve mutual exclusivity between applications for spectrum exempt from competitive bidding. We noted that the Balanced Budget Act terminated the Commission's authority to use lotteries to choose among mutually exclusive applications and concluded that we are precluded from using random selection procedures to resolve mutually exclusive applications for auction-exempt public safety radio services. Thus, we specifically sought comment on whether engineering solutions, negotiation, threshold qualifications, service regulations, or other means, such as comparative hearings and first-come, first-served licensing, should be used to resolve mutual exclusivity in cases where frequency coordination is unsuccessful in avoiding mutual exclusivity.

83. *Discussion.* We are aware that there may be instances where frequency coordination and/or first-come, first-served licensing will be inadequate and the Commission will receive mutually exclusive applications for licenses in the public safety radio services. However, we believe that such instances will be rare and conclude that the Commission should continue to rely on the regulatory tools already available to it to resolve mutually exclusive applications that may not be resolved by competitive bidding. In addition to commenters' suggestion that we provide a time period during which mutually exclusive applicants may negotiate a mutually agreeable solution, the Commission can also work with the relevant frequency coordinators to find alternative spectrum, develop engineering solutions, dismiss the applications with or without prejudice, or refer the matter to a comparative hearing. These tools have been sufficient heretofore to resolve mutually exclusive applications for non-auctionable spectrum, and, particularly given the expectation that such situations will continue to be rare, there does not appear to be sufficient grounds to implement a new procedural framework.

F. Proposals Regarding Private Land Mobile Radio Services

84. A number of issues have been raised regarding our auction authority in the context of licensing in the private radio services. First, we consider whether geographic licensing and competitive bidding should be employed on the PLMR frequencies below 470 MHz that are currently licensed under a scheme developed in our ''refarming'' docket. Next, we consider a proposal advanced by a coalition of private radio users to create a third radio pool to accommodate the needs of ''critical infrastructure industries.'' We also rule on a proposal advanced by the American Mobile Telecommunications Association, Inc. (''AMTA'') to restructure the licensing framework for the 450–470 MHz band. The *Report and Order* also analyzes a proposal to permit the incorporation of PLMR spectrum in the 800 MHz band into commercial mobile radio services (''CMRS'') systems. Finally, we address the issue of whether the part 90 multiple licensing rules should be changed in light of our revised auction authority.

i. Licensing of ''Refarming'' Bands

85. *Background.* In the *NPRM,* we sought comment on whether the public interest would best be served by retaining our current licensing scheme, rather than adopting geographic licensing and competitive bidding, for the PLMR frequencies below 470 MHz. We noted that the current licensing scheme for these frequencies came out of the lengthy ''Refarming'' proceeding, in which the Commission, *inter alia,* consolidated the twenty PLMR services into two broad frequency pools, and implemented procedures that will result in the transition to more spectrally efficient, narrowband technologies by requiring that future equipment meet increasingly efficient standards.

86. *Discussion.* The commenters were nearly uniform in their opposition to the introduction of geographic area licensing in the Refarming bands. We agree. Moreover, we believe that there simply has not been enough time since the adoption of the Refarming provisions to reap the full benefit of the revised procedures. We note that the refarmed bands below 470 MHz are currently licensed on a shared, rather than exclusive, basis. *See* 47 CFR 90.173(a). Many licensees operate on the same channels in most geographic areas. These channels are heavily congested in most major urban areas, so the number of incumbents, particularly in the areas where geographic overlay licenses would be most desirable, would create nearly impossible due diligence requirements and would make the spectrum, at best, only marginally useful to a geographic area licensee. We believe that this militates against geographic overlay licensing of this spectrum.

87. Thus, we conclude that the public interest would best be served by retaining our current licensing scheme. Accordingly, we shall not, at this time, reexamine the licensing scheme for the PLMR frequencies below 470 MHz. We emphasize, however, that this decision applies only to the existing allocation and not to any spectrum that might subsequently be allocated for PLMR services. In addition, we would not be precluded from revisiting the licensing

scheme for the Refarming bands at some later date and adopting a new approach, such as the use of band managers.

ii. UTC Proposal To Establish a New Public Safety Radio Pool in the Private Mobile Bands Below 470 MHz

88. *Background.* In the *NPRM,* we requested comment on a rulemaking petition submitted by UTC, The Telecommunications Association (''UTC''), the American Petroleum Institute (''API''), and the Association of American Railroads (''AAR'') (jointly referred to as the ''Critical Infrastructure Industries'' or ''CII''). UTC represents electric, gas, water, and steam utilities, and natural gas pipelines. API represents companies in all phases of the petroleum and natural gas industries. AAR represents railroads operating in the United States, Canada, and Mexico. The petition proposes to create a third radio pool, in addition to the Public Safety and Industrial/Business (I/B) Radio Pools already used for private radio frequencies below 470 MHz. We also sought comment on whether this approach would be feasible for other frequency bands. For the reasons set forth in the following paragraphs, we find that a third pool is not called for at this time, and we deny the petition for rule making.

89. *Discussion.* The petition urges the Commission to create a Public Service Radio Pool in the PLMR bands below 800 MHz open to entities that do not qualify for Public Safety Radio Pool spectrum, but are eligible to use the public safety radio service spectrum exempted from the Commission's auction authority under the Balanced Budget Act. The CII propose to form the proposed Public Service Pool from all of the channels formerly allocated exclusively to the Power, Petroleum and Railroad Radio Services before those services (and others) were consolidated into the I/B Pool in the *Refarming Second Report and Order.* The CII also propose moving a portion of the channels formerly shared by these services with one or more of the other services now in the I/B Pool. The CII further state that the Public Service Pool should also include frequencies formerly allocated to services used by any other industries that we conclude are eligible for auction-exempt public safety radio service spectrum. The CII recommend that the Commission should examine claims of eligibility for any new Public Service Pool closely.

90. The CII argue that a pool to accommodate the needs of critical infrastructure industries is needed to protect the availability of spectrum for qualified entities, because of the public safety components of their requirements. While critical infrastructure industries have legitimate spectrum needs, we do not believe these needs warrant removing frequencies from the I/B Pool. The I/B Pool was created to address the scarcity of PLMR spectrum, by consolidating spectrum to make fallow frequencies available to parties in need. We are not persuaded that creating a third pool would not exacerbate the shortage of PLMR spectrum, overall, for the entire set of eligibles for the I/B Pool.

91. The CII also argue that a third pool is needed because the power, petroleum and railroad industries' radio operations need greater protection from interference caused by other users than the Commission has provided. Critics of the petition argue that there is insufficient evidence of widespread interference problems to justify the creation of a third pool, and that isolated incidences of interference do not create a justification. We agree that the number of instances of actual electrical interference do not appear so large as to justify the inefficiencies that could arise from creating a third pool.

92. Furthermore, several commenters contend that the exclusive coordination prerogative granted to the CII creates a *de facto* separate pool for these entities, and that therefore a separate pool for the CII is not necessary. We also note that the question of whether that exclusive coordination prerogative should be expanded to include frequencies formerly allocated to the Power, Petroleum, and Railroad Radio Services on a shared basis is pending in the *Refarming* proceeding. We believe that the issue of how to protect these services from interference is more appropriately addressed there.

93. Finally, the CII contend that because Congress specifically intended to include within the exemption to competitive bidding the private internal radio services used by utilities, pipelines and railroads, the creation of a Public Service Radio Pool for the CII would effectuate Congressional intent by protecting those services from encroachment by non-essential services. The purpose of the exemption from our competitive bidding authority for public safety radio services is to relieve entities that protect the safety of life, health, and property from having to purchase spectrum at auction. There is no basis upon which to infer other or additional congressional intent with respect to this provision. Finally, the CII's argument that we should create a third pool in order to avoid complications due to the potential introduction of auctions in the I/B Pool is not persuasive. Because PLMR frequencies below 470 MHz currently are licensed in a manner that tends to avoid mutually exclusive applications, such complications generally do not arise.

94. Accordingly, for all the reasons stated, we deny the petition. We note, however, that our decision not to create a third pool below 470 MHz does not preclude us from using other mechanisms (*e.g.,* Bands Managers or a change of licensing schemes) in these or other bands, in order to appropriately respond to the concerns set forth by the CII.

iii. AMTA Proposal To Restructure Licensing Framework for PLMR Services in the 450–470 MHz Band

95. *Background.* On July 30, 1999, after we released the *NPRM*, AMTA, a trade association representing the specialized wireless communications industry, filed a petition for rule making proposing to fundamentally restructure the licensing framework for PLMR frequencies in the 450–470 MHz band. Currently, this band is licensed by 6.25 kilohertz frequency pairs assigned on a site-by-site basis. The frequencies are licensed on a shared basis, and frequency coordination is required. *See* 47 CFR 90.173(a), 90.175. The frequencies are divided between the Public Safety Radio Pool (8 MHz) and the Industrial/Business (I/B) Radio Pool (12 MHz). *See* 47 CFR 90.20(c)(3), 90.35(b)(3).

96. AMTA proposes that we divide the 450–470 MHz band I/B Radio Pool so that 2 megahertz would be available for site-based licensing on a shared basis, and 10 megahertz would be licensed by geographic area in .5 megahertz paired blocks (creating twenty licenses per market). Five of the twenty licenses would be set aside for private, internal systems, leaving the remaining fifteen available for either internal or commercial systems. In addition, any incumbent that is not a winning bidder for its frequency and area would be required either to move to the shared channels or elect to receive service from a commercial geographic licensee. The petition was placed on Public Notice on August 24, 1999. We believe that it is appropriate to consider these proposals as part of the instant proceeding.

97. *Discussion.* Although we believe that geographic licensing is generally a highly efficient means of assigning spectrum, in this instance we agree with the commenters that do not believe such an approach is warranted in the 450–470 MHz band. First, as we stated in our discussion of the Refarming bands (which include the 450–470 MHz band),

the benefits of geographic overlay licensing of this spectrum may be limited because these channels are heavily congested in most urban areas. In addition, we note that many commenters were concerned by the AMTA proposal's effect on incumbent operations. We conclude that it is not advisable to revisit the licensing scheme for the 450–470 MHz band at this time. Moreover, we believe that not enough time has elapsed in order to reap the benefits of the licensing reforms that were adopted as part of the Refarming proceeding. We therefore deny AMTA's petition. This decision does not, however, preclude us from deciding in the future that some alternative approach is warranted.

iv. Licensing of PLMR Channels in the 800 MHz Band for Use in Commercial SMR Systems

98. *Background.* In the *NPRM,* we noted that some spectrum currently allocated for private internal use is also used to provide subscriber-based services, pursuant to intercategory sharing or rule waiver. We referred to a request by Nextel Communications, Inc. (Nextel) for waivers to permit it to acquire by assignment part 90 PLMR services frequencies, and utilize those frequencies for CMRS operation in its 800 MHz SMR systems. Subsequently, the Wireless Telecommunications Bureau (Bureau) granted Nextel's request in part and denied in part. Specifically, the Bureau granted those waivers and assignments where Nextel would use the spectrum for relocation of incumbent licensees on the upper 200 channels of the 800 MHz band. The Bureau also permitted Nextel to use PLMR frequencies in its SMR network, but only on the condition that at least seventy-five percent of the channels involved in the waiver requests would be used to relocate upper 200 channel incumbents. The Bureau declined to address broader issues raised by Nextel's request to acquire channels without relocating an upper 200 incumbent, and determined that incorporation into the instant proceeding would be the more appropriate avenue to resolve such a proposal. Consequently, the Bureau released a *Public Notice* incorporating the record of the Nextel matter into the instant proceeding and seeking comment on whether the Commission's licensing rules for PLMR channels in the 800 MHz band should be amended to allow their use in CMRS systems.

99. *Discussion.* We first address whether our Rules should be amended to allow PLMR licensees to assign or transfer spectrum to CMRS licensees for use in CMRS operations. Commenters were split on this issue. Commenters supporting such a change argue that licensees should be permitted to enter into voluntary assignment agreements that alter the use of the spectrum because such voluntary transactions, wherein the licensee is willing to forgo use of the spectrum for the consideration offered by the other party, result in the most economically efficient use of the spectrum. That is, they contend that if a PLMR licensee finds advantageous the terms of commercial service, including the assignment of its frequency(ies) to the CMRS operator, then we should allow such transactions because the CMRS operator values the frequency(ies) more highly than the PLMR licensee. We note that the 800 MHz band is particularly suited to such flexibility because 800 MHz PLMR and CMRS channels are interleaved, rather than grouped into separate subbands. *See* 47 CFR 90.617. In addition, a review of our licensing database indicates a greater presence in the 800 MHz Business and I/LT channels of licenses on which CMRS operations are permitted, through rule waivers or inter-category sharing, than in other PLMR bands. We therefore find that permitting such transactions would create additional flexibility for both PLMR licensees seeking to fill their communications needs and for CMRS licensees seeking additional spectrum.

100. Consequently, we will amend our Rules to allow 800 MHz Business and I/LT licensees to assign or transfer their spectrum to CMRS licensees for use in CMRS operations. Moreover, unlike the Bureau's decision in the *Nextel Order*, we will not require that any portion of the channels transferred or assigned to CMRS licensees be used to relocate upper 200 channel incumbents. We are not persuaded that we should require the relocation of upper 200 channel incumbents as a condition of approving the transaction. That the spectrum at issue would be used predominantly for relocation purposes was important to the Bureau's public interest analysis of Nextel's waiver request. In this broader proceeding, however, we conclude that permitting such assignments and transfers will be beneficial for other reasons. We are convinced that alienability of PLMR licenses will enhance spectral use and efficiency. Limiting the flexibility of spectrum use to relocating upper 200 channel incumbents does not serve the public interest, and would merely erect another barrier to achieving maximum spectral efficiency.

101. Similarly, we also will permit these PLMR licensees to modify their PMRS licenses to allow CMRS use in their own systems. Just as with assignments and transfers, spectral efficiencies and technological developments will be aided by providing PLMR licensees with this same flexibility. Allowing PLMR licensees the flexibility to modify their licenses for CMRS use permits the PLMR licensee to assess marketplace needs and economic factors when determining the best and most efficient use of spectrum.

102. We disagree with those commenters opposed to permitting the incorporation of PLMR spectrum into CMRS systems, who argue that it will reduce the available supply of PLMR spectrum. They note that the Commission's purpose in eliminating intercategory sharing of non-SMR spectrum by SMR applicants was to stop encroachment on PLMR frequencies by commercial SMR licensees and eligibles, and argue that allowing CMRS use of 800 MHz PLMR spectrum would further exacerbate the current shortage of private spectrum. *See* Amendment of Part 90 of the Communications Act Regulatory Treatment of Mobile Services, PR Docket 93–144, *First Report and Order, Eighth Report and Order and Second Further Notice of Proposed Rulemaking*, 61 FR 6138 and 61 FR 6212 (February 16, 1996); *See* 47 CFR 90.621(e). In 1997, the Commission affirmed its decision to eliminate intercategory sharing by SMR eligibles. *See Memorandum Opinion and Order on Reconsideration*. We do not find these concerns persuasive. These objections seem to envision a scenario in which current PLMR licensees voluntarily surrender their rights to frequencies they are not using or are using inefficiently and these frequencies are then returned to the PLMR pool so as to be available for licensing to other private users. It has been our experience, however, that licensees do not in any large measure turn back to the Commission PLMR frequencies they no longer need or are using inefficiently; rather, they continue to hold the spectrum. Consequently, we believe that allowing licensees to modify their licenses for CMRS use or assign or transfer these frequencies to CMRS entities will not materially affect the supply of available spectrum for licensing from the PLMR pool.

103. However, we deny Nextel's proposal to eliminate the distinction between CMRS spectrum and non-Public Safety PLMR spectrum with respect to initial licensing. We believe that the existing PLMR pool of

unassigned frequencies should remain available on an initial basis to PLMR eligibles only, to construct new systems or expand existing systems. Therefore, we maintain the eligibility criteria for all new applications.

104. While we will allow incumbent PLMR licensees to transfer or modify their licenses for CMRS use, we do not want to facilitate trafficking of PLMR spectrum (*e.g.*, PLMR eligibles acquiring new licenses from the existing pool of unassigned frequencies for the purpose of selling them to CMRS providers). We will thus preclude a licensee that modifies its license or transfers or assigns its license to a CMRS operator, or an affiliate of the modifying or assigning licensee, from applying for 800 MHz PLMR spectrum in the same area for one year. We note that a one-year moratorium has been imposed upon General Category licensees that make partial assignment of a station's frequencies to stem trafficking in licenses. *See* 47 CFR 90.609(c).

105. In addition, we will allow modification to CMRS use or assignment to a CMRS operator only in the case of PLMR licenses that were initially granted at least five years prior to the modification, transfer, or assignment. *See Competitive Bidding Fifth Report and Order* (explaining that a holding period would be imposed to avoid sham arrangements with broadband PCS licenses). We believe a five-year holding period is appropriate because such a requirement has been applied to other situations where speculation and trafficking were concerns. For example, our rules provide that licensees are subject to unjust enrichment payments for any license transfer that occurs within five years of the license grant. *See* 47 CFR 1.2111(b)(1). In this regard, we also note that 800 MHz PLMR licensees can receive an extended implementation period for of up to five years, if they demonstrate that such a period is required to construct the proposed wide-area system. *See* 47 CFR 90.629. One of our goals in requiring a holding period is to ensure that these channels will continue to be initially licensed only to entities that will use them for PLMR communications. A holding period of less than five years could undermine this goal by allowing many wide-area licensees to modify or transfer their licenses for CMRS use before they finish construction.

106. We will not apply this five year holding period to licenses already granted, or for which the application already was filed, as of the adoption date of the *Report and Order*. It is our belief that no purpose would be served by applying the holding period to licenses obtained or requested before we amended our rules to permit assignment and/or transfer of 800 MHz Business and I/LT channels for CMRS use, because prior to adoption of the *Report and Order*, no speculative incentive to acquire Business and I/LT frequencies can be inferred.

107. We are confident that the rules adopted herein, coupled with existing requirements in our rules, provide the necessary safeguards against trafficking in PLMR licenses for the purpose of assigning the license to a CMRS operator or using the spectrum to provide a CMRS service. Section 90.155 requires the licensee to have its station placed in operation within twelve months from the date of grant to avoid automatic cancellation. *See* 47 CFR 90.155. Moreover, § 90.609 requires complete construction of the radio facility prior to any transfer or assignment. *See* 47 CFR 90.609. Additionally, § 90.157 provides that a license will cancel automatically if there is discontinuance of station operation for twelve months or more. *See* 47 CFR 90.157. We note that neither the one-year moratorium nor the five-year holding requirement is applicable to PLMR-to-PLMR assignments and/or transfers.

108. In addition, we note that there have been incidents of interference to public safety licensees in this band even though CMRS providers operate within their licensed parameters. To address this issue, an FCC/public safety/industry task force is investigating solutions for preventing and fixing interference to 800 MHz public safety operations. We seek to avoid the potential for future incidents of such interference that could result from the modification of PLMR facilities to CMRS. Consequently, we will require 800 MHz licensees seeking to use spectrum for CMRS, upon submitting a modification application, to: (a) certify that the co- or adjacent channel 800 MHz public safety licensees in the same geographic area have been notified of the application; and (b) commit that they will take affirmative steps to avoid harmful interference to such public safety licensees. *See also* 47 CFR 90.173(b), 90.403(e) (requiring licensees to undertake precautions to avoid harmful interference). We believe that these actions together will reduce the risk of increased interference in this band.

109. All 800 MHz PLMR licenses, including those granted before the rule change, may be assigned, transferred or modified in accordance with the new rules set forth herein. In addition, all new and pending applications for assignment, transfer, or modification will be subject to these new rules. However, other transactions were approved under previous and arguably more flexible terms and conditions. In this connection, we note that an application for review is pending with respect to the prior Nextel applications and associated waiver requests. Thus, in that regard, we believe that we should defer any decision affecting the transactions associated with the Nextel waivers to the disposition of the application for review. We believe that this approach will provide us with flexibility with respect to our treatment of the issues raised in the application for review.

v. Revision of Part 90 Multiple Licensing Rules

110. *Background*. In the *NPRM*, we sought comment on whether eliminating or modifying the multiple licensing rules would be appropriate in light of the potential expansion of our auction authority to include private radio services. The multiple licensing rules provide that two or more entities may be licensed for the same land station, provided that each licensee complies with the Commission's Rules regarding permissible communications and each licensee is eligible for the frequency(ies) on which the land station operates. *See* 47 CFR 90.185.

111. A ''multiple-licensed'' system, also known as a ''community repeater,'' is a base station in the part 90 private land mobile radio services which functions as a mobile relay, enabling low power mobile units to communicate with one another over a wide area by picking up a signal from one unit and repeating it to another. Generally, the licensees who share a multiple-licensed facility have been brought together by a third party, often the manufacturer of the land mobile equipment or a retailer, who operates the station on a profit-making basis. The Commission does not usually regulate this third party's activity and the third party is not licensed by the Commission. Multiple licensing has been a widespread practice in the land mobile services since the 1960s.

112. *Discussion.* We agree that multiple licensing is still permissible as a matter of law and desirable as a matter of public policy because the ''practical realities'' which led to the development of community repeaters continue to prevail. A commenter states that most part 90 licensees cannot independently afford the monthly site rent for a tower or rooftop which could provide the necessary coverage, and that if each

entity had to construct a separate system, it would be difficult to coordinate.

113. In addition, given the light response to our request for comment on whether to modify the multiple licensing rules, we will not eliminate multiple licensing. Furthermore, eliminating multiple licensing would be contrary to our current efforts to introduce more, not less, flexibility in how licensees use their spectrum. Thus, we will continue to closely monitor multiple-licensed systems and judge their validity on a case-by-case basis.

G. Section 337 Licensing for Public Safety Services

114. *Background*. The Balanced Budget Act added a new section 337 to the Communications Act. Section 337 of the Communications Act, *inter alia*, provides certain public safety entities the opportunity to apply for unused spectrum not otherwise allocated for public safety use. For purposes of applying section 337 and determining who may invoke its provisions, subsection 337(f) defines the term ''public safety services'' as ''services—

(A) the sole or principal purpose of which is to protect the safety of life, health or property;

(B) that are provided—

(i) by State or local government entities; or

(ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.''

115. The terms and conditions under which an eligible entity may apply to the Commission for spectrum under section 337 are provided at subsection (c)(1) of section 337 as follows:

(c) Licensing of Unused Frequencies for Public Safety Services.—

(1) Use of unused channels for public safety services.—Upon application by an entity seeking to provide public safety services, the Commission shall waive any requirement of this Act or its regulations implementing this Act (other than its regulations regarding harmful interference) to the extent necessary to permit the use of unassigned frequencies for the provision of public safety services by such entity. An application shall be granted under this subsection if the Commission finds that—

(A) no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use;

(B) the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations;

(C) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made;

(D) the unassigned frequency was allocated for its present use not less than 2 years prior to the date on which the application is granted; and

(E) granting such application is consistent with the public interest.

116. If the Commission finds that the applicant satisfies the statutory criteria, the authorization pursuant to section 337 is granted. Providers of public safety services may obtain spectrum via section 337(c) without engaging in competitive bidding.

117. In the *NPRM*, we sought comment on how to apply the statutory criteria. We specifically requested commenters to address the statutory requirement that the frequency applied for be ''unassigned'' and that the showing necessary to demonstrate that granting the application would be in the public interest, with particular attention to the question of whether it would be in the public interest for applicants seeking to provide public safety services to apply for frequencies that, while not yet licensed to another entity, already have been identified and designated by the Commission as frequencies to be licensed by auction. Since enactment of the statute, we have issued several decisions on section 337 applications.

118. *Discussion*. Some commenters suggest that an applicant need not satisfy all five statutory criteria to satisfy the requirements of section 337(c), if it makes a particularly strong showing for the factors it does meet. We disagree. We do not find any statutory basis or legislative history supporting such a conclusion. Indeed, the legislative history clearly states, ''Before granting applications under this subsection, the Commission must make five specific findings.'' All five statutory criteria must be satisfied to receive authorization based on a section 337 request.

119. In addition, we believe that further exposition regarding two of the criteria is warranted. With regard to the statutory requirement that ''no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use,'' several section 337 applicants apparently have interpreted this provision as only requiring a showing that no public safety frequencies are currently available in the same band as the frequencies being requested. We disagree with this interpretation. We believe that the statutory language is clear in that it expressly requires that no other spectrum allocated to public safety services be available without any qualification. Thus, we believe that the statute requires that there be no unassigned public safety spectrum, or not enough for the proposed public safety use, in any band in the geographic area in which the section 337 applicant seeks to provide public safety services.

120. With regard to the statutory requirement that ''granting such application is consistent with the public interest,'' we believe that our analysis under this criterion generally will entail a balancing of various public interest factors. For instance, some commenters assert that unlicensed spectrum should be available to entities seeking to provide public safety services, even if the spectrum is in the process of being auctioned. We agree that spectrum does not *per se* become unavailable to section 337 applicants once we have initiated the competitive bidding process. Competing spectrum management goals may be implicated by section 337 requests, depending upon when such requests are filed during the competitive bidding process. On the one hand, we do not believe that Congress intended for section 337 applications to compromise or frustrate the competitive bidding process generally. On the other hand, there may be circumstances in which the public interest would warrant grant of a section 337 request on spectrum that is subject to competitive bidding. Thus, we conclude that the state of the competitive bidding process when the section 337 application is received is relevant to our determination of whether grant of the waiver request and the associated application(s) is in the public interest, as required by subsection (c)(1)(E).

121. As a result, we will balance such determinations on a case-by-case basis. In a number of cases to date we have granted section 337 requests utilizing the five criteria for spectrum that was potentially subject to auction. For example, we granted such a request by South Bay Regional Communications Authority for channels in the 470–512 MHz band. As part of that grant we assigned auctionable narrowband PCS channels to a third party that applied for the same channels South Bay requested. This resolution enabled South Bay to gain access to spectrum it needed for important public safety needs. In another instance, the Wireless

Telecommunications Bureau granted a section 337 request for channels that had been designated for auction in the 900 MHz band. The Bureau weighed the five factors in the statute, and determined that a grant was warranted, despite the fact the spectrum was subject to an application freeze and a paging auction. Significantly, at the time the section 337 request was filed in this case, the auction date had not yet been established for the frequencies at issue.

122. Therefore, in reviewing section 337 waiver requests, we will balance a variety of public interest factors such as the likelihood that the spectrum will be auctioned, the likely timetable for such an auction, and the effect that grant of the request may have on such a future auction *against* the stated needs of the applicant and our obligation to promote public safety. Section 337 requests received early in the competitive bidding process, before an auction is announced, will likely weigh more in favor of a grant than requests received on the eve of an auction. For example, at the rulemaking stage, when we are soliciting comments on whether to auction a particular spectrum band, we may give more weight to the public interest considerations of the public safety applicant than to our concerns about the impact on the auction process. However, once the mechanisms for a particular spectrum auction are in place, beginning with the issuance of a Public Notice announcing the date of the auction (typically four to six months before the auction), the competitive bidding process is substantially underway. At this juncture, we believe that accepting section 337 applications would substantially impair our ability to conduct an orderly auction, on which prospective bidders depend in planning their auction strategies. Consequently, such requests will be subject to stricter review than those received earlier, and we anticipate that only in highly extraordinary circumstances will they be found to satisfy the requirements of section 337(c)(1)(E). In these situations, section 337 applicants will be expected to provide a showing that grant of their requests would result in significant public interest benefits that outweigh the uncertainty and disruption to the auction process that would be associated with a grant of their requested waiver.

123. Finally, we take this opportunity to streamline our processing of section 337 requests by amending our rules to require that section 337 requests be filed in the same manner and on the same form(s) as ordinary applications requesting the subject spectrum. Specifically, section 337 waiver requests and applications for commercial spectrum must be filed through the Universal Licensing System using Form 601 Main Form and Schedules B and J, and applicants will need to register their Taxpayer Identification Number or Employer Identification Number. Additionally, antennas that require registration must be registered prior to filing the request.

H. Final Regulatory Flexibility Analysis

124. As required by the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *NPRM* in WT Docket 99–87. *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz, WT Docket No. 99–87, RM–9332, RM–9405, *Notice of Proposed Rule Making*, 64 FR 28130 (May 25, 1999). The Commission sought written public comment on the issues and proposals in the *NPRM*, including comment on the IRFA. The comments received are discussed. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA. *See* 5 U.S.C. 604.

I. Need for, and Objectives of, the Report and Order

125. The *Report and Order* was initiated to evaluate the Commission's auction authority for wireless telecommunications services following the enactment of the Balanced Budget Act of 1997. The Balanced Budget Act revised the original spectrum auction standard that had been established under the Omnibus Budget Reconciliation Act of 1993. In the *Report and Order*, we develop a framework for making certain determinations for future licensing of the private wireless services and the scope of the Balanced Budget Act's exemption from competitive bidding for licenses and permits issued for public safety radio services. In attempting to maximize the use of private radio spectrum, we continue our efforts to improve the efficiency of spectrum use, maintain public safety services, reduce the regulatory burden on spectrum users, facilitate technological innovation, and provide opportunities for development of competitive new service offerings. The policies adopted in the *Report and Order* are also designed to implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with section 309(j) of the Communications Act of 1934, as amended. *See* 47 U.S.C. 309(j)(3)(B); *see also* 47 U.S.C. 257.

126. The *Report and Order* also amends certain part 1 and 90 rules to conform the application and licensing procedures in the private radio services with the new policies described in the *Report and Order*. In particular, these amendments adopt filing procedures for license applications submitted pursuant to section 337 of the Communications Act, describe procedures by which mutually exclusive applications for licenses in the public safety radio services will be resolved, and revise certain part 90 regulations applicable to the Private Land Mobile Radio (''PLMR'') services.

J. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

127. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. *See* 5 U.S.C. 603(b)(3). Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. *See* 5 U.S.C. 601(6). The RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act. *Compare* 5 U.S.C. 601(3) (RFA) *with* 15 U.S.C. 632 (SBA). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. *See* Small Business Act, 5 U.S.C. 632 (1996). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations.

128. The rule changes effectuated by the *Report and Order* apply to users of public safety radio services, and private radio licensees that are regulated under part 90 of the Commission's rules, and may also affect manufacturers of radio equipment. An analysis of the number of small entities affected follows.

129. *Public Safety radio services and Governmental entities.* Public Safety radio services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services. With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules. *See*

47 CFR 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the actual delivery of emergency medical treatment. *See* 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities and emergency repair of public communication facilities. *See* 47 CFR 90.33 through 90.55. The SBA rules contain a definition for small radiotelephone (wireless) companies, which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons. *See* 13 CFR 121.201 (SIC Code 4812). There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities.

130. *Specialized Mobile Radio* (''*SMR*''). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to two tiers of firms: (1) ''small entities,'' those with revenues of no more than $15 million in each of the three previous calendar years; and (2) ''very small entities,'' those with revenues of no more than $3 million in each of the three previous calendar years. The regulations defining ''small entity'' and ''very small entity'' in the context of 800 MHz SMR (upper 10 MHz and lower 230 channels) and 900 MHz SMR have been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz (upper 10 MHz) and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auction. Of the 1,020 licenses won in the 900 MHz auction, 263 licenses were won by bidders qualifying as small and very small entities. In the 800 MHz SMR auction, 38 of the 524 licenses awarded were won by small and very small entities.

131. *Estimates for PLMR Licensees.* Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. *See* 13 CFR 121.201 (SIC Code 4812). Included in this definition are business entities engaged in radiotelephone communications employing no more that 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

132. *Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. *See* 13 CFR 121.201, Standard Industrial Code (SIC) 3663. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

K. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

133. The *Report and Order* establishes a framework for making certain determinations for future licensing of the private wireless services and the scope of the Balanced Budget Act's exemption from competitive bidding for licenses and permits issued for public safety radio services. The *Report and Order* also imposes new compliance requirements for part 90 PLMR licensees seeking to modify their licenses to for use in CMRS systems.

134. We make minor revisions to the compliance requirements in Parts 1 and 90 of the Commission's Rules to conform the application and licensing procedures in the private and public safety radio services with the policies described in the *Report and Order.* These amendments require public safety applicants seeking lisense section 337 of the Communications Act to file using the Commission's Web-based Universal Licensing System, and require PLMR licensees seeking to modify 800 MHz non-Public Safety PLMR licenses for use in CMRS systems to demonstrate that they meet the requirements to be eligible for such modifications.

135. Also, in response to incidents of interference to public safety licensees, a joint task force composed of members of the public safety community, Commission licensees, and Commission

representatives is investigating solutions for preventing and fixing interference to 800 MHz public safety operations. We seek to avoid the potential for further incidents of such interference that could result from the conversion to CMRS. Consequently, we will require licensees seeking to convert to CMRS, upon submitting a modification application, to:

(a) Certify that the co- or adjacent-channel 800 MHz public safety licensees in the same geographic area have been notified of the application; and

(b) Commit that they will take affirmative steps to avoid harmful interference to such public safety licensees. We believe that these actions together will reduce the risk of increased interference in this band.

L. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

136. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See* 5 U.S.C. 603(c).

137. The part 1 rule adopted in the *Report and Order* clarifies our policies with regard to the processing of applications for licenses in the public safety radio services under section 337 of the Communications Act. While we considered the alternative of accepting section 337 requests on an *ad hoc* basis, such an approach would not eliminate the procedural uncertainties faced by public safety entities seeking spectrum. Further, clarification of the process and use of the electronic ULS will greatly reduce the cost of preparing wireless applications and pleadings, while increasing the speed of the licensing process. We expect that these changes will benefit all public safety entities, including those 96% of governmental entities considered to be small entities. Further, use of the ULS will present tremendous advantages for small businesses because it permits access to licensing information at tremendously reduced costs. Finally, we observe that we continue to review the burdens imposed by these and other regulations in our biennial review processes in an effort to minimize regulatory impacts.

138. The part 90 regulations amended by this permit the conversion of 800 MHz non-Public Safety PLMRS licensees be permitted to convert their spectrum to CMRS use under certain circumstances, and clarify that spectrum in the 800 MHz non-Public Safety PLMRS may not be shared under our part 90 multiple licensing rule. We denied a proposal to eliminate the distinction between CMRS spectrum and non-Public Safety PLMR spectrum with respect to initial licensing. We believe that the existing PLMR pool of unassigned frequencies should remain available on an initial basis to PLMR eligibles only, to construct new systems or expand existing systems. Therefore, we maintain the eligibility criteria for all new applications. Similarly, we considered an alternative of permitting PLMRS licensees to convert their spectrum without restriction, but rejected that idea because it would undercut important public interest objectives. The *Report and Order* imposes a holding period to prevent trafficking of PLMR spectrum (*e.g.,* PLMR eligible acquiring new PLMR licenses from existing pool of unassigned frequencies for the purpose of selling them to CMRS providers). Rather than negatively impact small businesses, we believe that this rule change is likely to benefit small business PLMR licensees by giving them greater ability to assess marketplace needs and economic factors when determining the best and most efficient use of spectrum. We believe that the benefits of this rule change the costs that may be associated with providing the required notice to potentially affected public safety licensees. Further, the *Report and Order* finds that allowing licensees to convert their frequencies to CMRS use or assign or transfer these frequencies to CMRS entities will not affect the supply of available PLMR spectrum for licensing from the PLMR pool, and thus should not further exacerbate the current shortage of private spectrum available to small business entities and other PLMR eligibles.

139. *Report to Congress:* The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

140. Accordingly, pursuant to sections 1, 2, 4(i), 5(c), 7(a), 11(b), 301, 302, 303, 307, 308, 309(j) , 310, 312a, 316, 319, 323, 324, 332, 333, 336, 337, and 351 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157(a), 161(b), 301, 302, 303, 307, 308, 309(j), 310, 312a, 316, 319, 323, 324, 332, 333, 336, 337, and 351, the Balanced Budget Act of 1997, Public Law 105–33, Title III, 111 Stat. 251 (1997), and §§ 1.421 and 1.425 of the Commission's Rules, 47 CFR 1.421 and 1.425, it is ordered that the *Report and Order* is hereby adopted.

141. It is further ordered that, pursuant to sections 1, 2, 4(i), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and 303, and § 1.425 of the Commission's Rules, 47 CFR 1.425, the Petition for Rulemaking filed by the American Mobile Telecommunications Association, Inc. on July 30, 1999 (RM–9705) is denied.

142. It is further ordered that, pursuant to sections 1, 2, 4(i), 303, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 303, and 337, the Petition for Rulemaking filed by UTC, The Telecommunications Association, the American Petroleum Institute, and the Association of American Railroads on August 14, 1998 (RM–9405) is denied.

143. It is further ordered that parts 1 and 90 of the Commission's Rules are amended as set forth, and that these rules shall be effective March 5, 2001, except § 90.621 which contains information collection requirement that has not been approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for this section.

144. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

List of Subjects in 47 CFR Parts 1 and 90

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR parts 1 and 90 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.913 is amended by adding paragraph (g) to read as follows:

§ 1.913 Application forms; electronic and manual filing.

* * * * *

(g) *Section 337 Requests.* Applications to provide public safety services submitted pursuant to 47 U.S.C. 337 must be filed on the same form and in the same manner as other applications for the requested frequency(ies).

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

4. Section 90.179 is amended by revising paragraph (g) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(g) The provisions of this section do not apply to licensees authorized to provide commercial mobile radio service under this part, including licensees authorized to use channels transferred or assigned pursuant to § 90.621(e)(2).

5. Section 90.621 is amended by revising paragraph (e)(2) to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(e) * * *

(2) Notwithstanding paragraph (e)(5) of this section, licensees of channels in the Industrial/Land Transportation and Business categories may request a modification of the license, *see* § 1.947 of this chapter, to authorize use of the channels for commercial operation. The licensee may also, at the same time or thereafter, seek authorization to transfer or assign the license, *see* § 1.948 of this chapter, to any person eligible for licensing in the General or SMR categories. Applications submitted pursuant to this paragraph must be filed in accordance with the rules governing other applications for Industrial/Land Transportation and Business channels, and will be processed in accordance with those rules, except that the modification application and the assignment application will be placed on public notice in accordance with § 1.933 of this chapter. Grant of requests submitted pursuant to this paragraph is subject to the following conditions:

(i) A licensee that modifies its license to authorize commercial operations will not be authorized to obtain additional 800 MHz Business or Industrial/Land Transportation category channels for sites located within 113 km (70 mi.) of the station for which the license was modified, for a period of one year from the date the license is modified. This provision applies to the licensee, its controlling interests and their affiliates, as defined in § 1.2110 of this chapter.

(ii) With respect to licenses the initial application for which was filed on or after November 9, 2000, requests submitted pursuant to paragraph (e)(2) of this section may not be filed until five years after the date of the initial license grant. In the case of a license that is modified on or after November 9, 2000 to add 800 MHz Industrial/Land Transportation or Business frequencies or to add or relocate base stations that expand the licensee's the interference contour, requests submitted pursuant to paragraph (e)(2) of this section for these frequencies or base stations may not be filed until five years after such modification.

(iii) Requests submitted pursuant to paragraph (e)(2) of this section must include a certification that written notice of the modification application has been provided to all Public Safety licensees, see § 90.20(a), with base stations within 113 km (70 mi.) of the site of the channel(s) for which authorization for commercial use is sought that operate within 25 kHz of the center of those channel(s). If, pursuant to paragraph (e)(2) of this section, modification and assignment or transfer applications are filed at different times, the written notice required by this paragraph must be provided each time.

(iv) The applicant must certify that it will take reasonable precautions to avoid causing harmful interference to Public Safety licensees, *see* § 90.20(a), and to take such action as may be necessary to eliminate interference to such licensees caused by its operations. (When an assignment or transfer application is filed pursuant to paragraph (e)(2) of this section, this representation is required only of the assignee or transferee.) Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If the licensees are unable to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation.

* * * * *

[FR Doc. 01–40 Filed 12–29–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 121200G]

Atlantic Highly Migratory Species (HMS) Fisheries; Pelagic Shark Species

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

ACTION: Commercial fishing quota notification.

SUMMARY: NMFS notifies eligible participants of commercial quotas for pelagic shark species for the 2001 fishing year. These quotas are consistent with the regulations issued in May 1999 to implement the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks.

DATES: The fishery opening for pelagic sharks is January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz, 301-713-2347; fax 301-713-1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and its implementing regulations are found at 50 CFR part 635 issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

On June 30, 1999, in the course of a lawsuit brought by commercial shark fishermen and dealers, NMFS was enjoined from enforcing the 1999 regulations, 64 FR 29090 (May 28, 1999), regarding Atlantic shark commercial catch quotas and fish-counting methods (including the counting of dead discards and state commercial landings after Federal closures) that are different from the quotas and fish-counting methods prescribed by the 1997 Atlantic shark regulations, 62 FR 16648 (April 7, 1997). On November 22, 2000, NMFS and the Plaintiffs signed a settlement agreement.

On December 7, 2000, the Court stipulated to the agreement and dissolved the injunction against the 1999 HMS FMP commercial shark regulations.

NMFS is now implementing and enforcing the pelagic shark quotas established in the May 28, 1999, regulations (64 FR 29090). The annual 2001 pelagic shark quota is as follows: porbeagle sharks, 92 mt dw; blue sharks, 273 mt dw; and pelagic sharks other than porbeagle sharks, 488 mt dw. The first semiannual quota for pelagic sharks is as follows: porbeagle sharks, 46 mt dw; blue sharks, 136.5 mt dw; and pelagic sharks other than porbeagle sharks, 244 mt dw. This fishery will open on January 1, 2001. When the quotas are projected to be reached for this fishery, NMFS will file notification of closure at the Office of the Federal Register at least 14 days before the effective date.

This document does not change the quotas or fishing season lengths announced on December 5, 2000, for large or small coastal sharks (65 FR 75867). NMFS is currently developing an emergency rule consistent with the settlement agreement for these fisheries.

Those vessels that have not been issued a limited access permit under 50 CFR 635.4 may not sell sharks and are subject to the recreational retention limits and size limits specified at 50 CFR 635.22(c) and 635.20(d), respectively. The recreational fishery is not affected by any closure in the commercial fishery.

Classification

This action is taken under 50 CFR part 635 and is exempt from review under Executive Order 12866.

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

Dated: December 26, 2000.

Val Chambers,

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

[FR Doc. 00–33449 Filed 12–29–00; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 1
Tuesday, January 2, 2001

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–46–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–7 Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 98–08–22, which currently requires inspecting the elevator and rudder attachment brackets for cracks and corrosion, and replacing any cracked or corrosion-damaged parts on certain Pilatus Aircraft Ltd. (Pilatus) Model PC–7 airplanes. AD 98–08–22 resulted from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. Since the issuance of AD 98–08–22, Pilatus has redesigned the brackets. Installation of these brackets should eliminate the cause of corrosion, which resulted in cracks or corrosion damage. The proposed AD would require you to replace the elevator and rudder attachment brackets with parts of improved design. The actions specified by the proposed AD are intended to prevent failure of the elevator and rudder attachment brackets because of cracks or corrosion damage. Such failure could result in the elevator or rudder separating from the airplane with consequent loss of airplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule by February 5, 2001.

ADDRESSES: Send three copies of your comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–46–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may read comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get service information that applies to the proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6509; facsimile: +41 41 610 3351. You may read this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roman Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on the proposed AD? We invite your comments on the proposed rule. You may send whatever written data, views, or arguments you choose. You need to include the rule's docket number and send your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received by the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

Are there any specific portions of the proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might require a change to the proposed rule. You may look at all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–46–AD.'' We will date stamp and mail the postcard back to you.

Discussion

Has FAA taken any action to this point? Reports received from the Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, revealed instances of corrosion and cracking in the elevator and rudder attachment brackets on Pilatus Model PC–7 airplanes that have been operated in areas of high humidity or salt content. This caused FAA to issue AD 98–08–22, Amendment 39–10471 (63 FR 19175, April 17, 1998). That AD requires you to inspect the elevator and rudder attachment brackets for cracks and/or corrosion, and replace any cracked or corrosion-damaged parts, as applicable.

What has happened since AD 98–08–22 to initiate this action? The FOCA recently notified FAA of the need to change AD 98–08–22. The FOCA reports that Pilatus has redesigned the elevators and rudder attachment brackets. Installation of these brackets should inhibit the cause of corrosion, which resulted in cracks or corrosion damage.

Is there service information that applies to this subject? Pilatus has issued Service Bulletin No. 55–005, dated March 23, 2000.

What are the provisions of this service bulletin? The service bulletin includes procedures for removing and replacing the elevator and rudder attachment brackets with ones of improved design.

What action did FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2000–411, dated September 27, 2000, to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Following this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Model PC–7 airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would the proposed AD require? This proposed AD would supersede AD 98–08–22 with a new AD that would require you to incorporate the actions in the previously referenced service bulletin.

Why is the compliance of the initial inspection in hours time-in-service (TIS) and calendar time? The affected airplanes are used in general aviation operations. Those operators may accumulate 100 hours TIS on the airplane in less than 3 months. We have determined that the dual compliance time:

—Gives all owners/operators of the affected airplanes adequate time to schedule and do the actions in this proposed AD; and

—Ensures that the unsafe condition referenced in this AD will be corrected within a reasonable time period without inadvertently grounding any of the affected airplanes.

Cost Impact

How many airplanes would the proposed AD impact? We estimate that the proposed AD affects 8 airplanes in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × $60 per hour = $480	Parts will be provided by the manufacturer free of charge	$480	$480 × 8 = $3,840.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed here would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if adopted, 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 has been placed 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, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations 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. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–08–22, Amendment 39–10471 (63 FR 19175, April 17, 1998), and by adding a new AD to read as follows:

Pilatus Aircraft Ltd.: Docket No. 2000–CE–46–AD; Supersedes AD 98–08–22, Amendment 39–10471.

(a) *What airplanes are affected by this AD?* This AD affects Model PC–7 airplanes, serial numbers MSN 001 through MSN 612, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the elevator and rudder attachment brackets because of cracks or corrosion damage, which could result in the elevator or rudder separating from the airplane with consequent loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Replace the horizontal stabilizer brackets with new parts using replacement kit No. 500.50.07.132 and replace the vertical stabilizer bracket with new parts using replacement kit No. 500.50.07.133.	Within the next 100 hours time-in-service (TIS) or 6 months after the effective date of this AD, whichever occurs first, unless already done.	Do these replacements following the ''Accomplishment Instructions'' paragraph of Pilatus Service Bulletin No. 55–005, dated March 23, 2000, the aircraft maintenance manuals, and illustrated parts catalogs.
(2) Do not install any parts identified as old parts in replacement kit No. 500.50.07.132 (or FAA–approved equivalent part numbers) or 500.50.07.133 (or FAA-approved equivalent part number).	As of the effective date of this AD	Not Applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

(2) Alternative methods of compliance approved under AD 98–08–22, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, 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 (e) 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roman Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can do the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland. You may look at these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 98–08–22, Amendment 39–10471.

Note 2: The subject of this AD is addressed in Swiss AD HB 2000–411, dated September 27, 2000.

Issued in Kansas City, Missouri, on December 21, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–33402 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–22–AD]

RIN 2120–AA64

Airworthiness Directives; Eagle Aircraft Pty. Ltd. Model 150B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Eagle Aircraft Pty. Ltd. (Eagle) Model 150B airplanes. The proposed AD would require you to inspect the rudder cables for fraying, cracks, nicks, etc. (referred to as damage), and replace any damaged cables. The proposed AD would also require you to replace the rudder cable pulleys with larger diameter pulleys to eliminate the possibility of further damage. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. The actions specified by the proposed AD are intended to detect and correct damaged rudder cables caused by chafing of the cable against the pulleys. Continued airplane operation with damaged cables could result in rudder cable system failure with possible loss of airplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 23, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE–22-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Eagle Aircraft Pty. Ltd., Lot 700 Cockburn Road, Henderson, WA 6166 Australia; telephone: (08) 9410 1077; facsimile: (08) 9410 2430. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on the proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–22–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, notified FAA that an unsafe condition may exist on certain Eagle Model 150B airplanes. The CASA reports an

occurrence where frayed rudder cables were found on an Eagle Model 150B airplane. Further investigation reveals that the diameter of the rudder cable pulleys is too small and cables rub against these pulleys.

What are the consequences if the condition is not corrected? Continued airplane operation with damaged cables could result in rudder cable system failure with possible loss of airplane control.

Is there service information that applies to this subject? Eagle has issued the following service bulletins:

—Service Bulletin No. 1059, dated January 21, 1999, which includes procedures for inspecting the rudder cables for fraying, cracks, nicks, etc. (referred to as damage), and specifies replacing any damaged cables; and

—Service Bulletin No. 1076, Revision 2, dated December 14, 1999, which includes procedures for replacing the rudder cable pulleys with larger diameter pulleys to eliminate the possibility of further damage.

What action did CAA take? The CASA classified these service bulletins as mandatory and issued Australian AD Number X-TS/2, effective December 24, 2000, in order to assure the continued airworthiness of these airplanes in Australia.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Australia and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, CASA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? The FAA has examined the findings of CASA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Eagle Model 150B airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would the proposed AD require? This proposed AD would require you to:

—Inspect the rudder cables for fraying, cracks, nicks, etc. (referred to as damage), and replace any damaged cables; and

—Replace the rudder cable pulleys with larger diameter pulleys to eliminate the possibility of further damage.

Compliance Time of the Proposed AD

What is the compliance time of the proposed AD? The compliance time of the proposed AD would be to accomplish the inspection and rudder cable pulley replacement ''within the next 100 hours time-in-service (TIS) after the effective date of this AD'' and to accomplish any necessary cable replacement ''prior to further flight after the inspection.''

Why are the compliance times of the Australian AD different from the compliance times in the proposed AD? The Australian AD requires (on Eagle Model 150B airplanes registered in Australia) the inspection within the next 5 hours of service and requires the pulley replacement within 100 hours of operation. These are the compliance times specified in the service information. We do not have justification to require the inspection within 5 hours of service. We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 100 hours TIS will give the owners/operators of the affected airplanes enough time to have the inspection and replacement accomplished without compromising the safety of the sailplanes.

By accomplishing both the inspection and replacement at the same time, the owners/operators of the affected airplanes only have their airplanes out of service once instead of twice.

Cost Impact

How many airplanes would the proposed AD impact? We estimate that the proposed AD affects 5 airplanes in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed inspection of the rudder cable and proposed replacement of the rudder cable pulley:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 workhours × $60 = $300	$286	$586	$2,930

Replacement cables, if necessary, would cost $305 per airplane. We have no way of determining the number of rudder cables that would be found damaged during the proposed inspection.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Eagle Aircraft Pty. Ltd.: Docket No. 2000–CE–22–AD

(a) *What airplanes are affected by this AD?* This AD affects Model 150B airplanes, serial numbers 001 thru 030, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damaged rudder cables caused by chafing of the cable against the pulleys. Continued airplane operation with damaged cables could result in rudder cable system failure with possible loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the rudder cables for fraying, cracks, nicks, etc. (referred to as damage).	Within the next 100 hours time-in-service (TIS) after the effective date of this AD.	In accordance with Eagle Service Bulletin No. 1059, dated January 21, 1999.
(2) Replace any rudder cables found damaged during the inspection.	Prior to further flight after the inspection	In accordance with the instructions in the maintenance manual, as specified in Eagle Service Bulletin No. 1059, dated January 21, 1999.
(3) Replace the rudder cable pulleys with new rudder cable pulleys, part numbers MS20220–1 and MS20220–2, change pulley attachment, and reduce cable tension.	Prior to further flight after the inspection	In accordance with Eagle Service Bulletin No. 1076, Revision 2, dated December 14, 1999.
(4) Do not install any rudder cable pulleys that are not part numbers MS20220–1 and MS20220–2 (with all associated hardware).	As of the effective date of this AD	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance (AMOC) provides an equivalent level of safety; and

(2) The Manager, Los Angeles Aircraft Certification Office, approves your AMOC. You may submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office. You may also submit your request directly to the Los Angeles Aircraft Certification Office.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, 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 (e) 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Fredrick A. Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5232; facsimile: (562) 627–5210.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Eagle Aircraft Pty. Ltd., Lot 700 Cockburn Road, Henderson WA 6166 Australia; telephone: (08) 9410 1077; facsimile: (08) 9410 2430. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Australian AD Number X–TS/2, effective December 24, 2000.

Issued in Kansas City, Missouri, on December 22, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–33403 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–67–AD]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all PIAGGIO AERO INDUSTRIES S.p.A (PIAGGIO) Model P–180 airplanes. The proposed AD would require you to inspect the flap actuators for incorrect maneuvering and evidence of grease and oxidation around the gear box (actuators with any of these conditions are referred to as problem actuators). If you find a problem actuator, the proposed AD would require you to immediately replace the flap actuators with improved design actuators or repair the existing actuators to the improved design level. If you do not find a problem actuator, the proposed AD would require you to repeat the inspection until the installed actuators are of improved design. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to detect and remove problem flap actuators from service. Continued operation with problem actuators could result in flap system failure, with consequent reduction in, or loss of, control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 3, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–67–AD–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be

inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Piaggio Aero Industries S.p.A, Via Cibrario 4, 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT:

Roman Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on the proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–67–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Ente Nazionale per l' Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on all PIAGGIO Model P–180 airplanes. The ENAC reports incidents of malfunctions of the flap actuators. Investigation of these incidents reveals problems inside the gearbox of the outboard flap actuators. Investigation results indicate incorrect maneuvering of the flap system and evidence of grease and oxidation around the gear box.

What are the consequences if the condition is not corrected? Continued operation with problem actuators could result in flap system failure, with consequent reduction in, or loss of, control of the airplane.

Is there service information that applies to this subject? PIAGGIO has issued Mandatory Service Bulletin No. SB–80–0120, Original Issue: July 20, 2000.

What are the provisions of this service bulletin? The service bulletin:

—Includes procedures for inspecting the flap actuators for incorrect maneuvering and evidence of grease and oxidation around the gear box (actuators with any of these conditions are referred to as problem actuators);

—Specifies replacing the flap actuators with improved design actuators in accordance with the instructions in the maintenance manual; and

—Specifies repairing the existing actuators to the improved design level in accordance with instructions received from Piaggio.

What action did ENAC take? The ENAC classified this service bulletin as mandatory and issued Italian AD Number N2000–392, dated August 7, 2000, in order to assure the continued airworthiness of these airplanes in Italy.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Italy and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the ENAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? The FAA has examined the findings of the ENAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other PIAGGIO Model P–180 airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would the proposed AD require? This proposed AD would require you to:

—Inspect the flap actuators for incorrect maneuvering and evidence of grease and oxidation around the gear box (actuators with any of these conditions are referred to as problem actuators);

—If you find a problem actuator, immediately replace the flap actuators with improved design actuators or repair the existing actuators to the improved design level; and

—If you do not find a problem actuator, repeat the inspection until you install improved design flap actuators.

Cost Impact

How many airplanes would the proposed AD impact? We estimate that the proposed AD affects 11 airplanes in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on operators
1 workhour × $60 per hour = $60	No parts required for the inspection	$60	$660

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such repair/replacement:

Labor cost	Parts cost	Total cost per airplane
32 workhours × $60 per hour = $1,920	$8,000 per airplane	$9,920

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

PIAGGIO AERO INDUSTRIES S.P.A.: Docket No. 2000–CE–67–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model P–180 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and remove problem flap actuators from service. Continued operation with problem actuators could result in flap system failure, with consequent reduction in, or loss of, control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the flap actuators for incorrect maneuvering and evidence of grease and oxidation around the gear box (actuators with any of these conditions are referred to as problem actuators).	Upon accumulating 600 hours time-in-service (TIS) on the flap actuators or within the next 100 hours TIS after the effective date of this Ad, whichever occurs later.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Mandatory Service Bulletin No. SB–80–0120, Original Issue: July 20, 2000.
(2) If you do not find any problem actuators, repeat the inspection until you have either:. (i) replaced all flap actuators with part number (P/N) C154183–1 and C154184–1 (or FAA-approved equivalent part numbers) actuators; or. (ii) repaired or modified the P/N C132277–3 and C132277–4 (or FAA-approved equivalent part numbers) to the P/N C154183–1 and C154184–1 design level.	Within 100 hours TIS after the inspection required in paragraph (d)(1) of this AD and thereafter at intervals not to exceed 100 hours TIS.	Accomplish the replacement in accordance with the instructions in the maintenance manual. Accomplish the repair or modification in accordance with instructions received from Piaggio at the address given in paragraph (h) of this AD.
(3) If you find problem actuators during any inspection required by this AD, immediately replace the flap actuators with P/N C154183–1 and C154184–1 (or FAA-approved equivalent part numbers); or repair to the P/N C154183–1 and C154184–1 design level.	Prior to further flight after the inspection where you find a problem actuator.	Accomplish the replacement in accordance with the instructions in the maintenance manual. Accomplish the repair or modification in accordance with instructions received from Piaggio at the address given in paragraph (h) of this AD.
(4) Only install flap actuators that are one of the following:.	As of the effective date of this AD	Not applicable.

Actions	Compliance	Procedures
(i) P/N C154183–1 and C154184–1 (or FAA-approved equivalent part numbers); or (ii) P/N C132277–3 and C132277–4 (or FAA-approved equivalent part numbers) that have been repaired or modified to the P/N C154183–1 and C154184–1 design level		

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, 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 (e) 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roman Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Piaggio Aero Industries S.p.A, Via Cibrario 4, 16154 Genoa, Italy. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Italian AD N2000–392, dated August 7, 2000.

Issued in Kansas City, Missouri, on December 21, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–33404 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–61–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA—Groupe AEROSPATIALE (Socata) Model TBM 700 airplanes. The proposed AD would require you to apply Loctite on attaching bolt threads of inboard, central, and outboard carriages; increase tightening torques; and replace central carriage attaching bolts. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent loose or the loss of flap attachment screws, which could cause rough or irregular control. Such rough or irregular control could lead to the loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule by February 5, 2001.

ADDRESSES: Send three copies of your comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–61–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may read comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get service information that applies to the proposed AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: (33) (0)5.62.41.73.00; facsimile: (33) (0)5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4191. You may also look at this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on the proposed AD? We invite your comments on the proposed rule. You may send whatever written data, views, or arguments you choose. You need to include the rule's docket number and send your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received by the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

Are there any specific portions of the proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might require a change to the proposed rule. You may look at all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and

any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–61–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on certain Socata Model TBM 700 airplanes. The DGAC reports two occurrences on Socata model TBM 700 airplanes where, following a flight, a screw of a flap attachment fitting was found partly unscrewed and another was missing. These occurrences are the result of flap vibration.

What are the consequences if the condition is not corrected? Loose or the loss of flap attachment screws could result in rough or irregular control. Such rough or irregular control could lead to loss of control of the airplane.

Is there service information that applies to this subject? Socata has issued Mandatory Service Bulletin No. SB 70–087 57, dated September 2000.

What are the provisions of this service bulletin? The service bulletin includes procedures for:

—Applying Loctite on attaching bolt threads of inboard, central, and outboard carriages;

—Increasing the tightening torques; and

—Replacing central carriage attaching bolts.

What action did the DGAC take? The DGAC classified this service bulletin as mandatory and issued French AD Number 2000–375(A), dated September 20, 2000, to ensure the continued airworthiness of these airplanes in France.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In carrying out this bilateral airworthiness agreement, the DGAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Socata Model TBM 700 airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would the proposed AD require? This proposed AD would require you to incorporate the actions in the previously referenced service bulletin.

Cost Impact

How many airplanes would the proposed AD impact? We estimate that the proposed AD affects 75 airplanes in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected airplanes? We estimate the following costs to complete the actions of the service bulletin:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. airplane operators
6 workhours × $60 for each hour = $360	$10	$360 + $10 = $370	75 × $370 = $27,750

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed in the Rules Docket. You may get a copy of it 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, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

SOCATA—Groupe Aerospatiale:

Docket No. 2000–CE–61–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model TBM 700 airplanes, serial numbers 1 thru 164, and 166 thru 173, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent loose flap attachment screws or the loss of flap attachment screws that could cause rough or irregular control and

consequently the loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Apply Loctite on attaching bolt threads of inboard, central, and outboard carriages; increase tightening torques; and replace central carriage attaching bolts with new bolts, part number Z00.N5109337315.	Within the next 25 hours time-in-service (TIS) after the effective date of this AD, if not already done.	Do this action following the ACCOMPLISHMENT INSTRUCTIONS paragraph in Socata Service Bulletin SB 70–087, dated September 2000 and the applicable maintenance manual.
(2) Do not install any central carriage attaching bolts that are not part number Z00.N5109337315 (or FAA-approved equivalent part number).	As of the effective date of this AD	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, 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 (e) 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. You may look at these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in French AD 2000–375(A), dated September 20, 2000.

Issued in Kansas City, Missouri, on December 22, 2000.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–33405 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107566–00]

RIN 1545–AY42

Guidance under section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities In Connection with an Acquisition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition. Changes to the applicable law were made by the Taxpayer Relief Act of 1997. These proposed regulations affect corporations and are necessary to provide them with guidance needed to comply with these changes. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by April 24, 2001. Outlines of topics to be discussed at the public hearing scheduled for May 15, 2001, at 10 a.m. must be received by April 24, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–107566–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–107566–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brendan P. O'Hara, (202) 622–7530; concerning submissions of comments, delivering comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A. State of the Law Before Section 355(e)

Section 355 generally provides that, if a corporation distributes to its shareholders stock of a corporation that it controls immediately before the distribution and certain other conditions are met, neither the distributing corporation (hereinafter referred to as Distributing) nor its shareholders recognize gain or loss. A number of the conditions for tax free treatment (for example, the continuity of interest requirement of § 1.355–2(c), the ''no device'' requirement of section 355(a)(1)(B), the 5-year active business requirement of section 355(b), and the limitation on disqualified stock under section 355(d)) operate to limit the circumstances in which Distributing or the controlled corporation (hereinafter referred to as Controlled) can undergo changes of control in conjunction with a distribution that qualifies for corporate

and shareholder-level nonrecognition under section 355. Nevertheless, prior to the enactment of section 355(e), it was possible for such changes to occur, for example, in the context of tax free reorganizations, while qualifying for tax free treatment under section 355. See, *e.g., Commissioner* v. *Mary Archer W. Morris Trust*, 367 F.2d 794 (4th Cir. 1966).

B. Enactment of Section 355(e)

Section 355(e), which was enacted in 1997, provides that the stock of a controlled corporation generally will not be qualified property under section 355(c)(2) or section 361(c)(2) if the stock is distributed as ''part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation.'' Thus, if section 355(e) applies to a distribution, Distributing is taxed on the amount by which the distributed stock's fair market value exceeds its basis. Distributee shareholders receive Controlled stock tax free, but do not increase their bases to reflect the corporate level gain recognized by Distributing on the distribution.

Section 355(e)(2)(B) provides that, unless the taxpayer establishes otherwise, a plan (or series of related transactions) (hereinafter referred to as a plan) exists if ''1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation during the 4-year period beginning on the date which is 2 years before the date of the distribution.''

The committee reports state that section 355 was intended to permit the tax free division of existing business arrangements among existing shareholders. The reports state that ''[i]n cases in which it is intended that new shareholders will acquire ownership of a business in connection with a spin off, the transaction more closely resembles a corporate level disposition of the portion of the business that is acquired'' and provide that gain is recognized ''if, pursuant to a plan or arrangement in existence on the date of distribution, either the controlled or distributing corporation is acquired * * *'' H.R. Rep. No. 105–148, at 462 (1997); see also S. Rep. No. 105–33, at 139–40 (1997) (slight variation in language). The Conference Report adds, ''[a]s under the House bill and Senate amendment, a public offering of sufficient size can result in an acquisition that causes gain recognition under the provision.'' H.R. Conf. Rep. No. 105–220, at 533 (1997).

C. Previous Proposal of Regulations

On August 24, 1999, the IRS and the Department of the Treasury published proposed regulations under section 355(e) (REG–116733–98) in the **Federal Register** (64 FR 46155) (hereinafter referred to as the 1999 proposed regulations). The 1999 proposed regulations provided the exclusive means by which a taxpayer could establish that a distribution and an acquisition were not part of a plan, and required that the taxpayer must establish the absence of a plan with clear and convincing evidence.

A public hearing regarding the 1999 proposed regulations was held on March 2, 2000. In addition, written comments were received. Commentators asserted that the approach of the 1999 proposed regulations, providing exclusive rebuttals for establishing that transactions are not part of a plan, was inappropriate because it unfairly limited the evidence taxpayers could produce that may be relevant to whether transactions are part of a plan. In addition, commentators argued that section 355(e) does not require the IRS and the Department of the Treasury to adopt a clear and convincing evidence standard for establishing whether transactions are part of a plan. Further, commentators were concerned that the exclusive rebuttals contained in the 1999 proposed regulations may not be available in cases in which there was an intent to facilitate any acquisition, regardless of its type or size, even if the acquisition being tested was not the intended acquisition. Finally, one of the rebuttals in the 1999 proposed regulations was only available if the taxpayer proves, among other things, that ''[a]t the time of the distribution, neither the distributing corporation, the controlled corporation, nor their controlling shareholders reasonably would have anticipated that it was more likely than not that one or more persons would acquire a 50-percent or greater interest in the distributing corporation or the controlled corporation within 2 years after the distribution * * * who would not have acquired such interests if the distribution had not occurred.'' 1999 Prop. Reg. § 1.355–7(a)(2)(iii)(B). Many commentators indicated that determining whether it was reasonably anticipated that an event was more likely than not to occur was impractical and that the consequent uncertainty inhibited normal business transactions.

Explanation of Provisions

After consideration of the comments received, the IRS and the Department of the Treasury have decided to withdraw the 1999 proposed regulations and issue new proposed regulations (hereinafter referred to as the 2000 proposed regulations) to provide guidance concerning the interpretation of the phrase ''plan (or series of related transactions).'' The 2000 proposed regulations also address the determination of Distributing's gain when multiple controlled corporations are distributed and the distributions are part of a plan pursuant to which a 50-percent or greater interest in one or more, but not all, of the distributed controlled corporations is acquired.

The IRS and the Department of the Treasury plan to issue regulations addressing other issues arising under section 355(e), including the definition of an acquisition, the application of the aggregation and attribution rules, the treatment of successors and predecessors, and the administration of the statute of limitations provision of section 355(e)(4)(E). Comments concerning the 2000 proposed regulations, the additional issues described above, and other issues that should be addressed in regulations are welcome.

A. Plan or Series of Related Transactions

The 2000 proposed regulations provide that whether a distribution and an acquisition are part of a plan is determined based on all the facts and circumstances. They include nonexclusive lists of facts and circumstances to be considered in making the determination. Because the determination of whether a plan exists is dependent on the facts and circumstances, the 2000 proposed regulations provide a general statement of the policy underlying whether a distribution and an acquisition are part of a plan for purposes of section 355(e).

In the case of an acquisition after a distribution, the 2000 proposed regulations provide that, in general, the distribution and acquisition are considered part of a plan if Distributing, Controlled, or any of their respective controlling shareholders intended, on the date of the distribution, that the acquisition or a similar acquisition occur in connection with the distribution. The reference to ''a similar acquisition'' ensures that changes in the terms of the acquisition intended at the time of the distribution (including, in certain circumstances, a substitution of acquirer) do not prevent the distribution

and the acquisition that actually occurs from being considered part of a plan.

In the case of an acquisition before a distribution, the 2000 proposed regulations provide that, in general, the distribution and acquisition are considered part of a plan if Distributing, Controlled, or any of their respective controlling shareholders intended, on the date of the acquisition, that a distribution occur in connection with the acquisition.

As indicated above, the facts and circumstances surrounding the distribution and the acquisition must be examined to determine whether the transactions were intended to occur in connection with each other. In addition, the 2000 proposed regulations contain six safe harbor provisions that, when applicable, provide that the acquisition and distribution are not part of a plan.

Under the 2000 proposed regulations, Distributing must test each acquisition of Distributing or Controlled stock to determine whether it is part of a plan that includes a distribution. The 2000 proposed regulations aggregate all acquisitions of stock of a corporation that are pursuant to a plan including a particular distribution to determine whether the 50 percent threshold of section 355(e)(2)(A)(ii) is met.

1. Facts and Circumstances

For those situations to which the safe harbor provisions do not apply, the 2000 proposed regulations provide two nonexclusive lists of facts and circumstances (hereinafter referred to as factors) to consider in assessing whether an acquisition and a distribution are part of a plan. One list of factors tends to demonstrate that a distribution and an acquisition are part of a plan and the other list tends to demonstrate that a distribution and an acquisition are not part of a plan. The weight of the factors depends on the particular case. The existence of a plan should not be determined merely by comparing the number of factors tending to show that the acquisition and distribution are, or are not, part of a plan.

Plan Factors

Many of the factors tending to show that a distribution and an acquisition are part of a plan (the plan factors) focus on whether Distributing, Controlled or their respective controlling shareholders participated in discussions with outside parties regarding the second transaction of the pair being tested before the first transaction occurred (factors (i), (ii), (iii), (iv), (v), and (vi)). Such discussions provide evidence that Distributing, Controlled or any of their respective controlling shareholders had an intent that the transactions occur in connection with each other.

Other plan factors (factors (vii), (viii), and (ix)) inquire into other indications of the intent of Distributing, Controlled and their respective controlling shareholders. Factor (vii) considers whether the distribution was motivated by a business purpose to facilitate the acquisition or a similar acquisition of Distributing or Controlled. The operating rule in proposed § 1.355–7(e)(1)(i) states that evidence of a business purpose to facilitate an acquisition of Distributing or Controlled exists if there was a reasonable certainty that within 6 months after the distribution an acquisition would occur, an agreement, understanding, or arrangement would exist, or substantial negotiations would occur regarding an acquisition. The operating rule in proposed § 1.355–7(e)(1)(ii) applies to acquisitions before a distribution, asking whether the acquisition occurred after the date of the public announcement of the planned distribution, or whether, at the time of the acquisition, it was reasonably certain that within 6 months after the acquisition the distribution would occur, an agreement, understanding, or arrangement would exist, or substantial negotiations would occur regarding the distribution. The operating rule in proposed § 1.355–7(e)(2) provides that the fact that internal discussions occurred may be indicative of the business purpose that motivated the distribution. The operating rule contained in proposed § 1.355–7(e)(3) provides that, if Distributing distributes Controlled stock intending, in whole or substantial part, to decrease the likelihood of the acquisition of Distributing or Controlled by separating it from another corporation that is likely to be acquired, Distributing is treated as having a business purpose to facilitate the acquisition of the corporation that was acquired.

The rule regarding reasonable certainty is necessary to implement section 355(e) because where a taxpayer was reasonably certain that an acquisition would occur, that acquisition was likely to be taken into account in determining whether to effect a distribution. While the IRS and the Department of the Treasury believe that reasonable certainty (even where no discussions with potential acquirers have occurred) is relevant in determining whether a plan exists, it should be noted that this concept is significantly modified from the 1999 proposed regulations. This operating rule will apply only in cases where there was a strong probability that, within 6 months after the distribution, an acquisition would occur, an agreement, understanding, or arrangement would exist, or substantial negotiations would occur.

Factor (viii) considers whether an acquisition and a distribution occured within 6 months of each other, or whether there was an agreement, understanding, arrangement, or substantial negotiations regarding the second transaction (or, if an acquisition is the second transaction, a similar acquisition) within 6 months after the first transaction.

Finally, factor (ix) examines whether the debt allocation between Distributing and Controlled made an acquisition of Distributing or Controlled likely in order to service the debt.

Nonplan Factors

The 2000 proposed regulations also provide a nonexclusive list of factors tending to show that a distribution and an acquisition are not part of a plan (the nonplan factors). Just as discussions with outside parties about the second transaction prior to the first transaction tend to show that Distributing, Controlled or their respective controlling shareholders had an intent that the second transaction occur in connection with the first transaction, the absence of such discussions tends to show that the transactions did not occur in connection with each other. Thus, there are nonplan factors that are analogous to the plan factors related to discussions (factors (i), (ii), and (iv)).

The existence of a corporate business purpose, other than a business purpose to facilitate the acquisition or a similar acquisition, that motivated Distributing, in whole or substantial part, to make the stock distribution tends to show that a distribution and an acquisition are not part of a plan (factor (vi)). The presence of a business purpose to facilitate the acquisition or a similar acquisition is relevant in determining the extent to which the distribution was motivated in whole or substantial part by another corporate business purpose within the meaning of § 1.355–2. Analyzing whether there is another substantial corporate business purpose for the distribution in light of an acquisition-related purpose is similar to analyzing whether there is a corporate business purpose for a distribution in light of the potential avoidance of federal taxes. See § 1.355–2(b)(1) and (5), *Example 8.* Thus, another business purpose must be real and substantial even in light of the acquisition business purpose. In making this determination, the operating rules in proposed § 1.355–7(e) apply.

Factors (iii) and (v) consider whether there was an identifiable, unexpected change in market or business conditions after the first of the two transactions being tested that resulted in the second, unexpected transaction. Factor (vii) considers whether the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition or a previously proposed similar acquisition.

2. Safe Harbors

The 2000 proposed regulations include six safe harbor provisions. A distribution and an acquisition are not part of a plan if they are described in one of the safe harbors. The first two safe harbors address acquisitions more than 6 months after a distribution. Safe Harbor I applies to an acquisition more than 6 months after a distribution if there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition before a date that is 6 months after the distribution and the distribution was motivated in whole or substantial part by a corporate business purpose other than a business purpose to facilitate an acquisition. The nonacquisition corporate business purpose for the distribution is considered in light of any business purpose to facilitate an acquisition, and the operating rules in proposed § 1.355–7(e) apply.

Safe Harbor II, like Safe Harbor I, applies only to acquisitions more than 6 months after a distribution for which there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition before a date that is 6 months after the distribution. However, where Safe Harbor I applies to cases where the distribution was motivated in whole or substantial part by a nonacquisition business purpose, Safe Harbor II applies to situations where the distribution was motivated in whole or substantial part by a business purpose to facilitate an acquisition. Under Safe Harbor II, an acquisition will not be treated as part of a plan with a distribution if the distribution was motivated in whole or substantial part by a corporate business purpose to facilitate an acquisition or acquisitions of no more than 33 percent of the stock of Distributing or Controlled, and no more than 20 percent of the stock of the corporation whose stock was acquired in the acquisition or acquisitions that motivated the distribution was either acquired or the subject of an agreement, understanding, arrangement, or substantial negotiations before a date that is 6 months after the distribution. Safe Harbor II is intended to alleviate the concerns commentators expressed about the unavailability of the rebuttals in the 1999 proposed regulations if the distribution was motivated by an intent to facilitate an acquisition regardless of its type or size.

Safe Harbors III and IV address acquisitions and distributions more than 2 years apart. Under Safe Harbor III, acquisitions more than 2 years after a distribution are not pursuant to a plan if there is no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition at the time of the distribution or within 6 months thereafter. Under Safe Harbor IV, acquisitions more than 2 years before a distribution are not part of a plan if there is no agreement, understanding, arrangement, or substantial negotiations concerning the distribution at the time of the acquisition or within 6 months thereafter.

Safe Harbor V provides that an acquisition of Distributing or Controlled stock that is listed on an established market (as defined in the 2000 proposed regulations) is not part of a plan if the stock is transferred between shareholders of Distributing or Controlled who are not 5-percent shareholders. In general, a person will be considered a 5-percent shareholder if, immediately before or after each transfer, the person owns, directly or indirectly, or together with related persons (as described in sections 267(b) and 707(b)), 5 percent or more of any class of stock of the corporation whose stock is transferred.

Safe Harbor VI provides that an acquisition of stock by an employee or director in connection with the performance of services, including an acquisition resulting from the exercise of certain compensatory stock options, is not part of a plan.

3. Agreement, Understanding, Arrangement, or Substantial Negotiations

There are many references in the 2000 proposed regulations to the existence of an agreement, understanding, arrangement, or substantial negotiations. The 2000 proposed regulations do not define those concepts precisely. A binding contract clearly is included as an agreement but, depending on all relevant facts and circumstances, parties can have an agreement, understanding, or arrangement even though they have not reached agreement on all terms. Under certain circumstances, such as in public offerings or auctions of Distributing's or Controlled's stock, an agreement, understanding, arrangement, or substantial negotiations can exist regarding an acquisition even if the acquirer has not been specifically identified.

4. Options

The 2000 proposed regulations enumerate interests treated as options. If stock of Distributing or Controlled is acquired pursuant to an option, the option is treated as an agreement to acquire stock on the date of writing unless Distributing establishes that, on the later of the date of the stock distribution or the writing of the option, the option was not more likely than not to be exercised. The 2000 proposed regulations also address the treatment of an agreement, understanding, or arrangement to write an option and substantial negotiations regarding the writing of an option. The 2000 proposed regulations exempt certain options from treatment as options unless they are written, transferred, or listed with a principal purpose of avoiding the application of section 355(e) or the 2000 proposed regulations. The enumerated exceptions cover certain commercially customary options that are unlikely to be used to avoid section 355(e) or the 2000 proposed regulations.

B. Any Controlled Corporation

Section 355(e)(2)(A)(ii) provides that section 355(e)(1), which causes Distributing to recognize its gain in Controlled stock as if Distributing had sold the stock for its fair market value, applies to any distribution to which section 355 (or so much of section 356 as relates to section 355) applies and ''which is part of a plan * * * pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation *or any controlled corporation*'' (emphasis added). A question has arisen concerning the measure of gain to Distributing if, pursuant to a plan, the stock of more than 1 controlled corporation is distributed and stock representing a 50-percent or greater interest is acquired in some, but not all, of the distributed controlled corporations. The 2000 proposed regulations clarify that under those circumstances, Distributing only recognizes gain on the stock of the distributed controlled corporations that were subject to 50-percent or greater acquisitions. If Distributing is the acquired corporation, it must recognize gain on all of the distributed controlled corporations.

Proposed Effective Date

The regulations in this section are proposed to apply to distributions occurring after the regulations in this

section are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking 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 Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) and comments sent via the Internet that are submitted timely to the IRS. The Department of the Treasury and the IRS specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 15, 2001, beginning at 10 a.m. in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by April 24, 2001. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Brendan P. O'Hara, Office of the Associate Chief Counsel (Corporate). However, other personnel from the Department of the Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.355–7 also issued under 26 U.S.C. 355(e)(5). * * *

Par. 2. Section 1.355–0 is amended by revising the section heading and adding introductory text and an entry for § 1.355–7 to read in part as follows:

§ 1.355–0 Outline of sections.

In order to facilitate the use of §§ 1.355–1 through 1.355–7, this section lists the major paragraphs in those sections as follows:

* * * * *

§ 1.355–7 Recognition of gain on certain distributions of stock or securities in connection with an acquisition.

(a) In general.
(b) Plan.
(c) Multiple acquisitions.
(d) Facts and circumstances.
(e) Operating rules.
(1) Reasonable certainty evidence of business purpose to facilitate an acquisition.
(2) Internal discussion evidence of business purpose.
(3) Hostile takeover defense.
(4) Effect of distribution on trading in stock.
(5) Consequences of section 355(e) disregarded for certain purposes.
(6) Substantial diminution of risk.
(f) Safe harbors.
(1) Safe Harbor I.
(2) Safe Harbor II.
(3) Safe Harbor III.
(4) Safe Harbor IV.
(5) Safe Harbor V.
(i) In general.
(ii) Special rules.
(6) Safe Harbor VI.
(g) Stock acquired by exercise of options, warrants, convertible obligations, and other similar interests.
(1) Treatment of options.
(i) General rule.
(ii) Agreement, understanding, arrangement, or substantial negotiations to write an option.
(2) Instruments treated as options.
(3) Instruments generally not treated as options.
(i) Escrow, pledge, or other security agreements.
(ii) Compensatory options.
(iii) Options exercisable only upon death, disability, mental incompetency, or separation from service.
(iv) Rights of first refusal.
(v) Other enumerated instruments.
(h) Multiple controlled corporations.
(i) [Reserved]
(j) Valuation.
(k) Definitions.
(1) Agreement, understanding, arrangement, or substantial negotiations.
(2) Controlled corporation.
(3) Controlling shareholder.
(4) Established market.
(5) Five-percent shareholder.
(l) [Reserved]
(m) Examples.
(n) Effective date.

Par. 3. Section 1.355–7 is added to read as follows:

§ 1.355–7 Recognition of gain on certain distributions of stock or securities in connection with an acquisition.

(a) *In general.* Except as provided in section 355(e) and in this section, section 355(e) applies to any distribution—

(1) To which section 355 (or so much of section 356 as relates to section 355) applies; and

(2) That is part of a plan (or series of related transactions) (hereinafter, plan) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation (Distributing) or any controlled corporation (Controlled).

(b) *Plan.* (1) Whether a distribution and an acquisition are part of a plan is determined based on all the facts and circumstances. In general, in the case of an acquisition after a distribution, the distribution and the acquisition are considered part of a plan if Distributing, Controlled, or any of their respective controlling shareholders intended, on the date of the distribution, that the acquisition or a similar acquisition occur in connection with the distribution. In general, in the case of an acquisition before a distribution, the acquisition and the distribution are considered part of a plan if Distributing,

Controlled, or any of their respective controlling shareholders intended, on the date of the acquisition, that a distribution occur in connection with the acquisition.

(2) For purposes of paragraph (b)(1) of this section, the actual acquisition and the intended acquisition may be similar even though the identity of the person acquiring stock of Distributing or Controlled (acquirer), the timing of the acquisition or the terms of the actual acquisition are different from the intended acquisition. For example, in the case of a public offering or auction, the actual acquisition and the intended acquisition may be similar even though there are changes in the terms of the stock, the class of stock being offered, the size of the offering, the timing of the offering, the price of the stock, or the participants in the public offering or auction.

(c) *Multiple acquisitions.* All acquisitions of stock of Distributing or Controlled that are considered to be part of a plan with a distribution pursuant to paragraph (b) of this section will be aggregated for purposes of the 50-percent test of paragraph (a)(2) of this section.

(d) *Facts and circumstances.* (1) The facts and circumstances to be considered in demonstrating whether a distribution and an acquisition are part of a plan include, but are not limited to, the facts and circumstances specified in paragraphs (d)(2) and (d)(3) of this section. The weight to be given each of the facts and circumstances depends on the particular case. Therefore, whether a distribution and an acquisition are part of a plan does not depend on the relative number of facts and circumstances present under paragraph (d)(2) as compared to paragraph (d)(3) of this section.

(2) Among the facts and circumstances tending to show that a distribution and an acquisition are part of a plan are the following:

(i) In the case of an acquisition (other than involving a public offering or auction) after a distribution, Distributing or Controlled and the acquirer (or any of their respective controlling shareholders) discussed the acquisition or a similar acquisition by the acquirer before the distribution. The weight to be accorded the discussions depends on the nature, extent and timing of the discussions. The existence of an agreement, understanding, arrangement or substantial negotiations at the time of the distribution is given substantial weight.

(ii) In the case of an acquisition (other than involving a public offering or auction) after a distribution, Distributing or Controlled and a potential acquirer (or any of their respective controlling shareholders) discussed an acquisition before the distribution and a similar acquisition by a different person occurred after the distribution. The weight to be accorded the discussions depends on the nature, extent and timing of the discussions and the similarity of the acquisition actually occurring to the acquisition discussed before the distribution.

(iii) In the case of an acquisition involving a public offering or auction after a distribution, Distributing or Controlled (or any of their respective controlling shareholders) discussed the acquisition with an investment banker or other outside adviser before the distribution. The weight to be accorded the discussions depends on the nature, extent and timing of the discussions.

(iv) In the case of an acquisition before a distribution, Distributing or Controlled and the acquirer (or any of their respective controlling shareholders) discussed a distribution before the acquisition. The weight to be accorded the discussions depends on the nature, extent and timing of the discussions.

(v) In the case of an acquisition before a distribution, Distributing or Controlled and a potential acquirer (or any of their respective controlling shareholders) discussed a distribution before the acquisition and a similar acquisition by a different person occurred before the distribution. The weight to be accorded the discussions depends on the nature, extent and timing of the discussions and the similarity of the acquisition actually occurring to the potential acquisition that was discussed.

(vi) In the case of an acquisition involving a public offering or auction before a distribution, Distributing or Controlled (or any of their respective controlling shareholders) discussed a distribution with an investment banker or other outside adviser before the acquisition. The weight to be accorded the discussions depends on the nature, extent and timing of the discussions.

(vii) In the case of an acquisition either before or after a distribution, the distribution was motivated by a business purpose to facilitate the acquisition or a similar acquisition of Distributing or Controlled.

(viii) In the case of an acquisition either before or after a distribution, the acquisition and the distribution occurred within 6 months of each other or there was an agreement, understanding, arrangement, or substantial negotiations regarding the second transaction within 6 months after the first transaction. Also, in the case of an acquisition occurring after a distribution, there was an agreement, understanding, arrangement, or substantial negotiations regarding a similar acquisition at the time of the distribution or within 6 months thereafter.

(ix) In the case of an acquisition either before or after a distribution, the debt allocation between Distributing and Controlled made an acquisition of Distributing or Controlled likely in order to service the debt.

(3) Among the facts and circumstances tending to show that a distribution and an acquisition are not part of a plan are the following:

(i) In the case of an acquisition (other than involving a public offering or auction) after a distribution, neither Distributing nor Controlled and the acquirer or any potential acquirer (nor any of their respective controlling shareholders) discussed the acquisition or a similar acquisition before the distribution.

(ii) In the case of an acquisition involving a public offering or auction after a distribution, neither Distributing nor Controlled (nor any of their respective controlling shareholders) discussed the acquisition with an investment banker or other outside adviser before the distribution.

(iii) In the case of an acquisition after a distribution, there was an identifiable, unexpected change in market or business conditions occurring after the distribution that resulted in the acquisition that was otherwise unexpected at the time of the distribution.

(iv) In the case of an acquisition (other than involving a public offering or auction) before a distribution, neither Distributing nor Controlled and the acquirer (nor any of their respective controlling shareholders) discussed a distribution before the acquisition. This paragraph (d)(3)(iv) does not apply if the acquisition occurred after the date of the public announcement of the planned distribution.

(v) In the case of an acquisition before a distribution, there was an identifiable, unexpected change in market or business conditions occurring after the acquisition that resulted in a distribution that was otherwise unexpected.

(vi) In the case of an acquisition either before or after a distribution, the distribution was motivated in whole or substantial part by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate the acquisition or a similar acquisition of Distributing or Controlled. The presence of a business

purpose to facilitate the acquisition or a similar acquisition of Distributing or Controlled is relevant in determining the extent to which the distribution was motivated by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate the acquisition or a similar acquisition of Distributing or Controlled.

(vii) In the case of an acquisition either before or after a distribution, the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition or a similar acquisition (including a previously proposed similar acquisition that did not occur).

(e) *Operating rules.* The operating rules contained in this paragraph (e) apply for all purposes of this section.

(1) *Reasonable certainty evidence of business purpose to facilitate an acquisition.* (i) In the case of an acquisition after a distribution, if, at the time of the distribution, it was reasonably certain that before a date that is 6 months after the distribution an acquisition would occur, an agreement, understanding, or arrangement would exist, or substantial negotiations would occur regarding an acquisition of Distributing or Controlled, the reasonable certainty is evidence of a business purpose to facilitate an acquisition of Distributing or Controlled.

(ii) In the case of an acquisition before a distribution, if the acquisition occurred after the date of the public announcement of the planned distribution, or if, at the time of the acquisition, it was reasonably certain that before a date that is 6 months after the acquisition the distribution would occur, an agreement, understanding, or arrangement would exist, or substantial negotiations would occur regarding the distribution, the public announcement or reasonable certainty is evidence of a business purpose to facilitate an acquisition of Distributing or Controlled.

(2) *Internal discussions evidence of business purpose.* The fact that internal discussions regarding an acquisition occurred may be indicative of the business purpose that motivated the distribution.

(3) *Hostile takeover defense.* If Distributing distributes Controlled stock intending, in whole or substantial part, to decrease the likelihood of the acquisition of Distributing or Controlled by separating it from another corporation that is likely to be acquired, Distributing will be treated as having a business purpose to facilitate the acquisition of the corporation that was likely to be acquired.

(4) *Effect of distribution on trading in stock.* The fact that the distribution made all or a part of the stock of Controlled available for trading or made Distributing or Controlled's stock trade more actively is not taken into account in determining whether the distribution and an acquisition of Distributing or Controlled stock were part of a plan.

(5) *Consequences of section 355(e) disregarded for certain purposes.* For purposes of determining the intentions of the relevant parties under this section, the consequences of the application of section 355(e), and the existence of any contractual indemnity by Controlled for tax resulting from the application of section 355(e) caused by an acquisition of Controlled, are disregarded.

(6) *Substantial diminution of risk.* The running of any time period prescribed in this section shall be suspended for any period during which risk of loss is substantially diminished under the principles of section 355(d)(6)(B).

(f) *Safe harbors*—(1) *Safe Harbor I.* (i) A distribution and an acquisition occurring after the distribution will not be considered part of a plan if—

(A) The acquisition occurred more than 6 months after the distribution and there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition before a date that is 6 months after the distribution; and

(B) The distribution was motivated in whole or substantial part by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate an acquisition of Distributing or Controlled.

(ii) For purposes of paragraph (f)(1)(i)(B) of this section, the presence of a business purpose to facilitate an acquisition of Distributing or Controlled is relevant in determining the extent to which the distribution was motivated by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate an acquisition of Distributing or Controlled.

(2) *Safe Harbor II.* A distribution and an acquisition occurring after the distribution will not be considered part of a plan if—

(i) The acquisition occurred more than 6 months after the distribution and there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition before a date that is 6 months after the distribution; and

(ii) The distribution was motivated in whole or substantial part by a corporate business purpose (within the meaning of § 1.355–2(b)) to facilitate an acquisition or acquisitions of no more than 33 percent of the stock of Distributing or Controlled, and no more than 20 percent of the stock of the corporation (whose stock was acquired in the acquisition or acquisitions that motivated the distribution) was either acquired or the subject of an agreement, understanding, arrangement, or substantial negotiations before a date that is 6 months after the distribution.

(3) *Safe Harbor III.* If an acquisition occurs more than 2 years after a distribution and there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition at the time of the distribution or within 6 months thereafter, the acquisition and the distribution are not part of a plan.

(4) *Safe Harbor IV.* If an acquisition occurs more than 2 years before a distribution, and there was no agreement, understanding, arrangement, or substantial negotiations concerning the distribution at the time of the acquisition or within 6 months thereafter, the acquisition and the distribution are not part of a plan.

(5) *Safe Harbor V*—(i) *In general.* An acquisition of Distributing or Controlled stock that is listed on an established market is not part of a plan if the acquisition is pursuant to a transfer between shareholders of Distributing or Controlled, neither of whom is a 5-percent shareholder. For purposes of the preceding sentence, the term 5-percent shareholder is defined in paragraph (k)(5) of this section, except that the corporation can rely on Schedules 13D and 13G (or any similar schedules) filed with the Securities and Exchange Commission to identify its 5-percent shareholders.

(ii) *Special rules*—(A) This paragraph (f)(5) does not apply to public offerings or redemptions.

(B) This paragraph (f)(5) does not apply to a transfer of stock by or to a person who, pursuant to a formal or informal understanding with other persons (the coordinating group), has joined in coordinated transfers of stock if, at any time during the period the understanding exists, the coordinating group owns, in the aggregate, 5 percent or more of the stock of the corporation whose stock is transferred (determined by vote or value) immediately before or after each transfer or at the time of the distribution. A principal element in determining if such an understanding exists is whether the investment decision of each person is based on the investment decision of 1 or more other existing or prospective shareholders.

(C) This paragraph (f)(5) does not apply to a transfer of stock by or to a person if the corporation the stock of which is being transferred knows, or has reason to know, that the person (or a coordinating group, treating it as a single person) intends to become a 5-percent shareholder at any time during the 4-year period beginning 2 years before the distribution.

(6) *Safe Harbor VI.* If stock of Distributing or Controlled is acquired by an employee or director of Distributing, Controlled, or a person related to Distributing or Controlled under section 355(d)(7)(A), in connection with the performance of services as an employee or director for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed) in a transaction to which section 83 applies, the acquisition is not an acquisition that is part of a plan as described in paragraph (b)(1) of this section.

(g) *Stock acquired by exercise of options, warrants, convertible obligations, and other similar interests*—(1) *Treatment of options*—(i) *General rule.* For purposes of this section, if stock of Distributing or Controlled is acquired pursuant to an option, the option will be treated as an agreement to acquire the stock on the date the option is written unless Distributing establishes that on the later of the date of the stock distribution or the writing of the option, the option was not more likely than not to be exercised. The determination of whether an option was more likely than not to be exercised is based on all the facts and circumstances, taking control premiums and minority and blockage discounts into account in determining the fair market value of stock underlying an option.

(ii) *Agreement, understanding, arrangement, or substantial negotiations to write an option.* If there is an agreement, understanding, or arrangement to write an option, the option will be treated as written on the date of the agreement, understanding, or arrangement. If an agreement, understanding, or arrangement to write an option is reached, or an option is written, more than 6 months but not more than 2 years after the distribution, and there were substantial negotiations regarding the writing of the option or the acquisition of the stock underlying the option before the end of the 6-month period beginning on the date of the distribution, the option will be treated as written within 6 months after the distribution.

(2) *Instruments treated as options.* For purposes of this paragraph (g), except to the extent provided in paragraph (g)(3) of this section, call options, warrants, convertible obligations, the conversion feature of convertible stock, put options, redemption agreements (including rights to cause the redemption of stock), any other instruments that provide for the right or possibility to issue, redeem, or transfer stock (including an option on an option), or any other similar interests are treated as options.

(3) *Instruments generally not treated as options.* For purposes of this paragraph (g), the following are not treated as options unless (in the case of paragraphs (g)(3)(i), (iii), and (iv) of this section) written, transferred (directly or indirectly), or listed with a principal purpose of avoiding the application of section 355(e) or this section.

(i) *Escrow, pledge, or other security agreements.* An option that is part of a security arrangement in a typical lending transaction (including a purchase money loan), if the arrangement is subject to customary commercial conditions. For this purpose, a security arrangement includes, for example, an agreement for holding stock in escrow or under a pledge or other security agreement, or an option to acquire stock contingent upon a default under a loan.

(ii) *Compensatory options.* An option to acquire stock in Distributing or Controlled with customary terms and conditions provided to an employee or director of Distributing, Controlled, or a person related to Distributing or Controlled under section 355(d)(7)(A), in connection with the performance of services as an employee or director for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed) and that immediately after the distribution and within 6 months thereafter—

(A) Is nontransferable within the meaning of § 1.83–3(d); and

(B) Does not have a readily ascertainable fair market value as defined in § 1.83–7(b).

(iii) *Options exercisable only upon death, disability, mental incompetency, or separation from service.* Any option entered into between shareholders of a corporation (or a shareholder and the corporation) that is exercisable only upon the death, disability, or mental incompetency of the shareholder, or, in the case of stock acquired in connection with the performance of services for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed), the shareholder's separation from service.

(iv) *Rights of first refusal.* A bona fide right of first refusal regarding the corporation's stock with customary terms, entered into between shareholders of a corporation (or between the corporation and a shareholder).

(v) *Other enumerated instruments.* Any other instrument the Commissioner may designate in revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(h) *Multiple controlled corporations.* Only the stock or securities of a controlled corporation in which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest as part of a plan involving the distribution of that corporation will be treated as not qualified property under section 355(e)(1) if—

(1) The stock or securities of more than 1 controlled corporation are distributed in distributions to which section 355 (or so much of section 356 as relates to section 355) applies; and

(2) One or more persons do not acquire, directly or indirectly, stock representing a 50-percent or greater interest in Distributing pursuant to a plan involving any of those distributions.

(i) [Reserved]

(j) *Valuation.* Except as provided in paragraph (g)(1)(i) of this section, for purposes of section 355(e) and this section, all shares of stock within a single class are considered to have the same value. Thus, control premiums and minority and blockage discounts within a single class are not taken into account.

(k) *Definitions*—(1) *Agreement, understanding, arrangement, or substantial negotiations.* Whether an agreement, understanding, or arrangement exists depends on the facts and circumstances. The parties do not necessarily have to have entered into a binding contract or have reached agreement on all terms to have an agreement, understanding, or arrangement. However, an agreement, understanding, or arrangement clearly exists if enforceable rights to acquire stock exist. In public offerings or auctions by Distributing or Controlled of Distributing or Controlled's stock, an agreement, understanding, arrangement, or substantial negotiations can exist even if the acquirer has not been specifically identified. The existence of such an agreement, understanding, arrangement, or substantial negotiations will be based on discussions with an

investment banker or other outside adviser.

(2) *Controlled corporation.* For purposes of this section, a controlled corporation is a corporation the stock of which is distributed in a distribution to which section 355 (or so much of section 356 as relates to section 355) applies.

(3) *Controlling shareholder.* (i) A controlling shareholder of a corporation the stock of which is not listed on an established market is any person who, directly or indirectly, or together with related persons (as described in sections 267(b) and 707(b)), possesses voting power in Distributing or Controlled representing a meaningful voice in the governance of the corporation.

(ii) A controlling shareholder of a corporation the stock of which is listed on an established market is a 5-percent shareholder who actively participates in the management or operation of the corporation.

(iii) For purposes of this section, a person is a controlling shareholder if that person meets the definition of controlling shareholder in this paragraph (k)(3) immediately before or immediately after the acquisition being tested.

(iv) If a distribution precedes an acquisition, Controlled's controlling shareholders immediately after the distribution are considered Controlled's controlling shareholders at the time of the distribution.

(4) *Established Market.* An established market is—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Act of 1934 (15 U.S.C. 78o-3); or

(iii) Any additional market that the Commissioner may designate in revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(5) *Five-percent shareholder.* A person will be considered a 5-percent shareholder of a corporation the stock of which is listed on an established market if the person owns, directly or indirectly, or together with related persons (as described in sections 267(b) and 707(b)) 5 percent or more of any class of stock of the corporation whose stock is transferred. A person is a 5-percent shareholder if the person meets the requirements of the preceding sentence immediately before or after each transfer. All options are treated as exercised for the purpose of determining whether the shareholder is a 5-percent shareholder.

(l) [Reserved]

(m) *Examples.* The following examples illustrate paragraphs (a) through (k) of this section. Throughout these examples, assume that Distributing (D) owns all of the stock of Controlled (C). Assume further that D distributes the stock of C in a distribution to which section 355 applies and to which section 355(d) does not apply. Unless otherwise stated, assume the corporations do not have controlling shareholders. No inference should be drawn from any example concerning whether any requirements of section 355 other than those of section 355(e) are satisfied. The examples are as follows:

Example 1. Unwanted assets. (i) D is in business 1. C is in business 2. D is relatively small in its industry. D wants to combine with X, a larger corporation also engaged in business 1. X and D begin negotiating for X to acquire D, but X does not want to acquire C. To facilitate the acquisition of D by X, D agrees to distribute all the stock of C pro rata before the acquisition. D and X enter into a binding contract for D to merge into X subject to several conditions. D distributes C and D merges into X one month later. As a result of the merger, D's former shareholders own less than 50 percent of the stock of X.

(ii) No Safe Harbor applies to this acquisition.

(iii) The issue is whether the distribution of C and the merger of D into X are part of a plan. To determine whether the distribution of C and the merger of D into X are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) The following tends to show that the distribution of C and the merger of D into X are part of a plan: X and D discussed the acquisition before the distribution (paragraph (d)(2)(i) of this section), D was motivated by a business purpose to facilitate the merger (paragraph (d)(2)(vii) of this section), and the distribution and the merger occurred within 6 months of each other (paragraph (d)(2)(viii) of this section). Because the merger was not only discussed, but was agreed to, before the distribution, the fact described in paragraph (d)(2)(i) of this section is given substantial weight.

(v) None of the facts and circumstances listed in paragraph (d)(3) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(vi) The distribution of C and the merger of D into X are part of a plan under paragraph (b)(1) of this section.

Example 2. Substituted acquirer. (i) The facts are the same as in *Example 1,* except that after D distributes C, X is unable to fulfill one of the conditions of the merger agreement and the merger of D into X does not occur. Y, one of X's competitors, perceives this as an opportunity and begins discussing with D a merger into Y. Five months after D distributes C, D merges into Y. As a result of the merger, the D shareholders own less than 50 percent of the outstanding Y stock.

(ii) No Safe Harbor applies to this acquisition.

(iii) The issue is whether the distribution of C and the merger of D into Y are part of a plan. To determine whether the distribution of C and the merger of D into Y are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) The following tends to show that the distribution of C and the merger of D into Y are part of a plan: X, a potential acquirer, and D discussed an acquisition before the distribution and a similar acquisition by Y occurred (paragraph (d)(2)(ii) of this section), D was motivated by a business purpose to facilitate an acquisition similar to the merger with Y (paragraph (d)(2)(vii) of this section), and the distribution and the merger occurred within 6 months of each other (paragraph (d)(2)(viii) of this section).

(v) As in *Example 1,* none of the facts and circumstances listed in paragraph (d)(3) of this section exist in this case. Although a substituted acquirer acquired D, the merger of D into Y was similar to the negotiated merger of D into X.

(vi) The distribution of C and the merger of D into Y are part of a plan under paragraph (b)(1) of this section.

Example 3. Public offering.

(i) D's managers, directors, and investment banker discuss the possibility of offering D stock to the public. They decide a public offering of 50 percent of D's stock with D as a stand alone corporation would be in D's best interest. To facilitate a stock offering by D of 50 percent of its stock, D distributes all the stock of C pro rata to D's shareholders. D issues new shares amounting to 50 percent of its stock to the public in a public offering 7 months after the distribution.

(ii) No Safe Harbor applies to this acquisition. Safe Harbor V, relating to public trading, does not apply to public offerings (paragraph (f)(5)(ii)(A) of this section).

(iii) The issue is whether the distribution of C and the public offering by D are part of a plan. To determine whether the distribution of C and the public offering by D are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) The following tends to show that the distribution of C and the public offering by D are part of a plan: D discussed the public offering with its investment banker before the distribution (paragraph (d)(2)(iii) of this section), D was motivated by a business purpose to facilitate the public offering (paragraph (d)(2)(vii) of this section), and there were substantial negotiations regarding the public offering within 6 months after the distribution (paragraph (d)(2)(viii) of this section).

(v) None of the facts and circumstances listed in paragraph (d)(3) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(vi) The distribution of C and the public offering by D are part of a plan under paragraph (b)(1) of this section.

Example 4. Public offering followed by unexpected opportunity—(i) *Facts.* D's managers, directors, and investment banker discuss the possibility of offering C stock to the public. D decides to distribute C pro rata to D's shareholders solely to facilitate a 20 percent stock offering by C. To take advantage of favorable market conditions, C issues new shares amounting to 20 percent of its stock in a public offering 1 month before D distributes its remaining 80 percent of the C stock. The public offering documents disclose the intended distribution of C, which is expected to occur shortly after the public offering. At the time of the distribution, it is not reasonably certain that an acquisition will occur, an agreement, understanding, or arrangement concerning an acquisition will exist, or substantial negotiations concerning an acquisition will occur within 6 months. Two months after the distribution, C is approached unexpectedly regarding an opportunity to acquire X. Five months after the distribution, C acquires X in exchange for 40 percent of the C stock.

(ii) *Public offering.* (A) No Safe Harbor applies to the public offering. Safe Harbor V, related to public trading, does not apply to public offerings (paragraph (f)(5)(ii)(A) of this section).

(B) The issue is whether the 20 percent public offering by C and the distribution by D of the remaining C stock are part of a plan. To determine whether the distribution and the public offering are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(C) Under paragraph (d)(2) of this section, the following tends to show that the distribution of C and the public offering are part of a plan: D discussed the distribution with its investment banker before the public offering (paragraph (d)(2)(vi) of this section), D was motivated by a business purpose to facilitate the public offering (paragraph (d)(2)(vii) of this section), and the public offering and the distribution occurred within 6 months of each other (paragraph (d)(2)(viii) of this section).

(D) None of the facts and circumstances listed in paragraph (d)(3) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(E) The public offering of C and the distribution of C are part of a plan under paragraph (b)(1) of this section.

(iii) *X acquisition.* (A) No Safe Harbor applies to the X acquisition.

(B) The issue is whether the distribution of C and the acquisition by C of X are part of a plan. To determine whether the distribution of C and the acquisition by C of X are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(C) Under paragraph (d)(2) of this section, the following tends to show that the distribution of C and acquisition by C of X are part of a plan: The distribution and the acquisition occurred within 6 months of each other (paragraph (d)(2)(viii) of this section). The fact described in paragraph (d)(2)(vii) of this section does not exist in this case because D's business purpose was to facilitate the public offering and C's acquisition of X is not similar to that acquisition.

(D) Under paragraph (d)(3) of this section, the following tends to show that the distribution of C and the acquisition by C of X are not part of a plan: Neither D, C, nor their respective controlling shareholders discussed the acquisition of X or a similar acquisition with potential acquirers before the distribution (paragraph (d)(3)(i) of this section), D had a substantial business purpose for the distribution other than a business purpose to facilitate the acquisition of X or a similar acquisition (paragraph (d)(3)(vi) of this section), and the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition of X (paragraph (d)(3)(vii) of this section). The distribution was announced and accomplished to facilitate the 20 percent public offering by C. D and C were unaware of the opportunity to acquire X at the time of the distribution.

(E) Weighing the facts and circumstances, the acquisition by C of X and the distribution of C by D are not part of a plan under paragraph (b)(1) of this section.

(F) If C's acquisition of X had occurred more than 6 months after the distribution and had not been the subject of an agreement, understanding, arrangement, or substantial negotiations before the date that is 6 months after the distribution, Safe Harbor II would have applied to C's acquisition of X.

Example 5. Hot market. (i) D is a widely held corporation the stock of which is listed on an established market. D announces a distribution of C and distributes C pro rata to D's shareholders. By contract, C agrees to indemnify D for any imposition of tax under section 355(e) caused by the acts of C. The distribution is motivated by a desire to improve D's access to financing at preferred customer interest rates, which will be more readily available if D separates from C. At the time of the distribution, although D has not been approached by any potential acquirer of C, it is reasonably certain that within 6 months after the distribution either an acquisition of C will occur or there will be an agreement, understanding, arrangement, or substantial negotiations regarding an acquisition of C. Corporation Y acquires C in a merger described in section 368(a)(2)(E) within 6 months after the distribution. The C shareholders receive less than 50 percent of the stock of Y in the exchange.

(ii) No Safe Harbor applies to this acquisition.

(iii) The issue is whether the distribution of C and the acquisition of C by Y are part of a plan. To determine whether the distribution of C and the acquisition of C by Y are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) Under paragraph (d)(2) of this section, the following tends to show that the distribution of C and the acquisition of C by Y are part of a plan: The acquisition and the distribution occurred within 6 months of each other (paragraph (d)(2)(viii) of this section). In addition, the distribution may be motivated by a business purpose to facilitate the acquisition or a similar acquisition because there is evidence of a business purpose to facilitate an acquisition by reason of the fact that at the time of the distribution it was reasonably certain that an acquisition of C would occur or there would be an agreement, understanding, arrangement, or substantial negotiations regarding an acquisition of C within 6 months after the distribution (paragraphs (d)(2)(vii) and (e)(1)(i) of this section).

(v) Under paragraph (d)(3) of this section, the following tends to show that the distribution of C and the acquisition of C by Y are not part of a plan: Neither D, C, nor their respective controlling shareholders discussed the acquisition or a similar acquisition with Y or any other potential acquirers before the distribution (paragraph (d)(3)(i) of this section). Furthermore, D may be able to demonstrate that the distribution was motivated in whole or substantial part by a corporate business purpose other than a business purpose to facilitate the acquisition or a similar acquisition (paragraph (d)(3)(vi) of this section). D's stated purpose for the distribution (facilitating D's access to favorable financing) must be evaluated in light of the evidence of a business purpose to facilitate an acquisition. D also may be able to demonstrate that the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition (paragraph (d)(3)(vii) of this section).

(vi) Under paragraph (e)(5) of this section, the existence of the indemnity is irrelevant in analyzing whether the distribution and acquisition of C are part of a plan.

(vii) In determining whether the distribution of C and the acquisition of C by Y are part of a plan, one should consider the importance of D's stated business purpose for the distribution in light of the reasonable certainty that C would be acquired or there would be an agreement, understanding, arrangement, or substantial negotiations regarding an acquisition of C within 6 months after the distribution. If D's stated business purpose for the distribution is substantial even though the reasonable certainty that C would be acquired is evidence of a business purpose to facilitate an acquisition, and if D would have distributed C regardless of Y's acquisition of C, Y's acquisition of C and D's distribution of C are not part of a plan.

Example 6. Unexpected opportunity. (i) D, the stock of which is listed on an established market, announces that it will distribute all the stock of C pro rata to D's shareholders. At the time of the announcement, the distribution is motivated wholly by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate an acquisition. After the announcement but before the distribution, widely held X becomes available as an acquisition target. There were no discussions between D and X before the announcement. D negotiates with and acquires X before the distribution. After the acquisition, X's former shareholders own 55 percent of D's stock. D distributes the stock

of C pro rata within 6 months after the acquisition of X.

(ii) No Safe Harbor applies to this acquisition.

(iii) The issue is whether the acquisition of X by D and the distribution of C are part of a plan. To determine whether the distribution of C and the acquisition of X by D are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(iv) Under paragraph (d)(2) of this section, the following tends to show that the acquisition of X by D and the distribution of C are part of a plan: The acquisition and the distribution occurred within 6 months of each other (paragraph (d)(2)(viii) of this section). Also, the distribution may be motivated by a business purpose to facilitate the acquisition or a similar acquisition because there is evidence of a business purpose to facilitate an acquisition by reason of the fact that the acquisition occurred after the public announcement of the planned distribution (paragraphs (d)(2)(vii) and (e)(1)(ii) of this section).

(v) Under paragraph (d)(3) of this section, D would assert that the following tends to show that the distribution of C and the acquisition of X by D are not part of a plan: The distribution was motivated by a corporate business purpose other than a business purpose to facilitate the acquisition or a similar acquisition (paragraph (d)(3)(vi) of this section), and the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition (paragraph (d)(3)(vii) of this section). That D decided to distribute C and announced that decision before it became aware of the opportunity to acquire X suggests that the distribution would have occurred at approximately the same time and in similar form regardless of D's acquisition of X. X's lack of participation in the decision also helps establish that fact.

(vi) In determining whether the distribution of C and acquisition of X by D are part of a plan, one should consider the importance of D's business purpose for the distribution in light of D's opportunity to acquire X. If D can establish that the distribution continued to be motivated by the stated business purpose, and if D would have distributed C regardless of D's acquisition of X, then D's acquisition of X and D's distribution of C are not part of a plan.

Example 7. Multiple acquisitions—(i) *Facts.* (A) D, the stock of which is listed on an established market, engages in business 1. C engages in business 2. D has a business strategy of growth through acquisitions and is interested in continually expanding business 1. D's ownership of C has been an impediment to acquisitions by D. D believes the distribution of C will make its acquisition program more economical overall, regardless of D's success with any particular acquisition target. D has no specific goals regarding how much D stock will be used for acquisitions.

(B) D and its investment banker identify X and Y as potential acquisition targets before D publicly announces the planned distribution. After D publicly announces the distribution, the sole purpose of which is to facilitate acquisitions by D, but before the distribution date, D negotiates with X, but has no contact with Y. D distributes all of the C stock. One month after the distribution, D consummates the negotiated acquisition of X. A, X's sole shareholder, receives 30 percent of D's stock. Seven months after the distribution, D begins negotiating with Y. One year after the distribution, D acquires Y. Y's shareholders receive 19 percent of D's stock. After the distribution, D and its investment banker identify Z as another desirable target. Eighteen months after the distribution, D acquires Z. Z's shareholders receive 17 percent of D's stock. If aggregated, the acquisitions of X, Y and Z would result in a change in the stock ownership of D of more than 50 percent.

(ii) *X acquisition.* (A) No Safe Harbor applies to the X acquisition.

(B) The issue is whether the distribution of C and the acquisition of X by D are part of a plan. To determine whether the distribution of C and the acquisition of X by D are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(C) Under paragraph (d)(2) of this section, the following tends to show that the distribution of C and the acquisition of X by D are part of a plan: D and X discussed the acquisition before the distribution (paragraph (d)(2)(i) of this section), D had a business purpose to facilitate the X acquisition or a similar acquisition (paragraph (d)(2)(vii) of this section), and the distribution and the X acquisition occurred within 6 months of each other (paragraph (d)(2)(viii) of this section).

(D) None of the facts and circumstances listed in paragraph (d)(3) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(E) The distribution of C and the acquisition of X are part of a plan under paragraph (b)(1) of this section.

(iii) *Y acquisition.* (A) No Safe Harbor applies to the Y acquisition. Safe Harbor I does not apply because the distribution was not motivated in whole or substantial part by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate an acquisition. Safe Harbor II does not apply because D's business purpose to facilitate acquisitions was not limited to 33 percent or less of the D stock. Also, more than 20 percent of D's stock was acquired in an acquisition that motivated the distribution before the date that was 6 months after the distribution (D's acquisition of X using 30 percent of D's stock 1 month after the distribution).

(B) The issue is whether the distribution of C and the acquisition of Y by D are part of a plan. To determine whether the distribution of C and the acquisition of Y by D are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (d) of this section.

(C) Under paragraph (d)(2) of this section, the following tends to show that the distribution of C and the acquisition of Y by D are part of a plan: D and a potential acquirer (X) discussed an acquisition before the distribution and a similar acquisition with a different acquirer (Y) occurred (paragraph (d)(2)(ii) of this section) and D had a business purpose to facilitate the Y acquisition or a similar acquisition (paragraph (d)(2)(vii) of this section).

(D) None of the facts and circumstances listed in paragraph (d)(3) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(E) The distribution of C and the acquisition of Y are part of a plan under paragraph (b)(1) of this section.

(iv) *Z acquisition.* The analysis is identical to the Y acquisition. The distribution of C and the acquisition of Z are part of a plan under paragraph (b)(1) of this section.

(v) Under paragraph (c) of this section, all acquisitions of stock of D pursuant to a plan involving a distribution will be aggregated for purposes of the 50-percent test of paragraph (a)(2) of this section. Because the acquisitions by D of X, Y, and Z are each part of a plan involving D's distribution of C, those three acquisitions are aggregated.

(n) *Effective date.* This section applies to distributions occurring after these regulations are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–32774 Filed 12–29–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116733–98]

RIN 1545–AW79

Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection With an Acquisition

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition that was published in the **Federal Register** on August 24, 1999. The withdrawal is in response to written comments received and oral comments presented at a public hearing.

FOR FURTHER INFORMATION CONTACT: Brendan O'Hara, (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1999, the IRS issued proposed regulations (REG–116733–98) in the **Federal Register** (64 FR 46155)

under section 355(e), relating to the recognition of gain on certain distributions of stock or securities in connection with an acquisition of stock of the distributing corporation or of stock of the corporation whose stock is distributed. In response to written comments received and comments presented at a public hearing held on March 2, 2000, these proposed regulations are being withdrawn. New proposed regulations (REG–107566–00) covering the same matters as the withdrawn proposed regulations are being issued elsewhere in this issue of the **Federal Register**.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805 and 26 U.S.C. 355(e)(5), the notice of proposed rulemaking (REG–116733–98) that was published in the **Federal Register** on August 24, 1999 (64 FR 46155) is withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–32775 Filed 12–29–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–104906–99]

RIN 1545–AX04

Third Party Contacts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing guidance on third-party contacts made with respect to the determination or collection of tax liabilities. The proposed regulations reflect changes to section 7602 of the Internal Revenue Code made by section 3417 of the Internal Revenue Service Restructuring and Reform Act of 1998. The proposed regulations potentially affect all taxpayers whose Federal tax liabilities are being determined or collected by the IRS.

DATES: Written and electronic comments and requests for a public hearing must be received on or before April 2, 2001.

ADDRESSES: Send submission to: CC:M&SP:RU (REG–104906–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–104906–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/reglist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Bryan T. Camp, 202–622–3620 (not a toll-free number); concerning submissions, Sonya Cruse at 202–622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) relating to the exercise by officers and employees of the IRS of the authority given them under section 7602 of the Internal Revenue Code (Code). Section 3417 of the IRS Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685), amends section 7602 to prohibit IRS officers or employees from contacting any person other than the taxpayer with respect to the determination or collection of the taxpayer's liability without first giving the taxpayer reasonable advance notice that such contacts may be made. The section further requires that a record of the persons contacted be provided to the taxpayer both periodically and upon the taxpayer's request. The section sets forth a number of exceptions to its requirements. These proposed regulations interpret and implement the amendments made by section 3417 of RRA 1998.

Explanation of Provisions

Section 3417 of RRA 1998 amended section 7602 to prohibit IRS officers or employees from contacting any person other than the taxpayer with respect to the determination or collection of the taxpayer's liability without giving the taxpayer reasonable advance notice that contacts with persons other than the taxpayer may be made.

Section 3417 was added to the bill by the Senate Finance Committee. In explaining the reasons for its proposal, the Senate Finance Committee expressed a concern that third-party contacts ''may have a chilling effect on the taxpayer's business and could damage the taxpayer's reputation in the community,'' and that taxpayers ''should have the opportunity to resolve issues and volunteer information before the IRS contacts third parties.'' S. Rep. No. 174, 105th Cong., 2nd Sess. 77 (1998). At the same time, the Senate Finance Committee stated that ''[c]ontacts with government officials relating to matters such as the location of assets or the taxpayer's current address are not restricted by this provision.'' *Id.*

As originally drafted by the Senate Finance Committee, the third-party contact rule would have prohibited most IRS contacts with third parties prior to taxpayer notification of the specific contact to be made. It contained exceptions for notification of contacts (i) that were authorized by a taxpayer, (ii) that would jeopardize collection, or (iii) with respect to pending criminal investigations. The requirement for specific pre-contact notice was modified by the Conference Committee to require only a generalized notice of IRS intent to contact third parties, followed by post-contact notice of specific contacts. Further, the exceptions were expanded to include situations that might involve reprisal against the third party or any other person. With regard to the general, pre-contact notice, the Conference Report states that ''this notice will be provided as part of an existing IRS notice provided to taxpayers.'' H.R. Rep. No. 599, 105th Cong., 2nd Sess. at 277 (1998).

The provision as enacted and the particular changes made by the Conference Committee to the Senate proposal support an interpretative approach that balances taxpayers' business and reputational interests, articulated as the principal impetus for the Senate proposal, with third parties' privacy interests and the IRS' responsibility to administer the internal revenue laws effectively. The replacement of specific pre-contact identification of intended third-party contacts, as proposed by the Senate, with a general pre-contact notice accompanied by post-contact identification, still enables taxpayers to come forward with information before third parties are contacted. The modifications still allow taxpayers to address business or reputational concerns arising from IRS contact with third parties, but accomplish this result without impeding the ability of the IRS to make those third-party contacts that are necessary to administer the internal revenue laws. The maintenance of the exceptions proposed in the Senate

version and the addition of an exception for situations involving potential reprisal express Congressional concern that the business and reputational interests of taxpayers be balanced with the privacy and safety interests of third parties and that certain types of investigations (*i.e.,* those involving jeopardy and potential criminal prosecution) be excepted from the statute.

Accordingly, the proposed regulations attempt to balance among the taxpayer, third party, and governmental interests implicated by the statute. The IRS and Treasury invite public comments on the following specific issues addressed by these proposed regulations, as well as any other issue raised by the new requirements for third-party contacts.

The Meaning of ''Person Other Than the Taxpayer'' When Contacting Business Entities

Section 7602(c) applies to contacts with ''any person other than the taxpayer.'' The ''person'' contacted may be a business entity rather than an individual. IRS employees must often contact employees of business entities. These contacts arise in two situations. First, IRS employees examining a business taxpayer generally must communicate with employees of the taxpayer. Second, in the course of determining or collecting any taxpayer's liability, an IRS employee may need to contact employees of a third-party business entity. For example, when an IRS employee contacts a bank or other business, the IRS employee actually communicates with an employee of the bank or business.

With respect to the first situation, when an IRS employee contacts an employee of a taxpayer under examination, the proposed regulations provide that a taxpayer's employee is not a ''person other than the taxpayer'' when acting within the scope of his or her employment. Several rationales underlie this position. First, corporations may speak and act only through individuals. Moreover, state law generally provides that employers are responsible for their employees, regardless of the form under which the employer does business, when the employees are acting within the scope of their employment. It seems reasonable, therefore, to treat employees who are acting within the scope of their employment as being part of the business taxpayer under examination. Second, this approach is consistent with how employees are treated elsewhere in the Internal Revenue Code. *See* I.R.C. 7609(c)(2)(A) (summons issued to any person who is the taxpayer under investigation ''or any officer or employee of such person'' not considered a summons issued to a third party). From an administrative standpoint, IRS employees examining a business generally rely on certain individuals designated by the taxpayer to provide information and direct the IRS to whichever employees can best provide that information. The regulations will not affect this current examination practice and business taxpayers will continue to be informed about contacts with their employees pursuant to current procedures.

With respect to the second situation, where an IRS employee contacts a third party that is a business entity, the proposed regulations provide that when an employee of the business is contacted while acting within the scope of his or her employment, the ''person other than the taxpayer'' to be recorded and reported to the taxpayer is the business entity and not any individual employee. Two rationales support this position. First, contacts with a business' employees should not be treated as contacts with persons other than the taxpayer because employees acting within the scope of their employment are most appropriately viewed as being part of the business entity being contacted. Second, the individual employee's privacy interest in not having his or her identity recorded by the government and reported to the taxpayer outweighs the taxpayer's interest in learning the name of the individual employee *in addition to* the identity of the business contacted. The most relevant information for the taxpayer is the identity of the business contacted, which information enables the taxpayer to contact the appropriate individuals within the business to address any business or reputational concerns that might result from the IRS contact.

Request for Comments

The IRS and the Treasury Department are interested in receiving comments on the extent to which employees of business entities should be considered ''persons other than the taxpayer'' apart from the business entity being contacted. The comments should assume that employees are contacted within the scope of their employment. The comments should articulate how well or poorly the proposed regulation, or any proposed alternative, balances taxpayer interests in their community reputations or businesses with third parties' interests in their privacy and with the IRS' obligation to administer the tax laws fairly and effectively.

The Meaning of ''With Respect to a Determination or Collection'' of Tax

Section 7602(c) prohibits IRS employees from contacting any person other than ''the'' taxpayer ''with respect to'' the determination or the collection of the tax liability of ''such'' taxpayer. The term ''with respect to'' indicates a required nexus between the contact and one of the two enumerated purposes of determining or collecting tax. The use of the words ''the'' and ''such'' imply a single affected taxpayer whose liability is being determined. The statute and committee reports do not describe with greater specificity the type of contacts that should be considered ''with respect to'' the determination or collection of a tax liability, nor how close a nexus must exist between a contact and the purposes described in section 7602(c).

Examination and collection activity is critical to the IRS' mission of ''helping [taxpayers] understand and meet their tax responsibilities.'' Administering the tax laws, however, involves more activities than an individual IRS employee examining a single return selected for audit or collecting unpaid taxes. It also includes: locating taxpayers who may not have fulfilled a filing or payment obligation, monitoring information returns, performing compliance checks to help identify which returns to examine, investigating leads from newspapers and other sources to identify non-filers and underreporters, providing services to taxpayers such as issuing Private Letter Rulings or determining employment status, tracing lost payments, and exchanging information with other taxing authorities and other federal agencies. Moreover, the examination of a single return may significantly affect other taxpayers. For example, adjustments to items attributable to partnerships or other pass-through entities may significantly affect partners or other investors in flow-through entities. Likewise, adjustments on returns of corporate taxpayers may significantly affect the corporations' shareholder liabilities. Broadly stated, almost every third-party contact made by IRS employees could be seen as ''with respect to the determination or collection'' of tax in that almost every contact may indirectly affect the liability of one or more taxpayers. Not every contact, however, has a direct and immediate nexus to the determination or collection of a particular taxpayer's liability.

The proposed regulations generally provide that a contact must be directly connected to the purpose of determining or collecting an identified taxpayer's

liability before the contact is subject to the statute, in contrast to making every contact which may affect a person's liability subject to the statute. An interpretation that requires each IRS employee to report each contact to every taxpayer whose liability could potentially be affected by the contact is overbroad, potentially unadministrable, and could needlessly alarm taxpayers whose returns were not actually being examined and would not in fact be selected for examination. Conversely, an interpretation that a contact was not ''with respect to'' the determination of liability until a return had been formally selected for examination would unduly elevate administrative concerns over taxpayer business and reputational interests. If a bank is contacted about a particular taxpayer, for example, the reputational concerns caused by the contact do not depend on whether the taxpayer is under formal examination at the time or is merely being screened as part of a process to identify returns for examination. Therefore, although the proposed regulations require a direct connection between the contact and the purpose of examining or collecting a liability of an identified taxpayer's liability before the contact is subject to the statute, they do not require that a formal examination be opened. They instead provide a series of tests and examples to identify classes of contacts which should or should not be subject to the statute under this standard, regardless of whether a formal examination has been opened.

Request for Comments

The IRS and the Treasury Department are interested in receiving comments on the types of contacts that should be considered to be ''with respect to the determination or collection of the liability of such taxpayer'' and, when one contact may indirectly affect the liabilities of more than one taxpayer, which taxpayers should receive the general advance notice.

Reports of Persons Contacted

Section 7602(c)(2) requires the IRS to report ''periodically'' to taxpayers the persons contacted during such period and to provide reports to taxpayers upon request. The statute does not specify the time that should elapse between reports or requests.

The proposed regulations provide that the periodic report should be produced once each year, and that taxpayers should be allowed to request the report more frequently, subject to any reasonable restrictions that the IRS may impose. In deciding what restrictions may be reasonable, the IRS may look to other, similar statutes for guidance. For example, section 6103(e)(8) allows one ex-spouse to request a report on whether the IRS has attempted to collect a joint liability from the other ex-spouse and how much of the joint liability has been collected. Like section 7602(c), section 6103(e)(8) places no restrictions on the number of requests. Nonetheless, the House Ways and Means Committee Report explaining section 6103(e)(8) suggested that ''the IRS may develop procedures to address the frequency of such requests'' and that ''one request per quarter would be a reasonable rate unless the taxpayer had good cause to seek more frequent information.'' H.R. Rep. No. 506, 104th Congress, 1st Session (1997) at 32.

A mandatory annual reporting rule, coupled with taxpayers' ability to request more frequent reports, is reasonable because a one-year cycle should be sufficiently long such that only one report would usually have to be provided to most taxpayers and yet sufficiently short, particularly in light of taxpayer ability to request more frequent reports, to enable taxpayers to address any business or reputational concerns raised by the third-party contacts. To enable the IRS to institute appropriate automated procedures to handle this requirement, the IRS plans to begin the annual mailings in the year 2001. In the interim, the IRS will provide taxpayers with reports of contacts upon request according to the guidelines contained in these proposed regulations.

Request for Comments

The IRS and Treasury are interested in receiving comments on how to interpret ''periodically'' for purposes of periodically providing a record of persons contacted to the taxpayer and whether and on what basis to impose reasonable limits or conditions on the frequency with which taxpayers may request reports.

Record of Person Contacted

Section 7602(c)(2) requires the IRS to give taxpayers a ''record of persons contacted'' both periodically and upon request. IRS employees do not obtain information from every person who is contacted with respect to the determination or collection of the taxpayer's liabilities. Moreover, when the accuracy of the information received is self-proving, IRS employees have no need to learn the identity of the persons they contact. For these reasons, the IRS does not request or learn the identity of every third party contacted. For example, an IRS employee who is trying to locate a taxpayer may talk with various persons other than the taxpayer. In these situations, the identity of the persons contacted is not relevant to the location information sought because the information will either lead to the taxpayer or not.

The proposed regulations provide that, as a general standard, the ''record of persons contacted'' should give the taxpayer information that, if known to the IRS employee, reasonably identifies the person contacted. The proposed regulations, however, do not require IRS employees to obtain information about third parties that they would not otherwise obtain. The proposed regulations also do not require disclosure to the taxpayer of any information about the third-party other than the identity information known to the employee at the time of the contact. Finally, the proposed regulations provide a bright-line rule that naming the person contacted will always satisfy the general standard of reasonable identification. This approach is consistent with the policy articulated by other privacy and disclosure statutes that the United States government will not disclose any more information about citizens in its possession than necessary to administer the laws. *See generally* 5 U.S.C. § 552a.

The general standard recognizes taxpayer interests by providing taxpayers a reasonable opportunity to learn the identity of the person contacted. The proposed regulations also recognize third-party privacy interests and the IRS' interest in not making unnecessary inquiries of third parties by requiring the IRS to report only the fact of a contact and not to make new inquiries of the third parties that would not otherwise be made. To interpret the statute otherwise would require IRS employees to intrude further into the affairs of third parties than is necessary to administer the tax laws and would adversely affect the willingness of third parties to provide information to the IRS.

An additional issue is the type of identifying information that should be included in the record when the name of the third party is not known or obtained by the IRS employee making the contact. The proposed regulations recognize that the information, other than a name, that would reasonably identify a person contacted will depend on the facts and circumstances of the contact. While the proposed regulations give an example where the place of contact might reasonably identify a person, the regulations intentionally do not set forth any specific list of characteristics to record. This approach is consistent with the interpreting the statute to require that only the fact of

the contact be recorded and not to require IRS employees to obtain more information about third parties than is otherwise necessary to administer the tax laws.

Request for Comment

The IRS and Treasury are interested in receiving comments on the type of information that should be included in the record of persons contacted which is provided to a taxpayer. Specifically, when the name of the third party is known, should additional information be included in the record of persons contacted? When the name of the third party is not known, what information should be included in the record of persons contacted?

Reprisal Exception

Section 7602(c) does not apply when the Secretary has good cause to believe that providing either the pre-contact notice or the post-contact record ''may involve reprisal against any person.'' When contacting a third party, IRS employees often do not know the details of the relationship, if any, between the third party and the taxpayer and so often do not know whether reporting the contact to the taxpayer may result in harm to any person, particularly the third party being contacted. At times, an IRS employee may have information that constitutes good cause to believe that reporting a contact may result in harm to someone. In the absence of this information, however, the IRS employee cannot know whether potential exists for reprisal without asking the third party. Under interim procedures, IRS employees generally inform the person contacted of the statute's requirements and ask whether the person has any concern that reprisal might occur against any person if the contact is reported to the taxpayer. The IRS experience under these interim procedures has been that few persons assert a fear of reprisal.

The proposed regulations interpret the statute to elevate third-party concerns about reprisal above taxpayers' business or reputational interests. The proposed regulations provide that ''reprisal'' encompasses not only physical harm, but also emotional or economic harm. The proposed regulations provide that a statement by the person contacted that harm may occur against any person is good cause to believe that reprisal may occur. Because third parties will ordinarily be better able than the IRS to evaluate their relationship with the taxpayer, the IRS must be permitted to rely on a third party's claim of potential reprisal without separately investigating every such claim. Further, to require IRS employees to investigate every claim of potential reprisal would divert resources from investigating tax liabilities to investigating third parties. Such a requirement would place a heavy administrative burden on the IRS, intrude into the third party's affairs, and require IRS employees to make judgments that they are not well positioned to make. Finally, the proposed regulation reflects the IRS' interim experience during which few persons expressed a fear of reprisal even when told that if they feared reprisal, their identity would not be reported to the taxpayer. This experience suggests that third parties generally will not express a fear of reprisal simply to keep their names off the contact lists.

The proposed regulations provide that information from any source, not only the third party contacted, may constitute good cause to believe that reprisal may occur. The proposed regulations also provide, however, that IRS employees are under no duty to investigate or determine for each contact whether good cause exists to believe that reprisal may occur. Finally, the proposed regulations provide that a mere desire for privacy will not be treated as a fear of reprisal and, in this respect, the statute requires that third-party privacy interests yield to taxpayers' interests in learning of IRS contacts. The examples clarify that third parties cannot simply request to be kept off the list of contacts reported to taxpayers.

Request for Comments

The IRS and Treasury are interested in receiving comments discussing the appropriate standards for ''reprisal'' for purposes of excluding third parties' identities from the record of persons contacted.

Contacts With Other Government Entities

Section 7602(c) applies to contacts with any person other than the taxpayer.

The statute contains no explicit exception for contacts with government entities. The Senate Finance Committee report, however, states that ''[c]ontacts with government officials relating to matters such as the location of assets or the taxpayer's current address are not restricted by this provision.'' S. Rep. No. 105–174, at 77 (1998). This report language suggests that Congress did not generally consider government contacts to implicate taxpayer business and reputational interests to the same degree as other types of third-party contacts.

In determining and collecting taxes, IRS employees often contact other government entities. For example, IRS employees may need to contact: county court clerks to retrieve land records or case files; state Secretary of State offices to retrieve corporate records; state Motor Vehicle offices to obtain license and vehicle registration information; the United States Post Office to obtain change of address information; or foreign governments to obtain information about taxpayer assets, location, or transactions. IRS employees may need to confer with non-IRS Treasury employees, Department of Justice employees, and other federal government employees with respect to the determination or collection of a taxpayer's liability. IRS employees also may need to contact bankruptcy trustees and other officers and employees of courts.

The proposed regulations provide that, generally, contacts with government entities need not be reported because they generally do not implicate the concerns that underlie the statute's enactment. Government contacts are much less likely than nongovernment contacts to affect taxpayers' reputations among persons with whom taxpayers have business relationships. Moreover, many government officials are under duties not to disclose IRS contacts to the general public. Additionally, government offices, like databases, generally serve as repositories of information on large groups of people. Inquiries for that information, whether made by the IRS or any other agency, are a routine part of the work performed by the contacted government office and generally should not affect a taxpayer's community reputation or business. The administrative burden on the IRS of maintaining and providing to taxpayers records of government contacts would be substantial because of the high volume of government contacts. Moreover, contacts with government offices are often made to locate taxpayers or their assets, which fact presents situations where pre-contact notice may not be feasible and attempts to comply with that requirement could delay and otherwise impair administration of the tax laws.

Some government contacts, however, may affect taxpayers' business relationships with the government and so will be treated as subject to the statute. The proposed regulations recognize taxpayers' interest in their business relations with government entities by providing that contacts concerning a taxpayer's conduct of business with the particular government office contacted will be subject to the statute.

Request for Comments

The IRS and Treasury are interested in receiving comments on the extent to which contacts with government entities should be excluded from section 7602(c)'s requirements. The comments should articulate how well or poorly the proposed regulation, or any suggested alternative, balances taxpayer interests in their community reputations or businesses with third parties' interests in their privacy and with the IRS' obligation to administer the tax laws fairly and effectively.

Special Analyses

This notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Likewise, section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the proposed regulations do 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, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (yes, 8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be conducted if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Bryan T. Camp of the Office of Assistant Chief Counsel (General Litigation). Other personnel from the IRS and Treasury Department have also participated in their drafting and development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURES AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7602–2 is added to read as follows:

§ 301.7602–2 Third party contacts.

(a) *In general.* Subject to the exceptions in paragraph (f) of this section, no officer or employee of the Internal Revenue Service (IRS) may contact any person other than the taxpayer with respect to the determination or collection of such taxpayer's tax liability without giving the taxpayer reasonable notice in advance that such contacts may be made. A record of persons so contacted must be made and given to the taxpayer both periodically and upon the taxpayer's request.

(b) *Third-party contact defined.* Contacts subject to section 7602(c) and this regulation shall be called ''third-party contacts.'' A third-party contact is a communication which—

(1) Is initiated by an IRS employee;

(2) Is made to a person other than the taxpayer;

(3) Is made with respect to the determination or collection of the tax liability of such taxpayer;

(4) Discloses the identity of the taxpayer being investigated; and

(5) Discloses the association of the IRS employee with the IRS.

(c) *Elements of third-party contact explained.* (1) *Initiation by an IRS employee*—(i) *Explanation.* For purposes of this section an IRS employee includes all officers and employees of the IRS, the Chief Counsel of the IRS and the National Taxpayer Advocate, as well as any other person who, through a written agreement with the IRS, is subject to disclosure restrictions consistent with section 6103. No inference about the employment or contractual relationship of such other persons with the IRS may be drawn from this regulation for any purpose other than the requirements of section 7602(c). An IRS employee initiates a communication whenever it is the employee who first tries to communicate with a person other than the taxpayer. Returning unsolicited telephone calls or speaking with persons other than the taxpayer as part of an attempt to speak to the taxpayer are not initiations of third-party contacts.

(ii) *Examples.* The following examples illustrate this paragraph (c)(1):

Example 1. An IRS employee receives a message to return an unsolicited call. The employee returns the call and speaks with a person who reports information about a taxpayer who is not meeting his tax responsibilities. Later, the employee makes a second call to the person and asks for more information. The first call is not a contact initiated by an IRS employee. Just because the employee must return the call does not change the fact that it is the other person, and not the employee, who initiated the contact. The second call, however, is initiated by the employee and so meets the first element.

Example 2. An IRS employee wants to hire an appraiser to help determine the value of a taxpayer's oil and gas business. At the initial interview, the appraiser signs an agreement which prohibits him from disclosing return information of the taxpayer except as allowed by the agreement. Once hired, the appraiser initiates a contact by calling an industry expert in Houston and discusses the taxpayer's business. The IRS employee's contact with the appraiser does not meet the first element of a third-party contact because the appraiser is treated, for section 7602(c) purposes only, as an employee of the IRS. For the same reason, however, the appraiser's call to the expert does meet the first element of a third-party contact.

Example 3. A revenue agent trying to contact the taxpayer to discuss the taxpayer's pending examination twice calls the taxpayer's place of business. The first call is answered by a receptionist who states that the taxpayer is not available. The IRS employee leaves a message with the receptionist stating only his name, telephone number, that he is with the IRS, and asks that the taxpayer call him. The second call is answered by the office answering machine, on which the IRS employee leaves the same message. Neither of these phone calls meets the first element of a third-party contact because the IRS employee is trying to initiate a communication with the taxpayer and not a person other than the taxpayer. The fact that the IRS employee must either speak with a third party (the receptionist) or leave a message on the answering machine, which may be heard by a third party, does not mean that the employee is initiating a communication with a person other than the taxpayer. Both the receptionist and the answering machine are only intermediaries in the process of reaching the taxpayer.

(2) *Person other than the taxpayer*—(i) *Explanation.* The phrases ''person other than the taxpayer'' and ''third party'' are used interchangeably in this section, and do not include—

(A) An officer or employee of the IRS, as defined in paragraph (c)(1)(i) of this section, acting within the scope of his or her employment;

(B) Any computer database or web site regardless of where located and by whom maintained, including databases or web sites maintained on the Internet or in county courthouses, libraries, or any other real or virtual site; or

(C) A current employee, officer, or fiduciary of a taxpayer when acting within the scope of his or her employment or relationship with the taxpayer. Such employee, officer, or fiduciary shall be conclusively presumed to be acting within the scope of his or her employment or relationship during business hours on business premises.

(ii) *Examples:* The following examples illustrate this paragraph (c)(2):

Example 1. A revenue agent examining a taxpayer's return speaks with another revenue agent who has previously examined the same taxpayer about a recurring issue. The revenue agent has not contacted a ''person other than the taxpayer'' within the meaning of section 7602(c).

Example 2. A revenue agent examining a taxpayer's return speaks with one of the taxpayer's employees on business premises during business hours. The employee is conclusively presumed to be acting within the scope of his employment and is therefore not a ''person other than the taxpayer'' for section 7602(c) purposes.

Example 3. A revenue agent examining a corporate taxpayer's return uses a commercial online research service to research the corporate structure of the taxpayer. The revenue agent uses an IRS account, logs on with her IRS user name and password, and uses the name of the corporate taxpayer in her search terms. The revenue agent later explores several Internet web sites that may have information relevant to the examination. The searches on the commercial online research service and Internet web sites are not contacts with ''persons other than the taxpayer.''

(3) *With respect to the determination or collection of the tax liability of such taxpayer*—(i) *With respect to.* A contact is ''with respect to'' the determination or collection of the tax liability of such taxpayer when made for the purpose of either determining or collecting a particular tax liability and when directly connected to that purpose. While a contact made for the purpose of determining a particular taxpayer's tax liability may also affect the tax liability of one or more other taxpayers, such contact is not for that reason alone a contact ''with respect to'' the determination or collection of those other taxpayers' tax liabilities. Contacts to determine the tax status of a pension plan under chapter I, subchapter D (Deferred Compensation), are not ''with respect to'' the determination of plan participants' tax liabilities. Contacts to determine the tax status of a bond issue under chapter 1, subchapter B, part IV (Tax Exemption Requirements for State and Local Bonds), are not ''with respect to'' the determination of the bondholders' tax liabilities. Contacts to determine the tax status of an organization under chapter 1, subchapter F (Exempt Organizations), are not ''with respect to'' the determination of the contributors' liabilities, nor are any similar determinations ''with respect to'' any persons with similar relationships to the taxpayer whose tax liability is being determined or collected.

(ii) *Determination or collection.* A contact is with respect to the ''determination or collection'' of the tax liability of such taxpayer when made during the administrative determination or collection process. For purposes of this paragraph (c) only, the administrative determination or collection process may include any administrative action to ascertain the correctness of a return, make a return when none has been filed, or determine or collect the tax liability of any person as a transferee or fiduciary under chapter 71 of title 26.

(iii) *Tax liability.* A ''tax liability'' means the liability for any tax imposed by title 26 of the United States Code (including any interest, additional amount, addition to the tax, or assessable penalty) and does not include the liability for any tax imposed by any other jurisdiction nor any liability imposed by other federal statutes.

(iv) *Such taxpayer.* A contact is with respect to the determination or collection of the tax liability of ''such taxpayer'' when made while determining or collecting the tax liability of a particular, identified taxpayer. Contacts made during an investigation of a particular, identified taxpayer are third-party contacts only as to the particular, identified taxpayer under investigation and not as to any other taxpayer whose tax liabilities might be affected by such contacts.

(v) *Examples.* The following examples illustrate the operation of this paragraph (c)(3):

Example 1. As part of a compliance check on a return preparer, an IRS employee visits the preparer's office and reviews the preparer's client files to ensure that the proper forms and records have been created and maintained. This contact is not a third-party contact ''with respect to'' the preparer's clients because it is not for the purpose of determining the tax liability of the preparer's clients, even though the agent might discover information that would lead the agent to recommend an examination of one or more of the preparer's clients.

Example 2. A revenue agent is assigned to examine a taxpayer's return, which was prepared by a return preparer. As in all such examinations, the revenue agent asks the taxpayer routine questions about what information the taxpayer gave the preparer and what advice the preparer gave the taxpayer. As a result of the examination, the revenue agent recommends that the preparer be investigated for penalties under sections 6694 or 6695. Neither the examination of the taxpayer's return nor the questions asked of the taxpayer are ''with respect to'' the determination of the preparer's tax liabilities within the meaning of section 7602(c) because the purpose of the contacts was to determine the taxpayer's tax liability, even though the agent discovered information that may result in a later investigation of the preparer.

Example 3. To help identify taxpayers in the florist industry who may not have filed proper returns, an IRS employee contacts a company that supplies equipment to florists and asks for a list of its customers in the past year in order to cross-check the list against filed returns. The employee later contacts the supplier for more information about one particular florist who the employee believes did not file a proper return. The first contact is not a contact with respect to the determination of the tax liability of ''such taxpayer'' because no particular taxpayer has been identified for investigation at the time the contact is made. The later contact, however, is with respect to the determination of the tax liability of ''such taxpayer'' because a particular taxpayer has been identified. The later contact is also ''with respect to'' the determination of that taxpayer's liability because, even though no examination has been opened on the taxpayer, the information sought could lead to an examination.

Example 4. A revenue officer, trying to collect the trust fund portion of unpaid employment taxes of a corporation, begins to investigate the liability of two corporate officers for the section 6672 Trust Fund Recovery Penalty (TFRP). The revenue officer obtains the signature cards for the corporation's bank accounts from the corporation's bank. The contact with the bank to obtain the signature cards is a contact with respect to the determination of the two identified corporate officers' tax liabilities because it is directly connected to the purpose of determining a tax liability of two identified taxpayers. It is not, however, a contact with respect to any other person not already under investigation for TFRP liability, even though the signature cards might identify other potentially liable persons.

Example 5. The IRS is asked to rule on whether a certain pension plan qualifies under section 401 so that contributions to the pension plan are excludable from the employees' incomes under section 402 and are also deductible from the employer's income under section 404. Contacts made with the plan sponsor (and with persons other than the plan sponsor) are not contacts ''with respect to'' the determination of the tax liabilities of the pension plan participants because the purpose of the contacts is to determine the status of the plan, even though that determination may affect the participants' tax liabilities.

(4) *Discloses the identity of the taxpayer being investigated*—(i)

Explanation. An IRS employee discloses the taxpayer's identity whenever the employee knows or should know that the person being contacted can readily ascertain the taxpayer's identity from the information given by the employee.

(ii) *Examples.* The following examples illustrate this paragraph (c)(4):

Example 1. A revenue officer seeking to value the taxpayer's condominium calls a real estate agent and asks for a market analysis of the taxpayer's condominium, giving the unit number of the taxpayer's condominium. The revenue officer has revealed the identity of the taxpayer, regardless of whether the revenue officer discloses the name of the taxpayer, because the real estate agent can readily ascertain the taxpayer's identity from the address given.

Example 2. A revenue officer seeking to value the taxpayer's condominium unit calls a real estate agent and, without identifying the taxpayer's unit, asks for the sales prices of similar units recently sold and listing prices of similar units currently on the market. The revenue officer has not revealed the identity of the taxpayer because the revenue officer has not given any information from which the real estate agent can readily ascertain the taxpayer's identity.

(5) *Discloses the association of the IRS employee with the IRS.* An IRS employee discloses his association with the IRS whenever the employee knows or should know that the person being contacted can readily ascertain the association from the information given by the employee.

(d) *Pre-contact notice*—(1) *In general.* An officer or employee of the IRS may not make third-party contacts without providing reasonable notice in advance to the taxpayer that contacts may be made. The pre-contact notice may be given either orally or in writing. If written notice is given, it may be given in any manner which the IRS employee responsible for giving the notice reasonably believes will be received by the taxpayer in advance of the third-party contact. Written notice is deemed reasonable if it is—

(i) Mailed to the taxpayer's last known address;

(ii) Given in person;

(iii) Left at the taxpayer's dwelling or usual place of business; or

(iv) Actually received by the taxpayer.

(2) *Pre-contact notice not required.* Pre-contact notice under this section need not be provided to a taxpayer for third-party contacts of which advance notice has otherwise been provided the taxpayer pursuant to another statute, regulation or administrative procedure. For example, Collection Due Process notices sent to taxpayers pursuant to section 6330 and its regulations constitute reasonable advance notice that contacts with third parties may be made.

(e) *Post-contact reports*—(1) *Periodic reports.* A record of persons contacted must be reported to the taxpayer periodically, but no less frequently than once a year. The period of time between these periodic reports shall be called ''the reporting period.'' The periodic report must be mailed to the taxpayer's last known address.

(2) *Requested reports.* A taxpayer may request a record of persons contacted in any manner which the Commissioner reasonably permits. The Commissioner may set reasonable limits on how frequently taxpayer requests need be honored. The requested report may be mailed either to the taxpayer's last known address or such other address as the taxpayer specifies in the request.

(3) *Contents of record*—(i) *In general.* The record of persons contacted should contain information, if known to the IRS employee making the contact, which reasonably identifies the person contacted. Providing the name of the person contacted fully satisfies the requirements of this section but this section does not require IRS employees to solicit identifying information from a person solely for the purpose of the post-contact report. The record need not contain any other information, such as the nature of the inquiries or the content of the third party's response. The record need not report multiple contacts made with the same person during a reporting period.

(ii) *Special rule for employees.* For contacts with the employees, officers, or fiduciaries of any entity who are acting within the scope of their employment or relationship, it is sufficient to record the entity as the person contacted. A fiduciary, officer or employee shall be conclusively presumed to be acting within the scope of his employment or relationship during business hours on business premises. For purposes of this paragraph (e)(3)(ii), the term ''entity'' means any business (whether operated as a sole proprietorship, disregarded entity under Treas. Reg. 301.7701–2, or otherwise), trust, estate, partnership, association, company, corporation, or similar organization.

(4) *Post-contact record not required.* A post-contact record under this section need not be made, or provided to a taxpayer, for third-party contacts of which the taxpayer has already been given a similar record pursuant to another statute, regulation, or administrative procedure.

(5) *Examples.* The following examples illustrate this paragraph (e):

Example 1. An IRS employee trying to find a specific taxpayer's assets in order to collect unpaid taxes talks to the owner of a marina. The employee asks whether the taxpayer has a boat at the marina. The owner gives his name as Mr. John Doe. The employee may record the contact as being with Mr. John Doe and is not required by this regulation to collect or record any other identity information. The taxpayer will receive a report that Mr. John Doe was contacted.

Example 2. An IRS employee trying to find a specific taxpayer and his assets in order to collect unpaid taxes talks to a person at 502 Fernwood. The employee asks whether the taxpayer lives next door at 500 Fernwood, as well as where the taxpayer works, what kind of car the taxpayer drives and whether the camper parked in front of 500 Fernwood belongs to the taxpayer. The person does not disclose his name. The employee may record the contact as being with a person at 502 Fernwood. If the employee then makes the same inquiries of another person on the street in front of 500 Fernwood, and does not learn that person's name, the contact may be reported as being with a person on the street in front of 500 Fernwood. Later contacts with either person during the same reporting period need not be reported again.

Example 3. A revenue officer seeking to collect a taxpayer's unpaid tax liability obtains loan documents from a bank where the taxpayer applied for a loan. After reviewing the documents, the revenue officer talks with the loan officer at the bank who handled the application. The revenue officer has contacted only one ''person other than the taxpayer.'' The bank and not the loan officer is the ''person other than the taxpayer'' for section 7602(c) purposes. The loan officer is not a person other than the taxpayer because the loan officer is acting within the scope of her employment.

Example 4. An IRS employee issues a summons to a third party with respect to the determination or collection of a taxpayer's liability and properly follows the procedures for such summonses under section 7609, which requires that a copy of the summons be given to the taxpayer. This third-party contact need not be maintained in a record separately reported to the taxpayer because providing a copy of the third-party summons to the taxpayer pursuant to section 7609 satisfies the post-contact recording and reporting requirement of this section. In addition, later contacts with this third party during the same reporting period need not be reported.

Example 5. An IRS employee serves a levy on a third party with respect to the collection of a taxpayer's liability. The employee provides the taxpayer with a copy of the notice of levy form which shows the identity of the third party. This third-party contact need not be maintained in a record or list separately reported to the taxpayer because providing a copy of the notice of levy to the taxpayer satisfies the post-contact recording and reporting requirement of this section.

(f) *Exceptions*—(1) *Authorized by taxpayer.* (i) Section 7602(c) does not apply to contacts authorized by the taxpayer. A contact is ''authorized'' within the meaning of this section if—

(A) The contact is with the taxpayer's authorized representative, that is, a person who is authorized to speak or act

on behalf of the taxpayer, such as a person holding a power of attorney, a corporate officer, a personal representative, an executor or executrix, or an attorney representing the taxpayer; or

(B) The taxpayer or the taxpayer's authorized representative requests or approves the contact.

(ii) This section does not entitle any person to prevent or delay an IRS employee from contacting any individual or entity.

(2) *Jeopardy.* (i) Section 7602(c) does not apply when the IRS employee making a contact has good cause to believe that providing the taxpayer with either a general pre-contact notice or a record of the specific person being contacted may jeopardize the collection of any tax. For purposes of this section only, good cause includes a reasonable belief that providing the notice or record will lead to—

(A) Attempts by any person to conceal, remove, destroy, or alter records or assets which may be relevant to any tax examination or collection activity;

(B) Attempts by any person to prevent other persons, through intimidation, bribery, or collusion, from communicating any information which may be relevant to any tax examination or collection activity; or

(C) Attempts by any person to flee, or otherwise avoid testifying or producing records which may be relevant to any tax examination or collection activity.

(ii) In the jeopardy situations described in this paragraph (f)(2), the IRS employee must make a record of the person contacted but the taxpayer need not be provided the record until it is no longer reasonable to believe that providing the record would cause the jeopardy described.

(3) *Reprisal*—(i) *In general.* Section 7602(c) does not apply when the IRS employee making a contact has good cause to believe that providing the taxpayer with either a general pre-contact notice or a specific record of the person being contacted may cause any person to harm any other person in any way, whether the harm is physical, economic, emotional or otherwise. A statement by the person contacted that harm may occur against any person is good cause to believe that reprisal may occur. This section does not require the IRS employee making the contact to question further the contacted person about reprisal or otherwise make further inquiries regarding the statement.

(ii) *Examples.* The following examples illustrate this paragraph (f)(3):

Example 1. A revenue officer seeking to collect unpaid taxes is told by the taxpayer that all the money in his and his brother's joint bank account belongs to the brother. The revenue officer contacts the brother to verify this information. The brother refuses to confirm or deny the taxpayer's statement. He states that he does not believe that reporting the contact to the taxpayer would result in harm to anyone but further states that he does not want his name reported to the taxpayer because it would then appear that he gave information. This contact is not excepted from the statute merely because the brother asks that his name be left off the list of contacts.

Example 2. The same facts as Example 1, except that the brother states that he fears harm from the taxpayer should the taxpayer learn of the contact, even though the brother gave no information. This contact is excepted from the statute because the third party has expressed a fear of reprisal. The IRS employee is not required to make further inquiry into the nature of the brothers' relationship or otherwise question the brother's fear of reprisal.

Example 3. A revenue officer is seeking to collect unpaid taxes owed jointly by a husband and wife who are recently divorced. From reading the court divorce file, the revenue officer learns that the divorce was acrimonious and that the ex-husband once violated a restraining order issued to protect the ex-wife. This information provides good cause for the IRS employee to believe that reporting contacts which might disclose the ex-wife's location may cause reprisal against any person. Therefore, when the revenue officer contacts the ex-wife's new employer to verify salary information provided by the ex-wife, the revenue officer has good cause not to report that contact to the ex-husband, regardless of whether the new employer expresses concern about reprisal against it or its employees.

(4) *Pending criminal investigations*—(i) *IRS criminal investigations.* Section 7602(c) does not apply to contacts made during an investigation, or inquiry to determine whether to open an investigation, when the investigation or inquiry is—

(A) Made against a particular identified taxpayer for the primary purpose of evaluating the potential for criminal prosecution of that taxpayer; and

(B) Made by an IRS employee whose primary duties include either identifying or investigating criminal violations of the law.

(ii) *Other criminal investigations.* Section 7602(c) does not apply to contacts which, if reported to the taxpayer, could interfere with a known pending criminal investigation being conducted by law enforcement personnel of any local, state, federal, foreign or other governmental entity.

(5) *Governmental entities.* Section 7602(c) does not apply to any contact with any office of any local, state, federal or foreign governmental entity except for contacts concerning the taxpayer's business with the government office contacted, such as the taxpayer's contracts with or employment by the office. The term ''office'' includes any agent or contractor of the office acting in such capacity.

(6) *Confidential informants.* Section 7602(c) does not apply when the employee making the contact has good cause to believe that providing either the pre-contact notice or the record of the person contacted would thereby identify a confidential informant whose identity would be protected under section 6103(h)(4).

(7) *Nonadministrative contacts.* Section 7602(c) does not apply to contacts made in the course of a pending court proceeding.

(g) *Effective Date.* This section is applicable on the date the final regulations are published in the **Federal Register**.

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 00–32479 Filed 12–29–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–6925–4]

Clean Air Act Full Approval of Operating Permits Programs in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to fully approve the operating permits program submitted by the State of Washington. Washington's operating permits program was submitted in response to the directive in the 1990 Clean Air Act Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction. In the Final Rules section of this **Federal Register**, EPA is approving the Washington operating permits program as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse

comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by February 1, 2001.

ADDRESSES: Written comments should be addressed to Denise Baker, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of Washington's submittal, and other supporting information used in developing this action, are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: December 15, 2000.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 00–33303 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–6925–2]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permits for PacifiCorp's Jim Bridger and Naughton Coal-Fired Power Plants, Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: This document announces that the EPA Administrator has partially granted and partially denied a petition to object to two state operating permits issued by the Wyoming Department of Environmental Quality, Air Quality Division, to PacifiCorp for its Jim Bridger plant and its Naughton plant in Wyoming. This order constitutes final action on the petition submitted by the Wyoming Outdoor Council. Pursuant to section 505(b)(2) of the Clean Air Act (Act) and 40 CFR 70.8(d), interested parties may seek judicial review of those portions of the petition which EPA denied in the United States Court of Appeals for the appropriate circuit within 60 days of this decision under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition and all other supporting information are on file at the: U.S. Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street—Suite 300, Denver, Colorado, 80202. All documents will be available for review at the U.S. EPA Region VIII office Monday through Friday from 8:00 a.m. to 5:00 p.m. (excluding federal holidays). The final order is also available electronically at *http://www.epa.gov/region07/programs/artd/air/title5/t5memos/woc020.pdf.*

FOR FURTHER INFORMATION CONTACT: Monica Morales, Air Technical Assistance Unit, EPA Region VIII, telephone (303) 312–6936, e-mail *morales.monica@epa.gov.* Interested parties may also contact the Wyoming Department of Environmental Quality, Air Quality Division, 122 West 25th Street, Cheyenne, Wyoming 82002.

SUPPLEMENTARY INFORMATION: The Clean Air Act affords EPA the opportunity for a 45-day period to review, and object to as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to state operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

The Wyoming Outdoor Council submitted a petition to the Administrator on June 30, 1998, seeking EPA's objection to the operating permits issued to PacifiCorp for its Jim Bridger and Naughton coal-fired power plants. The petitioner maintains that the PacifiCorp operating permits are inconsistent with the Act because the permits: (1) fail to require continuous opacity monitoring for Naughton unit 3 and Jim Bridger units 1, 2, and 3 as required by the federal acid rain regulations, 40 CFR 75.14(b); and (2) provide improper exemptions to State Implementation Plan (''SIP'') emission limits by allowing excess emissions due to malfunctions, abnormal conditions, or breakdowns that are beyond the control of the operator.

The order partially granting and partially denying this petition explains the reasons behind EPA's conclusions that (1) the permits fail to meet the continuous opacity monitoring requirement for the four coal-fired units and otherwise lack monitoring sufficient to assure compliance with the permit's terms and conditions, and (2) the petitioner failed to demonstrate that EPA has a basis for objecting to the exemption from SIP emission limits due to malfunctions, abnormal conditions or breakdowns.

Because the Order is a locally or regionally applicable action of the Administrator, judicial review of this decision under section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate regional circuit within 60 days from the date on which this notice is published in the **Federal Register**. Under section 307(b)(2) of the Act, this decision shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: December 20, 2000.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–33424 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6923–4]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, ''the Agency'' in this preamble) is proposing to grant final authorization to the State of Louisiana Department of Environmental Quality for its hazardous waste program revisions, specifically, revisions needed to meet the Resource Conservation and Recovery Act Cluster IX, which contains Federal rules promulgated between July 1, 1998 to June 30, 1999. In the ''Rules and Regulations'' section of this **Federal**

Register (FR), EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives no adverse comments, it will not take further action on this proposal. If EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before February 1, 2001.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444; or Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, (225) 765–0617.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: December 7, 2000.

Myron O. Knudson,

Acting, Regional Administrator, Region 6.

[FR Doc. 00–33159 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6924–6]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The State of Oklahoma has applied for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), portions of Cluster VIII, and entire Cluster IX which contains Federal rules promulgated from July 1, 1998, to June 30, 1999. The EPA proposes to grant final authorization to the State of Oklahoma. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. The EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. EPA have explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes or the document may identify the issues raised, respond to comments, and affirm that the immediate final rule will take effect March 5, 2001. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Written comments must be received on or before February 1, 2001.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Oklahoma during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444; or Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: December 7, 2000.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 00–33156 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 90

[WT Docket No. 99–87; RM–9332; RM–9405; RM–9705; FCC 00–403]

Revised Competitive Bidding Authority

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on whether certain rule changes would be in the public interest. Specifically, the Commission seeks comment on whether it should modify the equipment rules for non-Public Safety licensees operating in the private land mobile radio bands between 222 MHz and 896 MHz by prohibiting the manufacture or importation of equipment that does not meet certain efficiency standards by certain dates. The Commission also seeks comment as to whether Business and Industrial/Land Transportation category (BI/LT) licensees in the 896–901/935–940 MHz (900 MHz) band should be allowed to assign or transfer their spectrum to CMRS licensees for use in CMRS operations, or to modify the licenses to CMRS use in their own systems.

DATES: Interested parties may file comments on or before March 5, 2001 and reply comments on or before April 2, 2001.

ADDRESSES: An original and four copies of all comments should be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Guy Benson (regarding equipment efficiency rules) or Karen Franklin (regarding the 900 MHz band), (202) 418–0680, TTY (202) 418–7233, or via e-mail at *gbenson@fcc.gov* or *kfrankli@fcc.gov,* Wireless Telecommunications Bureau, Public Safety and Private Wireless Division.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*) in FCC 00–403; WT Docket No. 99–87, adopted on November 9, 2000 and released on November 20, 2000. The full text of this *FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW. Washington, DC 20037. The full text may also be downloaded at: *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the Notice

1. *Equipment efficiency rules.* On June 19, 1998, the American Mobile Telecommunications Association (AMTA) filed a petition for rule making proposing that certain Part 90 licensees be required to employ new spectrum-efficient technologies. Specifically, AMTA urges that non-Public Safety licensees in the bands between 222 MHz and 896 MHz be required to deploy technology that achieves the equivalent of two times the capacity of most current operations. The gain in efficiency would result in one voice path per 12.5 kilohertz of spectrum, using a 25 kilohertz frequency. AMTA proposes that the requirement be phased in from 2003 to 2020, beginning with the most congested areas. Licensees not deploying this new equipment would be required to accept secondary status.

2. AMTA contends that such requirements are needed because, under the current rules, it is financially imprudent for a licensee to invest in new, more efficient technology, since doing so results in additional costs without additional benefits. The current rules, which were adopted in the Refarming proceeding, provide that, in order to effect a transition to a narrowband channel plan, we will type certify only increasingly efficient equipment. Specifically, since February 14, 1997, we have certified equipment for 25 kilohertz channels only if it is also capable of operating on 12.5 kilohertz and/or narrower channels. After January 1, 2005, only new equipment that operates on 6.25 kilohertz channel bandwidths will be certified. New equipment that operates on 25 and/or 12.5 kilohertz channels will be certified only if it is also capable of operating on 6.25 kilohertz or narrower channels. The rules do not require users to replace existing systems.

3. When the Commission adopted the current rules in 1995, it specifically declined to implement a comprehensive set of dates mandating strict manufacturing and licensing requirements. The Commission concluded that the type certification process itself could provide the catalyst for transition from one technology to another by promoting a natural migration to new technologies. The Commission concluded that this approach was preferable to requiring manufacturing or licensing of narrowband equipment by certain dates, because it would provide users immediate flexibility in equipment decisions, provide a period for the development of new technologies, and avoid creating an unreasonable burden for licensees.

4. AMTA and other commenters argue that a new approach is needed, because the migration to narrowband technology is not occurring as rapidly as the Commission intended. Other commenters believe that the Refarming rules should be retained at least for the time being, because not enough time has elapsed in order to reap the benefits of the well-considered compromises the Commission adopted in that proceeding. After considering the record and comments in this proceeding, we are inclined to agree with AMTA that the current pace of migration to more spectrally efficient technology is not rapid enough. We seek comment on this tentative conclusion, as well as whether enough time has elapsed to allow us to evaluate the effectiveness of our current rules.

5. Commenters believing that the rules need to be revised should also discuss what action the Commission should take. We tentatively conclude that that we should encourage the migration to narrowband technology by prohibiting the manufacture or importation of equipment that does not meet certain efficiency standards by certain dates. We continue to be concerned that requiring the employment of new spectrum-efficient technologies by certain dates, as proposed by AMTA, would impose unreasonable burdens on licensees, and we acknowledge the concerns raised by opponents of AMTA's proposal that it would be unfair to require users to replace systems in which they have recently invested substantial amounts. On the other hand, a user that continues to employ spectrally inefficient equipment, when more efficient alternatives are available, is harming other users with whom it is sharing the frequencies in these bands. Therefore, we are also concerned with a system that permits users to remain on spectrally inefficient systems indefinitely. We request comment on these issues and on the comparative merits of alternative approaches to addressing these concerns. We also request comment on what timetable would be appropriate for implementing any new requirement. One alternative would be to prohibit the manufacture or importation of equipment that does not meet certain efficiency standards by January 1, 2005, which, is the date after which, under our current rules, only new equipment that operates on 6.25 kilohertz channel bandwidths will be certified. We seek comment on this proposal and alternative dates for this proposal to become effective. Commenters are encouraged to suggest specific dates and specific efficiency requirements, and to explain their recommendations.

6. *900 MHz band.* In the Report and Order portion of this item, we amended our rules to allow 800 MHz BI/LT licensees to assign or transfer their spectrum to CMRS licensees for use in CMRS operations, or to modify the licenses to CMRS use in their own systems. We also adopted rules to safeguard against trafficking in 800 MHz BI/LT licenses, and notification procedures to avoid interference to 800 MHz public safety operations. We did not ask commenters to address whether we should also extend this flexibility to any other frequency bands, and therefore did not consider any such rule amendments.

7. We now seek comment on whether this flexibility in use of PLMR channels should be extended to the 900 MHz band. We believe that such an action would promote the statutory objective of regulatory symmetry among CMRS

providers. We intend, if we introduce such flexibility for licensees in the 900 MHz band, to impose an appropriate holding period requirement on all licenses the application for which is filed on or after the date we adopt this item. We would take such an action in order to ensure that our request for comment on this issue does not motivate prospective licensees to apply for vacant PLMR spectrum with the sole intent of using it for CMRS operations. Given the unique characteristics of the 800 MHz PLMR bands, however, we also seek comment as to whether there are any reasons we should continue to treat the 800 MHz and 900 MHz bands differently.

Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals and tentative conclusions set forth in the *FNPRM* in WT Docket No. 99–87. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM*. In accordance with the RFA, the Commission will send a copy of this *FNPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Filing Procedures

9. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 5, 2001, and reply comments on or before April 2, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

10. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

11. Parties choosing to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, The Portals, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition, courtesy copies should be delivered to Leora Hochstein, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room #4–A633, Washington, DC 20554 and Scot Stone, Public Safety and Private Wireless Division, Federal Communications Commission, 445 12th Street, SW., Room #4–B408, Washington, DC 20554.

12. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection and duplication during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Copies also may be obtained from International Transcription Services, Inc., 445 12th Street, SW., Room CY–B400, Washington, DC 20554, (202) 314–3070.

Ordering Clauses

13. Authority for issuance of this *FNPRM* is contained in sections 4(I), 309(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

Initial Regulatory Flexibility Analysis

14. As required by the Regulatory Flexibility Act (''RFA''), the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this *FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this *FNPRM*. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').

Need for, and Objectives of, the Proposed Rules

15. The purpose of this *FNPRM* is to determine whether it would be in the public interest, convenience, and necessity to amend our rules governing non-public safety private land mobile radio (''PLMR'') licensees in the bands between 222 MHz and 896 MHz in order to expedite the transition to narrowband technology. As is described in the *FNPRM,* AMTA urges that non-Public Safety licensees in the bands between 222 MHz and 896 MHz be required to deploy technology that achieves the equivalent of two times the capacity of most current operations. AMTA asserts that the gain in efficiency would result in one voice path per 12.5 kilohertz of spectrum, using a 25 kilokertz frequency. AMTA proposes that the requirement be phased in from 2003 to 2020, beginning with the most congested areas. Other commenters believe that the Refarming rules should be retained at least for the time being, because not enough time has elapsed in order to reap the benefits of the well-considered compromises the Commission adopted in that proceeding. The Report and Order tentatively concludes that we should encourage the migration to narrowband technology by prohibiting the manufacture or importation of equipment that does not meet certain efficiency standards by certain dates and requests comment on these issues and the comparative merits of alternative approaches to addressing the concerns that have been raised, including what timetable would be appropriate for implementing any new requirement.

16. The *FNPRM* also seeks comment on whether to permit 900 MHz Business and Industrial/Land Transportation (''BI/LT'') licensees to modify their licenses to permit CMRS use. The Commission believes that extending this flexibility to 900 MHz BI/LT licensees would promote the statutory objective of regulatory symmetry among CMRS providers.

Legal Basis

17. Authority for issuance of this *FNPRM* is contained in Sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

18. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by

the proposed rules, if adopted. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. The RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.

19. The proposed rule amendments may affect users of public safety radio services and private radio licensees that are regulated under Part 90 of the Commission's rules, and may also affect manufacturers of radio equipment. An analysis of the number of small entities affected follows.

20. *Public Safety radio services and Governmental entities.* Public Safety radio services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone (wireless) companies, which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities.

21. *Specialized Mobile Radio (''SMR'').* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to two tiers of firms: (1) ''small entities,'' those with revenues of no more than $15 million in each of the three previous calendar years; and (2) ''very small entities,'' those with revenues of no more than $3 million in each of the three previous calendar years. The regulations defining ''small entity'' and ''very small entity'' in the context of 800 MHz SMR (upper 10 MHz and lower 230 channels) and 900 MHz SMR have been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz (upper 10 MHz) and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auction. Of the 1,020 licenses won in the 900 MHz auction, 263 licenses were won by bidders qualifying as small and very small entities. In the 800 MHz SMR auction, 38 of the 524 licenses awarded were won by small and very small entities.

22. *Estimates for PLMR Licensees.* Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. Included in this definition are business entities engaged in radiotelephone communications employing no more that 1,500 persons. Entities engaged in telegraph and other message communications with no more than $5 million in annual receipts also qualify as small business concerns. According to the Bureau of the Census, only twelve radiotelephone firms of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

23. *Equipment Manufacturers.* We anticipate that at least six radio equipment manufacturers will be affected by our decisions in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

24. Possible requirements under consideration in this *FNPRM* would impose new compliance requirements for certain 900 MHz PLMR licensees regulated under Part 90 of the Commission's rules that seek to modify their licenses to for use in CMRS systems. Assuming the rules adopted in the Report and Order are a good model for 900 MHz PLMR (which assumption has yet to be established), the Commission might require applicants, upon submitting a modification application, to: (a) Certify that the coor adjacent channel 800 MHz public safety licensees in the same geographic area have been notified of the application; and (b) commit that they will take affirmative steps to avoid harmful interference to such public safety licensees. These steps may be necessary to reduce risks of increased interference.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule or any part thereof for small entities.

26. The Commission believes that migration to narrowband technologies,

should benefit all entities, as it will result in more efficient use of the spectrum by allowing a greater number of entities to share existing spectrum. However, requiring the use of narrowband equipment by a date certain, or prohibiting the manufacture or import of non-compliant equipment, could impact some small entities requiring them to upgrade their communications systems before they would otherwise do so. An alternative would be to maintain the current rules, which are intended to foster migration to narrowband technology by way of progressively more stringent type certification requirements. We issue this *FNPRM* in order to consider whether a change in the Rules would benefit small entities and other PLMR licensees.

27. In the Report and Order portion of this item, we amended our rules to allow 800 MHz BI/LT licensees to assign or transfer their spectrum to CMRS licensees for use in CMRS operations, or to modify the licenses to CMRS use in their own systems. We also adopted rules to safeguard against trafficking in 800 MHz Business and I/LT licenses, and notification procedures to avoid interference to 800 MHz public safety operations. This *FNPRM* now seeks comment on whether this flexibility in use of PLMR channels should be extended to the 900 MHz band.

28. In the context of 800 MHz PLMR, we have found that allowing licensees to convert their frequencies to CMRS use or assign or transfer these frequencies to CMRS entities will not affect the supply of available PLMR spectrum for licensing from the PLMR pool, and thus should not further exacerbate the current shortage of private spectrum available to small business entities and other PLMR eligibles. An alternative approach might permit such modifications without restriction; however, this might affect the supply of available PLMR spectrum which might, in turn, have possible adverse effects on small businesses.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

29. None.

List of Subjects in 47 CFR Parts 1 and 90

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–41 Filed 12–29–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 591, 592 and 594

[Docket No. NHTSA–2000–8159; Notice 2]

RIN 2127–AH67

Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured to Conform with the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141

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

ACTION: Extension of comment period.

SUMMARY: This document grants a request to extend the comment period on an agency proposal, principally to amend the regulations pertaining to registered importers of motor vehicles not originally manufactured to conform with the Federal motor vehicle safety, bumper, and theft prevention standards. The agency also proposed associated amendments to allied regulations. The agency is extending the comment period an additional four weeks.

DATES: Comments must be received on or before the close of business on February 1, 2001 (the comments were originally due on January 4, 2001).

ADDRESSES: You should mention the docket number of this document in your comments, and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http//dms.dot.gov. Click on ''Help & Information,'' or ''Help/Info'' to obtain instructions for filing the document electronically.

You may call Docket Management at 202–366–9324. You may visit the Docket from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, 400 Seventh St., SW., Washington, DC 20590. (202–366–5263).

SUPPLEMENTARY INFORMATION: On November 20, 2000, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend 49 CFR part 592, *Registered Importers of Vehicles Not Originally Manufactured to Conform with the Federal Motor Vehicle Safety Standards* (65 FR 69810). The NPRM also proposed conforming amendments to 49 CFR part 567, *Certification,* 49 CFR part 591, *Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards,* and 49 CFR part 594, *Schedule of Fees Authorized by 49 U.S.C. 30141.*

The NPRM specified a comment closing date of January 4, 2001 (45 days after the date of publication). However, on December 22, 2000, the agency received a written request for an extension of the comment closing date from the American Association of Motor Vehicle Administrators (AAMVA). AAMVA said that it wishes to provide comments on the proposal but that ''the time needed to consult with AAMVA's member jurisdictions will not permit the association to submit comments by the January 4, 2001 deadline.'' AAMVA requested an extension ''to allow the Association additional time to complete its review of the notice and the many issues raised for consideration.''

The agency may grant a person's petition for an extension of a comment period if the petition shows good cause for the extension, and if the extension is consistent with the public interest (49 CFR 553.19). The agency concludes that the petitioner has made that showing and that an extension is in the public interest. An extension would aid AAMVA and other interested persons (such as American Honda Motor Co., which made an oral request for an extension) in fully responding to the changes proposed. Accordingly, this notice extends the comment closing date an additional four weeks, to February 1, 2001.

Authority: 49 U.S.C. 322, 30111, and 30166; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: December 27, 2000.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 00–33455 Filed 12–27–00; 4:24 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122200C]

Fisheries of the Northeastern United States; Northeast Skate Fishery; Scoping Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of scoping process; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intent to prepare a Fishery Management Plan (FMP) for the northeast region skate complex and to prepare an EIS to analyze the impacts of any proposed management measures. The FMP would be developed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Council also formally announces the initiation of a public process to determine the scope of issues to be addressed in the environmental impact analysis. The purpose of this notice is to alert the interested public of the scoping process and to provide for public participation in compliance with environmental documentation requirements.

DATES: The Council will discuss and take scoping comments at public meetings in January and February 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times. Written scoping comments must be received at the appropriate address or fax number, (See **ADDRESSES**), on or before 5:00 p.m. local time, February 21, 2001.

ADDRESSES: Written comments and requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, Telephone (978) 465-0492. Comments may also be sent via facsimile (fax) to (978) 465-3116.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Background

The seven species in the northeast region skate complex currently include: winter skate (*Leucoraja ocellata*), barndoor skate (*Dipturis laevis*), thorny skate (*Amblyraja radiata*), smooth skate (*Malacoraja senta*), little skate (*Leucoraja erinacea*), clearnose skate (*Raja eglanteria*), and rosette skate (*Leucoraja garmani*). The northeast skate complex is generally distributed along the coast of the eastern United States from near the tide line to depths exceeding 700 m (383 fathoms). In the northeast region, the center of distribution for the little and winter skates is Georges Bank and Southern New England. The barndoor skate is most common in the Gulf of Maine, on Georges Bank, and in Southern New England. The thorny and smooth skates are commonly found in the Gulf of Maine. The clearnose and rosette skates have a more southern distribution, and are found primarily in the Chesapeake Bight.

Status of the Stocks

A benchmark assessment of the northeast skate complex was completed at the 30th Stock Assessment Workshop (SAW 30) in November 1999. Conclusions about the status of the seven species in the northeast region skate complex are based mainly on standardized research trawl survey data collected by the U.S. and Canada during 1963-1999. Taken as a group, the skate biomass for the seven species in the northeast region is at a medium level. The large increase in skate biomass in the mid to late 1980s was dominated by winter and little skate. The biomass of large-sized skates (>100 cm maximum length; barndoor, winter, and thorny) has steadily declined since the mid-1980s. The recent increase in aggregate skate biomass has been due to an increase in small-sized skates (<100 cm maximum length; little, clearnose, rosette, and smooth), mainly little skate.

At SAW 30, each species in the northeast skate complex was individually assessed. SAW scientists developed status determination criteria to evaluate whether overfishing was occurring and whether or not a species is in an overfished condition. Based on the SAW 30 criteria, overfishing was found to be occurring on one species of skate (winter skate), and four species were found to be in an overfished condition (winter skate, thorny skate, barndoor skate, and smooth skate).

On June 21, 1999, a notice regarding barndoor skate was published by NMFS in the **Federal Register**. This notice indicated that NMFS had received a petition to add the barndoor skate to the list of threatened and endangered wildlife and to designate critical habitat for barndoor skate, and was seeking information and comments. At the SAW 30 in November 1999, assessment scientists reviewed each of the ESA listing criteria relative to barndoor skate and provided an assessment with recommendations and comments regarding the potential ESA listing. The Stock Assessment Review Committee (SARC) found that there was no evidence that the barndoor skate is in danger of extinction or likely to become endangered within the foreseeable future throughout all or a significant portion of its range. As of the date of publication of this notice, NMFS has not published a decision.

In March 2000, NMFS informed the Council of its decision to designate the Council as the responsible body for the development and management of the seven species included in the northeast region skate complex. Based on work completed at SAW 30, NMFS identified four species of skates as overfished: barndoor, smooth, thorny, and winter skate. The overfished status of these species necessitates development of an FMP to end overfishing and rebuild these stocks in accordance with Section 304(e) of the Magnuson-Stevens Act.

Purpose

The purpose of the proposed Skate FMP is to establish conservation and management measures to end overfishing and rebuild overfished stocks in the northeast skate complex.

Management Options

The Skate FMP may establish mechanisms to obtain better information about individual skate species and directed and incidental skate fisheries. With the implementation of the Skate FMP, vessels may be required to obtain a Federal permit to fish for skates. Vessels with skate permits may be required to submit Vessel Trip Reports (VTRs or logbooks) for all trips. To collect better information about the skate fisheries, the Council may also require that vessels report landings and discards of skates by species and/or by fishery (wings/bait).

The low abundance level and current overfished status of barndoor skate will likely require a significant reduction in fishing mortality. Because the barndoor skate is not a primary component of either the bait fishery or the wing fishery, the Council may consider prohibiting its possession.

Clearnose and rosette skate are distributed considerably further south than the other five skates in the northeast complex, the northern extent of their ranges reaching only to waters off the New Jersey coastline. These two species are not overfished and are not known to be a component of either the bait or wing fishery in the northeast region. Including these two species as part of the northeast skate complex for management purposes could complicate the development of management measures and could pose unnecessary burdens on fisheries that do not interact with the other five species of skates. Therefore, the Council is considering eliminating clearnose and rosette skate from the northeast complex for management purposes.

The Council may consider developing a limited access program for directed and/or incidental skate fishing. This could include the establishment of a control date for skate fishing. The Council will consider other management measures (e.g., minimum sizes, gear restrictions, area closures, quotas, trip limits, fishing seasons, Skate days-at-sea, etc.) as appropriate, based on comments received through the scoping process.

Scoping Process

Scoping meetings for the Skate FMP are as follows:

1. *January 23, 2001*, 6 p.m., Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923, (978) 777-2500; fax (978) 750-7991;

2. *February 2, 2001*, 10 a.m., Provincetown Town Hall, 260 Commercial Street, Provincetown, MA 02657, (508) 487-7013; fax (508) 487-9560;

3. *February 6, 2001*, 7 p.m., Wyndham Hotel, 700 King Street, Wilmington, DE 19801, (302) 655-0400; fax (302) 429-5979; and

4. *February 12, 2001*, 6 p.m., Tiverton Community Center, 346 Judson Street, Tiverton, RI 02878, (401) 625-6704; fax (401) 625-6705.

Additional meetings of the Council, Skate Committee, or Advisory Panel during the scoping period will provide opportunities for public comment on specific issues identified in the respective agendas.

All persons affected by or otherwise interested in skate fisheries management are invited to participate in determining the scope and significance of issues to be analyzed by submitting written comments (see **ADDRESSES**). Alternatives include not developing a management plan, developing amendments to existing plans, or other reasonable courses of action. Impacts of this proposed action to be considered in this process may be direct, indirect, individual, or cumulative. The scoping process will also identify and eliminate from detailed study issues that are not significant. Once a draft FMP and an Environmental Assessment or an EIS is developed, the Council will hold public hearings to receive comments.

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

Dated: December 26, 2000.

Valerie Chambers,

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

[FR Doc. 00–33452 Filed 12–29–00; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 1

Tuesday, January 2, 2001

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

Curlew National Grassland Draft EIS and Resource Management Plan Caribou-Targhee National Forest, Oneida County, ID

AGENCY: Forest Service, USDA.

ACTION: Extension of the comment period on the Draft Environmental Impact Statement.

SUMMARY: On October 20, 2000 the Notice of Availability of the Draft EIS for the Curlew National Grassland Resource Management Plan was published in the **Federal Register**. Many interested parties have requested that the comment period be extended so they can provide more substantive, researched comments. We have agreed to extend the comment period on the Draft EIS for an additional 60 days.

DATES: Comments on the Draft EIS will be accepted through March 30, 2001.

ADDRESSES: Send correspondence to Jerry B. Reese, Forest Supervisor, 250 South Fourth Avenue, Ste. 172, Pocatello, Idaho 83201.

FOR FURTHER INFORMATION CONTACT: Questions concerning this comment period extension, the proposed action and the EIS should be directed to Linda Ward, Team Leader, Caribou-Targhee National Forest, Telephone: (208) 236–7500.

Dated: December 8, 2000.

Jerry B. Reese,

Forest Supervisor, Caribou-Targhee National Forest, Intermountain Region, USDA Forest Service.

[FR Doc. 00–33414 Filed 12–29–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent: To Request a Revision of a Currently Approved Information Collection

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13) and the Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces NRCS'' intention to request a revision to a currently approved information collection, Application for Payment.

DATES: Comments on this notice must be received by March 5, 2001 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Phyllis I. Williams, Directives Manager, NRCS, USDA, 5601 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705–5000; telephone: (301) 504–2170; e-mail: Phyllis.Williams2@usda.gov.

SUPPLEMENTARY INFORMATION: *Title:* Application for Payment. *OMB Number:* 0578–0018. *Expiration Date of Approval:* April 30, 2001. *Type of Request:* To continue, with change, a currently approved collection for which approval will expire. *Abstract:* The primary objective of NRCS is to work in partnership with the American people to conserve and sustain our natural resources. The purpose of the Application for Payment information collection is to provide NRCS program participants with a method for making application for payment, provide information regarding completion of conservation program contract activities, provide certification of work performed within the required standards, determine division of payment, ascertain the status of debt register collections, and provide the responsible NRCS official with authority to make Federal cost-share payments to the land user or third party upon successful completion of a conservation program contract. Information collected is used by NRCS to ensure the proper use of program funds. The *NRCS-FNM–141* or the *CCC–1202* are the basic documents used by USDA program participants and vendors to request payment through their USDA Service Center in return for applying one or more conservation practices in a long-term contract or completing an action associated with filing an easement (7 CFR 631.12, 7 CFR 632.31, 7 CFR 636.6, 7 CFR 701.44, 7 CFR 702.12, 7 CFR 752.14 and 7 CFR 1467.9). NRCS will ask for 3-year OMB approval within 60 days of submitting the request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.52 hours per response.

Respondents: Farms, individuals, households, or State, local, or Tribal governments.

Estimated Number of Respondents: 35,540.

Estimated Total Annual Burden on Respondents: 20,731.5.

Copies of this information collection and related instructions can be obtained without charge from Phyllis I. Williams, Directives Manager, NRCS, USDA, at 5601 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705–5000; telephone: (301) 504–2170; e-mail: Phyllis.Williams2@usda.gov.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technologic collection techniques or other forms of information technology. Comments may be sent to Phyllis I. Williams, Directives Manager, NRCS, USDA, 5601 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705–5000; telephone: (301) 504–2170; e-mail: Phyllis.Williams2@usda.gov.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed in Washington, D.C. on December 13, 2000.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

[FR Doc. 00–33381 Filed 12–29–00; 8:45 am]

BILLING CODE 3410–16–U

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Notice; Meeting

Date and Time: anuary 9, 2001; 8:30 a.m.–4 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW, Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: December 28, 2000.

Carol Booker,

Legal Counsel.

[FR Doc. 00–33458 Filed 12–28–00; 3:24 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

[I.D. 122700MC]

Submission For OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Project Design for Research, Exploration, or Salvage of the R.M.S. Titanic and/or Its Artifacts.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 48.

Number of Respondents: 2.

Average Hours Per Response: 12.

Needs and Uses: In order to protect the R.M.S. Titanic and to conserve artifacts recovered, NOAA has issued voluntary guidelines for documenting scientific and professional approaches and methodologies to be used during research and exploration. Project designs submitted by respondents (e.g. researchers, salvers, etc.) for advice will be peer-reviewed to ensure protection and conservation. Reports of activities are also requested.

Affected Public: Not-for-profit institutions, business or other for-profit organizations, Federal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer,Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: December 22, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–33447 Filed 12–29–00; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

International Trade Administration

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year (''sunset'') review.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year (''sunset'') review of the antidumping duty order listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* covering this same order.

FOR FURTHER INFORMATION CONTACT: James P. Maeder, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–3330 or (202) 482–5050, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Review

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998)), we are initiating a sunset review of the following antidumping duty order:

DOC ITC Case No.	ITC Case No.	Country	Product
A–570–840	A–724	China	Manganese metal

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of

sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin,* the Department's schedule of sunset reviews, case history information (*i.e.,* previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: ''www.trade.gov'''

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (2000). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in this review. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order,* 63 FR 24391 (May 4, 1998)).

Information Required from Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (2000)) wishing to participate in this sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the Sunset Regulations at 19 CFR 351.218(d)(1)(ii). In accordance with the *Sunset Regulations,* if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews. Please consult the Department's regulations at 19 CFR Part 351 (2000) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: December 20, 2000.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 00–32982 Filed 12–29–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

C–423–809

Stainless Steel Plate in Coils from Belgium: Notice of Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review.

EFFECTIVE DATE: January 2, 2001.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or Melani Miller at (202) 482–0189 and (202) 482–0116, respectively, Office of AD/CVD Enforcement I, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act and all citations to the regulations are to 19 CFR part 351 (2000).

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On June 30, 2000, the Department published a notice of initiation of administrative review of the countervailing duty order on stainless steel plate in coils from Belgium, covering the period September 9, 1998, through December 31, 1999 (65 FR 41942).[1] The preliminary results for the countervailing duty administrative review of stainless steel plate in coils from Belgium are currently due no later than January 31, 2001.

Extension of Preliminary Results of Review

Because of the complexity of certain issues in this review (*e.g.,* change in ownership, the significance of outstanding programs, and the investigation of new programs), it is not practicable to complete the preliminary results of this review within the original time limit. *See Memorandum from Team to Richard W. Moreland,*

[1] Due to a clerical error, the POI was accurately reflected in a subsequent **Federal Register** notice. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews, 65 FR 64662 (October 30, 2000).

December 26, 2000. Therefore, the Department is extending the time limits for completion of the preliminary results by an additional 75 days, or until no later than April 16, 2001.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: December 22, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 00–33377 Filed 12–29–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 001215357–0357–01]

RIN 0693–ZA43

Announcement of Availability of Funds for a Competition—Advanced Technology Program (ATP)

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Notice.

SUMMARY: The Technology Administration's National Institute of Standards and Technology (NIST) announces that it will hold a single fiscal year 2001 Advanced Technology Program (ATP) competition. This single competition will continue ATP's practice of being open to all technology areas, while also capturing the advantage and momentum of focused program planning. Through this single competition strategy, ATP encourages proposals from the many technical teams that have identified synergy between industry needs and ATP funding opportunities, accelerating the pursuit of critical elements of research which were identified in focused program plans. All fiscal year 2001 proposals received will be distributed to technology—specific source evaluation boards in areas such as advanced materials, biotechnology, electronics, information technology, etc. This notice provides general information regarding ATP competitions.

DATES: ATP will begin accepting proposals on January 10, 2001 through 3 p.m. Eastern Time on September 30, 2001. ATP is also issuing a notice in the Commerce Business Daily (CBD) regarding this ATP competition.

ADDRESSES: Information on the ATP may be obtained from the following address: National Institute of Standards and Technology, Advanced Technology Program, 100 Bureau Drive, Stop 4701, Administration Building 101, Room A413, Gaithersburg, MD 20899–4701.

Additionally, information on the ATP is available on the Internet through the World Wide Web (WWW) at *http://www.atp.nist.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for ATP information, application materials, and/or to have your name added to the ATP mailing list for future mailings may also be made by:

(a) Calling the ATP toll-free ''hotline'' number at 1–800–ATP–FUND or 1–800–287–3863. You will have the option of hearing recorded messages regarding the status of the ATP or speaking to one of our customer representatives who will take your name and address. If you reach ATP voice mail, please speak distinctly and slowly and spell the words that might cause confusion. Leave your phone number as well as your name and address:

(b) Sending a facsimile (fax) to 301–926–9524 or 301–590–3053; or

(c) Sending electronic mail to atp@nist.gov. Include your name, full mailing address, and phone number.

SUPPLEMENTARY INFORMATION:

Background

The ATP statute originated in the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 278n) and was amended by the American Technology Preeminence Act of 1991 (Pub. L. 102–245). This law has been codified at 15 U.S.C. 278n. The ATP implementing regulations are published at 15 CFR Part 295, as amended. The Catalog of Federal Domestic Assistance (CFDA) number and program title for the ATP are 11.612, Advanced Technology Program (ATP).

The ATP is a competitive cost-sharing program designed for the Federal government to work in partnership with industry to accelerate the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant commercial payoffs and widespread benefits for the nation. This unique government-industry partnership accelerates the development of emerging or enabling technologies leading to revolutionary new products, industrial processes and services that can compete in rapidly changing world markets. The ATP challenges industry to take on higher risk projects with commensurately higher potential payoff to the nation. The ATP provides multi-year funding to single companies and to industry-led joint ventures.

The funding instrument used in ATP awards is a ''cooperative agreement.'' Through the use of the cooperative agreement, the ATP is designed to foster a government-industry partnership to accomplish a public purpose of support or stimulation. NIST plays a substantial role by providing technical assistance and monitoring the technical work, business progress, and expenditure of Federal funds.

Funding Availability

An estimated $60.7 million in first year funding is available for new awards. The actual number of proposals funded under this competition will depend on the quality of the proposals received and the amount of funding requested in the highest ranked proposals. Outyear funding beyond the first year is contingent on the approval of future Congressional appropriations and satisfactory project performance. The average yearly funding for fiscal year 2000 for a single company was $690,000, and for a joint venture it was $1,500,000.

Eligibility Requirements, Selection Criteria, and Proposal Review Process

The eligibility requirements, selection criteria, and the proposal review process are discussed in detail in the ATP implementing regulations published at 15 CFR Part 295, as amended, and the ATP Proposal Preparation kit dated November 2000.

No less often than every two months or after ATP has received approximately 100 proposals, ATP will group all proposals received during that period and review them as a group, called a ''batch.'' Each batch will be reviewed under a multiple stage and sequential review process to reduce the amount of information required at one time. Each stage in the process is called a ''gate.'' There are four gates as follows:

(a) Gate 1—The proposer submits detailed information to address the scientific and technological merit selection criterion. Additionally, the proposer submits preliminary information to address the selection criterion on the potential for broad-based economic benefits. If the information submitted is determined to have high merit, ATP notifies the proposer and requests that the required additional information be submitted for consideration in Gate 2. If a proposal passes Gate 1, the proposer will have two weeks (14 calendar days) from notification to submit the required information in Gate 2.

(b) Gate 2—The proposer submits more detailed information to address the potential for broad-based economic benefits selection criterion and detailed budget data. If the information

submitted is determined to have high merit, ATP notifies the proposer of its selection as a semi-finalist and the proposal proceeds to Gate 3.

(c) Gate 3—The proposer is requested to submit required forms and additional documentation, as necessary, and may be invited to NIST for an oral review. If ATP determines, based on all the information received, that the proposal has sufficiently high merit to be funded, the proposal is considered a finalist and proceeds to Gate 4.

(d) Gate 4—Final award processing and issuance, if selected.

Additionally, the following requirements shall apply:

(a) Semi-finalist proposals will be ranked in the following three categories: ''Superior,'' ''Fundable/Deferred,'' or ''Unfundable.''

(b) Proposers may not submit replacement and/or revised pages and/or documents for any portion of a proposal once that portion has been submitted unless specifically requested by NIST.

(c) Once a proposer has received notification that their proposal will not be funded, the proposer may revise and resubmit that proposal for consideration one additional time within this competition.

Funding Amounts, Award Period and Cost Sharing (Matching) Requirements

(a) A single company can receive up to $2 million in total for R&D activities for up to 3 years. ATP funds may only be used to pay for direct costs for single company recipients. Single company recipients are responsible for funding all of their overhead/indirect costs. Small and medium size companies applying as single company proposers are not required to provide cost-sharing of direct costs, however, they may pay a portion of the direct costs if they wish, in addition to all indirect costs. Large companies applying as single company proposers, however, must cost-share at least 60 percent of the yearly total project costs (direct plus all of the indirect costs). A large company is defined as any business, including any parent company plus related subsidiaries, having annual revenues in excess of $3.037 billion. (Note that this number will likely be updated annually and will be noted in future annual announcements of availability of funds and ATP Proposed Preparation Kits.)

(b) Joint ventures (as defined in 15 CFR 295.2(i)) can receive funds for R&D activities for up to 5 years with no funding limitation other than the announced availability of funds. Joint ventures must cost-share (matching funds) more than 50 percent of the yearly total project costs (direct plus indirect costs). The term matching funds (cost-sharing) is defined in 15 CFR 295.2(l).

(c) Funds derived from Federal sources may not be used to meet the cost-share requirement. Additionally, subcontractors may not contribute towards the cost-share requirement.

Application Forms and Proposal Preparation Kit

A new November 2000 version of the ATP Proposal Preparation Kit is available upon request from the ATP at the address and phone numbers noted in this notice. The Kit is also available on the Internet on the ATP website http://www.atp.nist.gov. Note that the ATP is mailing the Kit to all those individuals whose names are currently on the ATP mailing list. Those individuals need not contact the ATP to request a copy. The Kit contains proposal cover sheets, other required forms, and all the necessary guidelines for developing an ATP proposal. All proposals must be prepared in accordance with the guidelines in the Kit.

Submission of Revised Proposals

A proposer may submit a full proposal that is a revised version of a full proposal submitted to a previous ATP competition. NIST will examine such proposals to determine whether substantial revisions have been made. Where the revisions are determined not to be substantial, NIST reserves the right to score and rank, or where appropriate, to reject, such proposals based on reviews of the previously submitted proposal.

Other Requirements

(a) If a proposal is selected as a semi-finalist, ATP reserves the right to submit a list of questions to the proposer.

(b) There are certain types of projects that ATP will not fund because they are inconsistent with the ATP mission. These include:

(1) Straightforward improvements of existing products or product development.

(2) Projects that are predominately basic research.

(3) Pre-commercial scale demonstration projects where the emphasis is on demonstration that some technology works on a large scale or is economically sound rather than on R&D.

(4) Projects involving military weapons R&D or R&D that is of interest only to some mission agency rather than to the commercial marketplace.

(5) Projects that ATP believes would likely be completed without ATP funds in the same time frame or nearly the same time frame.

(c) Certain costs that may be allowed in Federal financial assistance programs are not eligible for funding under ATP awards. The ATP Proposal Preparation Kit lists these costs.

(d) For joint ventures, no costs shall be incurred under an ATP project by the joint venture members until such time as a joint venture agreement has been executed by all of the joint venture members and approved by NIST. NIST will withhold approval until it determines that a sufficient number of members have signed the joint venture agreement. Costs will only be allowed after the execution of the joint venture agreement and approval by NIST.

(e) Any proposal that includes research involving human subjects, human tissue and/or cells, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR Part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon NIH and other federal agencies regarding these topics, all regulatory policies and guidance adopted by NIH, FDA, and other Federal agencies on these topics, and all Presidential statements of policy on these topics, which are provided in the handbook entitled ''Advanced Technology Program Guidelines and Documentation Requirements for Research Involving Human and Animal Subjects.'' This handbook may be obtained through any of the options described in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

The National Institutes of Health recently released their guidelines on the use of human pluripotent stem cells derived from human embryos in research. The ATP is currently reviewing these guidelines. Until ATP has had the opportunity to fully assess the new guidelines and develop appropriate implementing procedures, ATP will not consider proposals that involve human pluripotent stem cells derived from human embryos for funding.

On December 3, 2000, the U.S. Department of Health and Human Services (DHHS) introduced a new Federalwide Assurance of Protection of Human Subjects (FWA). The FWA covers all of an institution's Federally-supported human subjects research, and eliminates the need for other types of Assurance documents. In anticipation of the new Assurance, the Office for

Human Research Protections (OHRP) has suspended processing of multiple project assurance (MPA) renewals. All existing MPAs will remain in force until further notice. OHRP will continue to accept new single project assurances (SPAs) until approximately March 1, 2001. For information about FWAs, please see the OHRP website at *http://ohrp.osophs.dhhs.gov/whatsnew.htm.*

In accordance with the DHHS change, NIST will continue to accept the submission of human subjects protocols that have been approved by Institutional Review Boards (IRBs) possessing a current, valid MPA from DHHS. NIST also will accept the submission of human subjects protocols that have been approved by IRBs possessing a current, valid FWA from DHHS. NIST will not issue an SPA for any IRB reviewing any human subjects protocol proposed to NIST.

Requirements set forth in the handbook entitled ''Advanced Technology Program Guidelines and Documentation Requirements for Research Involving Human and Animal Subjects,'' shall also apply, with the exception of the guidance on assurances, which has been superceded by the recently published DHHS guidelines discussed in the previous two paragraphs. As stated above, this handbook may be obtained through any of the options in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

(f) Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's ''Guide for the Care and Use of Laboratory Animals'' which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC, 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58.

In addition, all requirements as set forth in the handbook entitled ''Advanced Technology Program Guidelines and Documentation Requirements for Research Involving Human and Animal Subjects,'' shall apply.

(g) The intellectual property provisions found at 15 U.S.C. 278n(d)(11) and 15 CFR 295.8 shall apply to all ATP awards.

(h) Proposers shall provide sufficient funds in the project multi-year budget for a project audit, including each joint venture participant. Subcontractors/subawardees who receive total funding under an ATP project totaling more than $300,000 each are also subject to the audit requirement. A subcontractor/subawardee is defined as an organization which receives a portion of the financial assistance from the recipient/awardee and assists the ATP recipient/awardee in meeting the project goals but does not include procurement of goods and services. It is the responsibility of the recipient to ensure that audits are performed in a timely fashion. Most routine audits can be performed by the recipient's external CPA. However, the Department of Commerce Office of Inspector General (DoC/OIG) and General Accounting Office (GAO) reserve the right to carry out audits as deemed necessary and appropriate. ATP recipients must be willing to submit to audits (e.g., audits of cost-accounting systems, direct-cost expenditures, indirect cost rates, or other periodic reviews) by the Inspectors General or GAO. Periodic project audits shall be performed as follows:

(1) For awards less than 24 months, an audit is required at the end of the project.

(2) For 2-, 3-, or 4-year awards, an audit is required after the first year and at the end of the project.

(3) For 5-year awards, an audit is required after the first year, third year, and at the end of the project.

Budgeting for an audit shall be as follows:

(1) Proposers should allocate funds in their proposal budgets under the ''Other'' direct cost category for the project audit. For joint ventures, this must be included in each participant's budget, as each participant is responsible for the performance of their own project audit.

(2) If an organization's indirect cost pool includes audit costs, this is acceptable. In these cases, an explanation must be provided in the budget narrative and no audit costs reflected under ''Other'' costs.

(3) If a cognizant Federal agency auditor is resident within the company, the cognizant Federal agency auditor may perform the audit. In these cases, an explanation must be provided in the budget narrative and no audit costs reflected under ''Other'' costs or ''Indirect Costs.''

Audits of all recipients shall be conducted in accordance with Government Auditing Standards (GAS), issued by the Comptroller General of the United States (the Yellow Book). If an ATP recipient is required to have an audit performed in accordance with OMB Circular A–133, Audits of States, Local Government, and Non-Profit Organizations, the annual Circular A–133 audit is deemed to meet the ATP audit requirement.

If an ATP recipient does not have an annual Circular A–133 audit performed, the recipient should follow the following project audit requirements:

(1) Audits for single company recipients shall be conducted using the NIST Program-Specific Audit Guidelines for Advanced Technology Program (ATP) Cooperative Agreements with Single Companies.

(2) Audits for joint venture recipients shall be conducted using the NIST Program-Specific Audit Guidelines for Advanced Technology Program (ATP) Cooperative Agreements with Joint Ventures.

(i) Indirect costs charged to ATP cooperative agreements or used as cost-sharing must be calculated in accordance with an approved indirect cost proposal. If a recipient has established an indirect cost rate with its cognizant Federal agency (the Federal agency providing the greatest dollars), the recipient must submit a copy of the negotiated agreement to the DoC/OIG for verification. If an indirect cost rate(s) has not been negotiated prior to receiving the award, then an indirect cost rate proposal must be submitted to the recipient's cognizant Federal agency within 90 days from the date of the award. Provisional rates provided by the joint venture participant in the indirect cost proposal may be used until approval is obtained or indirect cost rates are negotiated.

(j) All ATP recipients must agree to adhere to the U.S. Export Administration laws and regulations and shall not export or re-export, directly or indirectly, any technical data created with Government funding under an award to any country for which the United States Government or any agency thereof, at the time of such export or re-export requires an export license or other Governmental approval without first obtaining such licenses or approval and the written clearance of the NIST Grants Officer. The Bureau of Export Administration (BXA) shall conduct an annual review for any relevant information about a proposer and/or Recipient. NIST reserves the right to not issue any award or suspend or terminate an existing award in the event that significant adverse information about a proposer or Recipient is discussed by BXA to the NIST Grants Officer.

(k) Federal Policies and Procedures. Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards as

identified in the cooperative agreement award.

(l) Past Performance. Unsatisfactory performance under prior Federal awards may result in a proposal not being considered for funding.

(m) Pre-award Activities. Applicants (or their institutions) who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover pre-award costs.

(n) No Obligation for Future Funding. If a proposal is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

(o) Delinquent Federal Debts. No award of Federal funds shall be made to a proposer or recipient who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to NIST are made.

(p) Name Check Review. All for-profit and non-profit proposers are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the proposer have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the proposer's management, honesty, or financial integrity.

(q) Primary Applicant Certification. All primary proposers (including all joint venture participants) must submit a completed form CD–511, ''Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanation is hereby provided:

(1) *Nonprocurement Debarment and Suspension.* Prospective participants, as defined at 15 CFR 26.105 are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(2) *Drug-Free Workplace.* Grantees (as defined at 15 CFR part 605) are subject to 15 CFR 26, subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(3) *Anti-Lobbying.* Person (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-Lobbying Disclosures.* Any proposer that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

(r) Lower Tier Certification. Recipients shall require proposers/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying'' and Form SF–LLL, ''Disclosure of Lobbying Activities.'' Although the CD–512 is intended for the use of primary recipients and should not be transmitted to NIST, the SF–LLL submitted by any tier recipient or subrecipient should be forwarded in accordance with the instructions contained in the award document.

(s) False Statements. A false statement on any application for funding under ATP may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(t) Intergovernmental Review. The ATP does not involve the mandatory payment of any matching funds from state or local government and does not affect directly any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372, ''Intergovernmental Review of Federal Programs'' is not applicable to this program.

(u) American-Made Equipment and Products. Proposers are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with the funding provided under this program in accordance with Congressional intent.

(v) Paperwork Reduction Act. This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by the Office of Management and Budget (OMB Control Nos. 0693–0009, 0348–0046, and 0925–0418). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

(w) Executive Order Statement. This funding notice was determined to be ''not significant'' for purposes of Executive Order 12866.

Dated: December 27, 2000.

Raymond G. Kammer,

Director.

[FR Doc. 00–33429 Filed 12–29–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program; Announcement of Public Meetings

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meetings (proposers' conferences).

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend public meetings (Proposers' Conferences) to learn more about the Advanced Technology Program (ATP). ATP partners with industry on high-risk, high technology research in technologies ranging from advanced manufacturing to medicine and from advanced materials to microelectronics.

DATES: The public meetings will be held on January 30, February 1, and February 6, 2001 in Chicago, Las Vegas, and Gaithersburg, respectively. The meetings at all three locations will be held from 9:30 a.m.–12:30 p.m. local time.

ADDRESSES: The meetings will be held at the following three locations:

Tuesday, January 30, 2001, Holiday Inn O'Hare International, 5440 N. River Road, Rosemont, IL 60018, Tel: 847–671–6350; Fax: 847–671–5406

Thursday, February 1, 2001, Alexis Park, 375 E. Harmon Avenue, Las Vegas, NV 89109, Tel: 800–582–2228; Fax: 702–796–4334

(Note: For the meetings in Chicago and Las Vegas, a block of rooms has been reserved at the meeting locations at

room rates of $120 and $125, respectively.)

Tuesday, February 6, 2001, NIST, Green Auditorium, 100 Bureau Drive, Gaithersburg, MD 20899–0001

If you plan to attend the meeting in Gaithersburg, a block of rooms has been reserved at:

Holiday Inn (room rate: $95), 2 Montgomery Village Avenue, Gaithersburg, MD 20879, Tel: 301–948–8900; Fax; 301–258–1940

To register for a room for any of the three conferences, please contact the hotel at least three weeks prior to your arrival date, and mention that you are attending the NIST/ATP Meeting.

Information on the ATP may be obtained from the following address:

National Institute of Standards and Technology, Advanced Technology Program, 100 Bureau Drive, Stop 4701, Administration Building 101, Room A413, Gaithersburg, MD 20899–4701

Additionally, information on the ATP is available on the Internet at the ATP website *http://www.atp.nist.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, you may telephone Toni Nashwinter at 301–975–3780 or e-mail: *Toni.Nashwinter@nist.gov.*

Requests for ATP information, application materials, and/or to have your name added to the ATP mailing list for future mailings may also be made by:

(a) Calling the ATP toll-free ''hotline'' number at 1–800–ATP–FUND or 1–800–287–3863. You will have the option of hearing recorded messages regarding the status of the ATP or speaking to one of our customer representatives who will take your name and address. If you reach ATP voice mail, please speak distinctly and slowly and spell the words that might cause confusion. Leave your phone number as well as your name and address;

(b) Sending a facsimile (fax) to 301–926–9524 or 301–590–3053; or

(c) Sending electronic mail to *atp@nist.gov.* Include your name, full mailing address, and phone number.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418, 15 U.S.C. 278n), amended by the American Technology Preeminence Act of 1991 (Public Law 102–245), directed the establishment of ATP. The purpose of the ATP is to assist United States businesses to carry out research and development on high-risk, high-pay-off, emerging and enabling technologies.

These public meetings will provide general information regarding the ATP, details on the new application process, tips on preparing good proposals, and an opportunity for audience questions.

No registration fee will be charged. The format and content of each of the public meetings will be the same.

Registration for the public meetings is as follows:

For electronic registration, visit www.nist.gov/conferences. Please scroll down the NIST conference listing to find the appropriate date.

Fax registration form by 1/16/01 to Kimberly Snouffer, 301–948–2067.

Mail registration form (Exhibit 1 in ATP Proposal Preparation Kit) by 1/16/01 to NIST Conference Office, 100 Bureau Drive, Stop 3461, Gaithersburg, MD 20899–3461.

Dated: December 27, 2000.

Raymond G. Kammer,

Director.

[FR Doc. 00–33430 Filed 12–29–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122700A]

Southeast Region Logbook Supplementary Discard Form

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before March 2, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Robert Sadler, Southeast Regional Office, 9721 Executive Center Drive, St. Petersburg, FL 33702, phone 727-570-5326.

SUPPLEMENTARY INFORMATION:

I. Abstract

A supplemental form will be used with the existing required logbook form to collect information on the species and quantities of fish, marine mammals, and sea turtles that are caught and discarded by vessels that have been issued a Federal permit for Gulf of Mexico reef fish, South Atlantic snapper-grouper, king mackerel, Spanish mackerel, or sharks. The information will be used to help manage fisheries and the protection of marine mammals and endangered species.

II. Method of Collection

Forms will be submitted as attachments to logbooks.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 4,000.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 3,000.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 21, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–33448 Filed 12–29–00; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Required and Optional Search Criteria for Computer Implemented Business Method Patent Applications in Class 705.

Form Numbers: No Forms Associated.

Agency Approval Number: 0651–00XX.

Type of Request: New Information Collection.

Burden: 150 hours.

Number of Respondents: 100 responses.

Avg. Hours Per Response: Based on estimates from surveys, the USPTO estimates that it will take the public one and a half hours (1.5 hours) to gather, prepare, and submit comments recommending a database to the USPTO for evaluation.

Needs and Uses: There are no specific statutes or regulations requiring the USPTO to collect the database recommendations solicited in the Notice. The USPTO is collecting the information as part of its continuing efforts to improve customer service, to improve the quality of patent examination, and to decrease the amount of time that it takes to examine a patent application and issue it as a patent. The USPTO is soliciting comments from the public on various aspects of the database, such as the type and amount of information that it contains, the search interface, cost, and accessibility so that they can evaluate the resources that are currently in use, and evaluate possible new resources to add to the existing ones in use. The public will use this information collection to recommend databases to the USPTO for evaluation and to provide information that the USPTO needs to effectively evaluate the items such as database content, database identification, accessibility, technical support, continuity, and mode of access. In addition to evaluating the databases, the USPTO also uses this information to determine whether the database qualifies as a mandatory or supplemental search tool.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, Federal government, and state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Data Administration Division, Office of Data Management, United States Patent and Trademark Office, Crystal Park 3, 3rd Floor, Suite 310, Washington, DC 20231, by phone at (703) 308–7400, or via the Internet at susan.brown@uspto.gov.

Written comments and recommendations for the proposed information collection should be sent on or before February 1, 2001 to David Rostker, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: December 22, 2000.

Susan K. Brown,

Records Officer, Data Administration Division, Office of Data Management.

[FR Doc. 00–33375 Filed 12–29–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1996.

DATES: Interested persons are invited to submit comments on or before February 1, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren__Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 26, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Extension

Title: Streamlined Clearance Process for Discretionary Grant Information Collections

Frequency: Annually

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 1

Burden Hours: 1

Abstract: The information collection plan provides the U.S. Department of Education with the option of submitting its discretionary grant information collections through a streamlined Paperwork Reduction Act clearance process. This streamlined clearance process will begin when the Department submits the information collection to the OMB and, at the same time, publishes a 30-day public comment period notice in the **Federal Register**. OMB will then have 60 days after the start of the public comment period to reach a decision on the information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional

Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–33406 Filed 12–29–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 01–09; Scientific Discovery Through Advanced Computing: Climate Change Prediction Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant and cooperative agreement applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications to support the development of simulation models for decadal to multi-century climate prediction in conjunction with the Climate Change Prediction Program (CCPP), a part of the U.S. Global Change Research Program.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. There is no deadline for the preapplication, but early submission of preapplications is encouraged to allow time for meaningful discussions.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., March 15, 2001, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2001.

ADDRESSES: Preapplications referencing Program Notice 01–09 may be sent to the program contact, Dr. David C. Bader, via electronic mail at dave.bader@science.doe.gov or by U. S. Postal Service Mail at the following address: Office of Biological and Environmental Research, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications referencing Program Notice 01–09 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contract Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 01–09. This address also must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted; however, applicants are requested not to submit multiple application copies using more than one delivery or mail service.

FOR FURTHER INFORMATION CONTACT: Dr. David C. Bader, Office of Biological and Environmental Research, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–5329, fax (301) 903–8519, Internet e-mail address: dave.bader@science.doe.gov. Program information is available on the DOE/OBER WWW site using the URL: *http://www.sc.doe.gov/production/OBER/GC/model.html.*

SUPPLEMENTARY INFORMATION:

Background: Scientific Discovery Through Advanced Computing and the Climate Change Prediction Program

Accurate prediction of climate change on decadal and longer time scales remains a major scientific objective of the Environmental Sciences Division (ESD). The Climate Change Prediction Program (CCPP) is the current phase in the evolution of DOE's long-standing climate modeling and simulation research agenda. The program is focused on developing, testing and applying climate simulation and prediction models that stay at the leading edge of scientific knowledge and computational technology. The program will continue the development of models based on more definitive theoretical foundations and improved computational methods that will run efficiently on current and future generations of high-performance scientific supercomputers. The intent is to increase dramatically both the accuracy and throughput of computer model-based predictions of future climate system response to the increased atmospheric concentrations of greenhouse gases. Concurrently, to meet the challenge posed by the new generation of terascale computers with peak speeds of 10 to 100 trillion Operations Per Second (teraOPS), SC will fund a set of coordinated investments in scientific computing, through its Scientific Discovery through Advanced Computing (SciDAC) Program. It will create a scientific computing software infrastructure that bridges the gap between the advanced computing technologies being developed by the computer industry and the scientific research programs sponsored by the Office of Science. The CCPP portion of SciDAC, has been labeled the Accelerated Climate Prediction Initiative.

To ensure that the program meets the broadest needs of the research community and the specific needs of ESD, the successful applicants will participate as members of the Climate Change Prediction Program Science Team along with selected scientists from related ESD and SC programs. Costs for the participation in Science Team meetings and workshops should be included in the respondent's application. Yearly estimates for Science Team travel should be based on one trip of five days to Washington, DC, one trip of five days to San Francisco, CA, and one trip of five days to Denver, CO.

Request for Cooperative Agreement Applications

This notice requests applications for cooperative agreements in the following area:

The development of prototype climate models of the future including new formulations, numerical methods, algorithms and computational techniques, that will underpin the construction of production-quality climate GCMs in the five to ten year time frame.

Successful applicants for cooperative agreements to develop models of the future will devise a multi-disciplinary research strategy that addresses both climate science and computational science challenges facing the development of production-quality climate GCMs in the five to ten year time frame. These challenges include, but are not limited to, model formulations that accurately simulate critical climate processes and efficient algorithms that will execute on future high-end computer architectures such as multi-threaded and processor-in-memory designs that are anticipated to have theoretical peak speeds over 100 TeraOPS. Successful applications will convey a strong emphasis on multi-disciplinary graduate training. Cooperative agreements differ from grants in that there is continuing substantial involvement by DOE in the conduct of the research.

Request for Grant Applications

Additionally, this notice requests applications for grants in the following four areas:

(1) Theoretical limits to global climate prediction over decade to multi-century time frames with subcontinental and smaller scale spatial accuracy.

(2) The development of improved representations of key climate processes (surface processes, convective transport, etc.,) that accurately simulate these processes on the appropriate scales used in general circulation model (GCM) based climate models that simulate decade-to-century climate change.

(3) The development of improved mathematical techniques, model formulations and computer algorithms for atmosphere, ocean and coupled atmosphere-ocean GCMs that more accurately and efficiently describe and predict global climate system behavior on the time and space scales mentioned above using advanced, parallel-processing scientific supercomputers.

(4) The development of diagnostic methods and tools to evaluate the ability of GCM-based climate models to accurately describe and predict global climate system behavior on the time and space scales mentioned above.

Successful applicants for grants exploring the theoretical limits of climate prediction will conduct studies of the climate system to ascertain the capability for climate simulation models to predict the aspects of the climate system that influence near-surface temperature, precipitation and winds, decades to centuries in the future. These studies may include, but are not limited to, analytical and modeling investigations of the coupled climate system, or components of the climate system, to identify climate dynamical mechanisms that influence long-term variability and predictability over continental and subcontinental spatial scales.

Successful applicants for grants to develop or improve representations of climate system processes for inclusion in GCM-based climate prediction models will conduct research to more accurately describe these processes and their interaction with other aspects of the simulated climate system. These studies will explore methods for incorporating the results of the U.S. Global Change Research Program's observational and experimental programs into model components that accurately describe climate system processes at the model resolution scales typically used for decade-to-multi-century climate prediction. Applicants in this area must include a plan for the dissemination of any developed model code, and necessary documentation, to the climate modeling community.

Successful applicants for grants to develop new mathematical techniques and numerical algorithms will target their research toward methods that can be incorporated into models running on highly parallel scientific supercomputers capable of performing over 10 trillion operations per second (10 teraOPS). Applicants must demonstrate the role of their research in improving the accuracy and/or computational efficiency of GCM-based climate simulation models of the type envisioned for use in making forecasts of long-term climate change. These methods may be used in the simulation of any or all of the climate system processes modeled in a GCM, including, but not limited to, atmospheric and ocean dynamics and transport, surface energy and mass exchange, atmospheric radiative transfer, ocean convection, and sea-ice dynamics and thermodynamics. Applicants in this area must include a plan for the dissemination of any developed model code, and necessary documentation, to the climate modeling community.

Successful applicants for grants to develop diagnostic methods and tools will focus their research on new or greatly improved diagnostic methodologies to objectively evaluate the ability of GCM-based climate models to accurately simulate climate dynamics and global climate on the time and space scales described above. Particularly important are observation-based diagnostic methods that can be applied consistently to multiple models to identify sources of predictive uncertainty. Applicants in this area must be willing to cooperate with other groups in building the new methodologies into comprehensive diagnostic packages that will be freely available to the broader climate modeling community.

Program Funding

It is anticipated that approximately $5,000,000 will be available for awards in Fiscal Year 2001, contingent upon the availability of appropriated funds. Multiple year funding of awards is expected, with out-year funding also contingent upon the availability of appropriated funds, progress of the research, and programmatic needs. The allocation of funds within the research areas will depend upon the number and quality of applications received. SC anticipates that grant awards in this area will be approximately $200,000 per year, but may range from $50,000 to $600,000. SC anticipates that cooperative agreement awards will be approximately $1,000,000 per year.

Collaboration

Applicants are strongly encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html.*

Preapplications

Potential applicants are strongly encouraged to submit a brief preapplication that consists of two to three pages of narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the SC's Climate Change Prediction Program. Principal investigator address, telephone number, fax number and e-mail address are required parts of the preapplication. A response to each preapplication discussing the potential program relevance of a formal application generally will be communicated within 30 days of receipt. There is no deadline for the submission of preapplications, but applicants should allow sufficient time in order for formal application deadlines to be met. SC's preapplication policy can be found on SC's Grants and Contracts Web Site at: *http://www.sc.doe.gov/production/grants/preapp.html.*

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors, such as the relevance of the proposed research to the terms of the announcement and an agency's

programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. The technical portion of the application should not exceed twenty-five (25) double-spaced pages and should include detailed budgets for each year of support requested. Awards are expected to begin on or about June 1, 2001.

Technical information on CCPP is available on the World Wide Web at the URL: *http://www.sc.doe.gov/production/OBER/GC/model.html* or from the Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831, telephone (423) 576–8401.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on December 19, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–33443 Filed 12–29–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–462–000]

DPL Energy Resources, Inc.; Notice of Issuance of Order

December 22, 2000.

DPL Energy Resources, Inc. (DPL) submitted for filing a rate schedule under which DPL will engage in wholesale electric power and energy transactions at market-based rates. DPL also requested waiver of various Commission regulations. In particular, DPL requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by DPL.

On December 13, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, 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 DPL 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 285.214).

Absent a request for hearing within this period, DPL 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 DPL'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 January 16, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33408 Filed 12–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–76–000]

Northern Natural Gas Company; Notice Shortening Comment Period

December 26, 2000.

On December 22, 2000, Reliant Energy Minnegasco (Minnegasco) filed a Motion for Extension of Time Within Which to File Comments in the above-docketed proceeding. In the filing, Minnegasco requested that the period for submitting answers to the extension motion be shortened in order to expedite Commission review of the filing. By this notice, the date for filing answers to Minnegasco's Motion for Extension of Time is shortened to and including December 28, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33386 Filed 12–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–297–000]

Outback Power Marketing, Inc.; Notice of Issuance of Order

December 22, 2000.

Outback Power Marketing, Inc. (Outback) submitted for filing a rate schedule under which Outback will engage in wholesale electric power and energy transactions at market-based rates. Outback also requested waiver of various Commission regulations. In particular, Outback requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Outback.

On December 12, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, 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 Outback 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, Outback 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 Outback'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 January 16, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–33409 Filed 12–29–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00305; FRL–6761–2]

Pre-Renovation Information Dissemination; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), EPA is seeking public comment and information on the following Information Collection Request (ICR): Pre-Renovation Information Dissemination - TSCA Section 406(b) (EPA ICR No. 1669.03, OMB No. 2070–0158). This ICR involves a collection activity that is currently approved and scheduled to expire on September 30, 2001. The information collected under this ICR relates to requirements that persons who perform housing renovations provide certain information on any lead hazards created by the renovation to the owner and occupant of such housing prior to beginning renovation, thereby protecting public health and the environment. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPPTS–00305 and administrative record number AR–232, must be received on or before March 5, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00305 and administrative record number AR–232 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Ronald Morony, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–0282; fax number: (202) 260–0001; e-mail address: morony.ronald@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you perform renovations of certain types of housing, constructed prior to 1978, for compensation. Potentially affected categories and entities may include, but are not limited to:

Type of business	NAICS codes
Single family housing construction	23321
Multifamily housing construction	23322
Plumbing, heating, and air-conditioning contractors	23511
Painting and wall covering contractors	23521
Electrical contractors	23531
Masonry and stone contractors	23541
Carpentry contractors	23551
Lessors of residential buildings and dwellings	53111
Offices of real estate agents and brokers	53121
Residential property managers	53131

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industry Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 4085 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPPTS–00305 and administrative record number AR–232. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business

Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00305 and administrative record number AR–232 on the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00305 and administrative record number AR–232. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Pre-Renovation Information Dissemination - TSCA Section 406(b).

ICR numbers: EPA ICR No. 1669.03, OMB No. 2070–0158.

ICR status: This ICR is currently scheduled to expire on September 30, 2001. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: This information collection involves third-party notification to owners and occupants of housing that will allow these individuals to avoid exposure to lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations of housing where lead-based paint is present, thereby protecting public health. Since young children are especially susceptible to the hazards of lead, owners and occupants with children can take action to protect their children from lead poisonings. TSCA section 406(b) requires EPA to promulgate regulations requiring certain persons who perform renovations of target housing for compensation to provide a lead hazard information pamphlet (developed under TSCA section 406(a)) to the owner and occupants of such housing prior to beginning the renovation. Those who fail to provide the pamphlet as required may be subject to both civil and criminal sanctions.

Responses to the collection of information are mandatory (see 40 CFR

part 745, subpart E). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA,'' burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 0.96 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 3,046,000.

Estimated total number of potential respondents: 3,046,000.

Frequency of response: On occasion.

Estimated average number of responses for each respondent: 5.

Estimated total annual burden hours: 2,938,546.

Estimated total annual burden costs: $95,464,291.

VI. Are There Changes in the Estimates from the Last Approval?

There is a net increase of 606,949 hours (from 2,331,597 hours to 2,938,546 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This increase is attributable to changes in disclosure burden with the current renewal assuming a higher disclosure burden for the rule. This increase is offset in part by decreases in start-up burden resulting from the elimination of start-up burden estimates for existing renovators and rental property managers (but not new entrants to these occupations) and in the estimated number of renovation events in the current renewal compared to the existing information collection.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 22, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–33453 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6926–9]

Petition for Secondary National Ambient Air Quality Standards for Nitrogen Dioxide, Sulfur Dioxide, and Fine Particulate Matter and Related Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: On August 9, 2000 (65 FR 48699), EPA published a notice announcing receipt of a petition for rulemaking under section 109 of the Clean Air Act (CAA), to promulgate revised secondary national ambient air quality standards (NAAQS) for pollutants associated with the formation of acid rain, including nitrogen dioxide (NO_2), sulfur dioxide (SO_2), and fine particulate matter ($PM_{2.5}$). The petition was submitted by representatives of the States of New York, Massachusetts, Maine, New Hampshire, Connecticut, Rhode Island, and Vermont in a letter to the EPA Administrator, dated October 26, 1999. In that letter, the States request EPA to address what they assert to be a wide range of adverse environmental effects associated with these pollutants through the mechanism of revised secondary NAAQS. In addition, EPA has received a related request for rulemaking from the U.S. Department of the Interior (DOI) in a letter to the EPA Administrator, dated July 19, 2000, to address many of the same adverse environmental effects associated with the same types of air pollutants, and with ozone (O_3) that DOI asserts are occurring in national parks and wilderness areas.

To consider and respond to this petition and related requests properly, EPA is reviewing relevant scientific information and consulting with the public and potentially affected stakeholders to ensure that decisions in response to these requests are based on the best available information. By this action, EPA is extending the comment period to give the public additional time to review this petition for rulemaking from the States and this request from DOI and to submit public comments to EPA.

DATES: Comments and associated information and analyses should be submitted on or before April 2, 2001.

ADDRESSES: You may comment in various ways:

On paper. Send paper comments (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention Docket No. A–2000–36, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Electronically. Send electronic comments to EPA at: *A-and-R-Docket@epa.gov.* We accept comments as e-mail attachments or on disk. Either way, they must be in Wordperfect 5.1, 6.0, Corel 8, or ASCII file format. Avoid the use of special characters and any form of encryption. Be sure to identify all comments by Docket No. A–2000–36.

Public Inspection. Docket No. A–2000–36 containing the letters and related information is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays at the Air and Radiation Docket and Information Center (6102), 401 M Street, SW, Room M–1500, Washington, DC 20460, phone 202–260–7548, fax 202–260–4400. A reasonable fee for copying may be charged.

FOR FURTHER INFORMATION CONTACT: David J. McKee, MD–15, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5288, e-mail *mckee.dave@epa.gov;* or Geoffrey L. Wilcox, Mail Code 2344A,

Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, telephone (202) 564–5601, e-mail: *wilcox.geoffrey@epa.gov.*

Dated: December 20, 2000.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 00–33428 Filed 12–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6927–5]

FY2001–2002 USEPA Great Lakes National Program Office Request for Preproposals

AGENCY: Environmental Protection Agency (EPA)—Great Lakes National Program Office.

ACTION: Notice of funding availability.

SUMMARY: EPA's Great Lakes National Program Office (GLNPO) is now requesting the submission of preproposals for GLNPO funding through the ''*FY2001–2002 USEPA Great Lakes National Program Office Request for Preproposals*'' (RFP). The RFP solicits preproposals for assistance projects in the areas of Contaminated Sediments, Pollution Prevention and Reduction, Ecological (Habitat) Protection and Restoration, Invasive Species, Indicator Development, and Emerging Issues.

DATES: The deadline for submission of preproposals is February 16, 2001.

DOCUMENT AVAILABILITY: The RFP is available on the Internet at *http://www.epa.gov/glnpo/fund/2001guid/*. It is also available from Lawrence Brail (312–886–7474/brail.lawrence@epa.gov).

FOR FURTHER INFORMATION CONTACT: Mike Russ, EPA–GLNPO, G–17J, 77 West Jackson Blvd., Chicago, IL 60604 (312–886–4013/*russ.michael@epa.gov).*

SUPPLEMENTARY INFORMATION: USEPA's Great Lakes National Program Office is targeting a total of $3.15 million to award in the summer and fall of FY 2001 for Great Lakes projects pertaining to: Contaminated Sediments; Pollution Prevention and Reduction (Binational Toxics Strategy); Ecological (Habitat) Protection and Restoration; Invasive Species; Indicator Development; and Strategic or Emerging Issues. Indicator Development is a new category, building upon work done through the State of the Lakes Ecosystem Conferences. Assistance (through grants, cooperative agreements, and interagency agreements) is available pursuant to Clean Water Act section 104(b)(3) for activities in the Great Lakes Basin and in support of the Great Lakes Water Quality Agreement. State pollution control agencies, interstate agencies, other public or nonprofit private agencies, institutions, and organizations are eligible to apply. Potential applicants can find the Request for Preproposals, including evaluation criteria and the Preproposal development and submittal program, on the Internet at *http://www.epa.gov/glnpo/fund/2001guid/*.

Dated: December 20, 2000.

Gary V. Gulezian,

Director, Great Lakes National Program Office.

[FR Doc. 00–33426 Filed 12–27–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested.

December 22, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 5, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0484.

Title: Amendment of the Part 63 of the Commission's Rules to Provide for Notification of Common Carriers of Service Disruptions—Section 63.100.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Number of Respondents: 52.

Estimated Time Per Response: 5 hours.

Total Annual Burden: 1040 hours.

Total Annual Cost: $0.

Needs and Uses: Section 63.100 of the Commission's rules requires that ''any local exchange or interexchange common carrier that operates transmission or switching facilities and provides access service or interstate or international telecommunications service that experiences an outage on any facilities which it owns or operates must notify the Commission if such service outage continues for 30 or more minutes. An initial and a final outage report is required for each outage. The reports enable us to monitor developments affecting telecommunications reliability; to serve as a source of information for the public; to encourage and, where appropriate, assist in dissemination of information to those affected; and to take immediate steps, as needed, and after analyzing the information submitted, to determine what, if any, other action is required.

OMB Control No.: 3060–0226.

Title: Modification of Licenses—90.135(d) and (e).

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions, and State, local or Tribal Government.

Number of Respondents: 1.656.

Frequency of Response: Reporting on occasion.

Total Annual Burden: 276 hours.

Needs and Uses: Rules requires licensees who change certain

parameters (name, address, mobile units, *etc.*) to inform the Commission by form or letter. The information collection covers the submission of letters to notify the FCC. Information is used to maintain an accurate database.

OMB Control No.: 3060–0281.

Title: Supplemental reports required of licensees authorized under this subpart—§ 90.651.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions, and State, local or Tribal Government.

Number of Respondents: 16,408.

Frequency of Response: Reporting on occasion.

Total Annual Burden: 2,724 hours.

Needs and Uses: This section lists various reports required of 800 MHz licensees. The reports indicate whether the system has been constructed and the number of mobile units served.

OMB Control No.: 3060–0291.

Title: Interconnected systems—§ 90.477.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions, and State, local or Tribal Government.

Number of Respondents: 1000.

Frequency of Response: Record-keeping.

Total Annual Burden: 1000 hours.

Needs and Uses: Rule permits land mobile licensees to employ interconnection on a non-profit, cost shared basis and requires that cost sharing records be maintained.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–33379 Filed 12–29–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

December 22, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 5, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0698.

Title: Amendment of the Commission's Rules to Establish a Radio Astronomy Coordination Zone in Puerto Rico (ET Docket No. 96–2).

Form No.: None.

Type of Review: Extension of a currently approved collection.

Number of Respondents: 500.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 300 hours.

Total Annual Cost: $3,000.

Needs and Uses: By Report and Order the Commission has established a Coordination Zone that covers the Islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico (the Puerto Rico Islands). The coordination zone and notifications procedures will enable the Arecibo Radio Astronomy Observatory (Observatory) to receive information needed to assess whether an applicant's proposed operations will cause harmful interference to the Observatory's operations and will promote efficient resolution of coordination problems between the applicants and the Observatory.

OMB Control No.: 3060–0224.

Title: 90.151 Requests for waiver.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Number of Respondents: 60.

Frequency of Response: Reporting on occasion.

Total Annual Burden: 120 hours.

Needs and Uses: Rule requires applicants who request waiver of various rules to submit justification for the proposed waiver. This is necessary to enable the FCC to make an informed decision on requests.

OMB Control No.: 3060–0508.

Title: Rewrite and Update of Part 22.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 107,772.

Frequency of Response: On occasion, quarterly, semi-annually, annually.

Total Annual Burden: 266,505 hours.

Needs and Uses: Part 22 contains the technical and legal requirements for radio stations operating in the Public Mobile Services. Generally the collected information is used to determine legal, technical and/or financial qualifications of the respondents.

OMB Control No.: 3060–0739.

Title: Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 19.

Frequency of Response: Reporting—One time submission.

Total Annual Burden: 116,456 hours.

Needs and Uses: This proceeding proposes to require Tier 1 Local Exchange Carriers (LEC) to submit nonstructural safeguard plans to the Commission for approval prior to their offering of Personal Communications Service (PCS).

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–33380 Filed 12–29–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 26, 2001.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire 100 percent of the voting shares of Old Kent Financial Corporation, Grand Rapids, Michigan, and thereby indirectly acquire Old Kent Bank, Grand Rapids, Michigan, and Old Kent Bank, N.A., Jonesville, Michigan.

In connection with this matter, Fifth Third Bancorp has also given notice of its intent to acquire Old Kent Securities Corporation, Grand Rapids, Michigan, and thereby engage in permissible financial and investment advisory activities pursuant to §§ 225.28(b)(6) and (7) of Regulation Y; Old Kent Financial Life Insurance Corporation, Grand Rapids, Michigan, and thereby engage in permissible credit related reinsurance activities pursuant to § 225.28(b)(11) of Regulation Y; and Gladshire Limited Dividend Housing Association LP; Pleasant Prospect Limited Dividend Housing Association LP; Mount Mercy Limited Partnership; Grand Rapids Hope II Limited Partnership; Grand Rapids Hope Limited Partnership; Michigan Capital Fund For Housing Limited Partnership I; Trinity Village II Limited Dividend Housing Ass'n LP; Pleasant Prospect II Limited Dividend Housing Ass'n LP; Michigan Capital Fund for Housing Limited Partnership II; New Hope Homes Limited Dividend Housing Ass'n LP; Hayward-Wells Limited Dividend Housing Ass'n LP; Independence Village of Brighton Limited Dividend Housing Association LP; CFSB - Eastbrook Apartments Investor, LLC; and Eastbrook Apartments Limited Dividend Housing Ass'n LP, and thereby engage in permissible community development activities pursuant to § 225.28(b)(12) of Regulation Y.

Board of Governors of the Federal Reserve System, December 26, 2000.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 00–33398 Filed 12–29–00; 8:45 am]

BILLING CODE 6210–01–S

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, including the companies listed below, 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. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 26, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. National Australia Bank Limited, Melbourne, Australia; to acquire up to 70 percent of the outstanding voting shares of thinkorswim, Inc., and thereby engage in providing retail securities brokerage services over the Internet pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, December 26, 2000.

Jennifer J. Johnson

Associate Secretary of the Board.

[FR Doc. 00–33399 Filed 12–29–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of November 15, 2000

In accordance with § 71.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on November 15, 2000.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 6½ percent.

By order of the Federal Open Market Committee, December 22, 2000.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 00–33397 Field 12–29–00; 8:45 am]

BILLING CODE 6210–01–S

[1] Copies of the Minutes of the Federal Open Market Committee meeting of November 15, 2000, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), The Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.
Date: January 25–26, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).
Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

2. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.
Date: February 22–23, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).
Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

3. *Name of Subcommittee:* Health Care Technology and Decision Sciences.
Date: March 1–2, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).
Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

4. *Name of Subcommittee:* Health System Research.
Date: March 5–6, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).
Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of the meetings should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: December 15, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–33378 Filed 12–29–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of a Letter of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that a Letter of Authorization to take polar bears incidental to a specific oil and gas industry exploration activity has been issued to the following companies:

Company, Activity, Site, and Date Issued

Phillips Alaska, Inc., Exploration, Nanuq #3, November 16, 2000
BP Exploration (Alaska), Exploration, NPR–A, November 22, 2000
Phillips Alaska, Inc., Exploration, Hunter #1, November 29, 2000
Phillips Alaska, Inc., Exploration, Outlook #1, November 29, 2000
Phillips Alaska, Inc., Exploration, Oxbow #1, November 29, 2000
Phillips Alaska, Inc., Exploration, Rendezvous, November 29, 2000
Phillips Alaska, Inc., Exploration, Spark, November 29, 2000
Phillips Alaska, Inc., Exploration, Sunrise, November 29, 2000

CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: The Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities (65 FR 16828; March 30, 2000).''

Dated: December 11, 2000.

David B. Allen,

Regional Director.

[FR Doc. 00–33415 Filed 12–29–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–01–1120–JG, HAG–01–0057]

Seasonal Closure of the CCC Road; (Numbered 41–14E–11) Klamath County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the seasonal closure of the CCC Road at the Barnes Valley creek crossing in Klamath County, Oregon.

SUMMARY: Notice is hereby given that during the winter and spring high water periods, the CCC road (Numbered 41–14E–11) on the east side of Gerber Reservoir in Klamath County, Oregon will be closed to through traffic at the CCC road's junction with the north and south rims of the Barnes Valley Creek canyon. The road will be closed by the Authorized Officer when water levels in Barnes Valley Creek make the CCC road's low water crossing at Barnes Valley Creek unsafe to use by the public. Gates have been installed at the CCC road junction with the north and south rims of the Barnes Valley Creek canyon. The closure is made under the authority of 43 CFR 8364.1.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local, and Federal law enforcement and fire protection personnel. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, as well as the penalties provided under Oregon State law.

The road temporarily closed to through traffic under this order will be posted with signs at points of public road access.

The purpose of this emergency temporary closure is to protect persons from potential harm due to high water flows and flood conditions in Barnes Valley Creek. The road will be opened by the Authorized Officer when water levels in Barnes Valley Creek make the CCC road safe to use by the public.

DATES: This closure is effective from December 13, 2000 and will remain in effect until rescinded by the Authorized Officer.

ADDRESSES: Copies of the closure order and maps showing the location of the closed road are available from the Klamath Falls Resource Area Office, 2795 Anderson Avenue, Building 25, Klamath Falls, Oregon 97603.

FOR FURTHER INFORMATION CONTACT: Teresa A. Raml, Field Manager, Klamath Falls Resource Area at (541) 883–6916.

Dated: December 13, 2000.

Teresa A. Raml,

Field Manager, Klamath Falls Resource Area.

[FR Doc. 00–33420 Filed 12–29–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–PG]

Upper Snake River District and Lower Snake River District Resource Advisory Council Vacancies—Call for Nominations

AGENCY: Bureau of Land Management, Interior.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act (FACA), the Bureau of Land Management will accept nominations for two Resource Advisory Council (RAC) positions, one each on the Upper Snake River District (USRD) and the Lower Snake River District (LSRD) RACs. Applications will be accepted from the publication of this notice through January 31, 2001.

One Category Three vacancy is being advertised for the USRD RAC to complete the current 2000–2001 term, along with a Category One vacancy for the LSRD RAC, also to complete the current 2000–2001 term. These terms end in September 2001, and successful nominees who wish to remain on the RAC for a full three year term should apply for renomination in the spring of 2001.

The Category One vacancy is open to holders of Federal grazing permits or leases within the LSRD or who represent interests associated with transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, commercial recreation, commercial timber industry, or energy and mineral development. The Category Three vacancy is open to holders of state, county, or local elected office; employees of a State agency responsible for management of natural resources; academicians involved in natural sciences; representatives of Native American Tribes, and the public-at-large.

SUPPLEMENTARY INFORMATION: Those interested in receiving an application may call BLM Field Offices in Southern Idaho (Boise, Idaho Falls, Burley, Pocatello, Shoshone, or Twin Falls). Applications are also available by calling Kim Buxton at (208) 373–4015 or via email at *kim_buxton@blm.gov.* You may also obtain the application on Idaho BLM's web site at *www.id.blm.gov.* All applications should be submitted to Kim Buxton, BLM Idaho State Office, 1387 South Vinnell Way, Boise, ID 83709, by January 31, 2001.

FOR FURTHER INFORMATION CONTACT: Kim Buxton, Public Affairs Specialist, BLM Idaho State Office. Telephone, (208) 373–4015.

Dated: December 19, 2000.

James E. May,

Upper Snake River District Manager.

[FR Doc. 00–33419 Filed 12–29–00; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion will include a review of the BLM National Off-Highway Vehicle Strategy and local applications to BLM lands in Nevada; an update on wild horse gathers in northern Nevada; review of priority list of land acquisitions proposed as part of the Southern Nevada Public Lands Act; review of management of the Knott Creek Grazing Allotment; preliminary planning for the Winnemucca Resource Management Plan and proposed plan amendments for the Carson City Field Office; and other topics the council may raise.

All meetings are open to the public. The public may present written and/or oral comments to the council at 3 p.m. on Thursday, January 25th. The detailed agenda will be available on the internet by January 16, 2001, at *www.nv.blm.gov/rac;* hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107 no later than January 16, 2001.

Date & Time: The RAC will meet on Thursday, January 25, 2001, from 9 a.m. to 5 p.m., and Friday, January 26, 2001, from 8 a.m. to 4 p.m., in the first floor conference room of the BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada. Public comment on individual topics will be received at the discretion of the council chairperson, as meeting moderator, with a general public comment period on Thursday, January 25, 2001, at 3 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone (775) 885–6107.

Dated: December 12, 2000.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 00–33417 Filed 12–29–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–72053]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (P.L. 97–451), a petition for reinstatement of oil and gas lease UTU–72053 for lands in Carbon County, Utah, was timely filed and required rentals accruing from July 1, 2000, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in

Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–72053, effective July 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rate cited above.

Christopher J. Merritt,

Acting Chief, Branch of Minerals Adjudication.

[FR Doc. 00–33401 Filed 12–29–00; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1220–AF]

Supplementary Rules for Public Land in Eastern Tulare County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rulemaking.

SUMMARY: The Bureau of Land Management (BLM), Bakersfield (California) Field Office has established the supplementary rules listed below to protect natural resources and provide for the safety of visitors, and property on public land located in eastern Tulare County adjacent to the towns of Three Rivers and Hammond, California. These supplementary rules will be posted on public land in the applicable areas and made available at the Bakersfield Field Office.

DATES: January 2, 2001.

FOR MORE INFORMATION CONTACT: Ronald D. Fellows, Bureau of Land Management, Bakersfield Field Office Manager, 3801 Pegasus Drive, Bakersfield, California 93308.

Supplementary Rules

Pursuant to 43 CFR 8365.1–6 (Supplementary Rules), 43 CFR 8364.1 (Closure and restriction orders), and 8341.2 (Special rules) the following supplementary rules are in effect on public land managed by the BLM within Case Mountain/Milk Ranch Peak area defined as: Township 17 South, Range 29 East, MDB&M and Township 18 South, Range 29 East, MDB&M or the North Fork of the Kaweah Special Management Area defined as: Township 15 South, Range 28 East, MDB&M; Township 16 South, Range 28 East, MDB&M; and, Township 17 South, Range 28 East, MDB&M.

A. Target shooting is permitted within the Case Mountain/Milk Ranch Peak area provided that the firearm is discharged toward a proper backstop sufficient to stop the projectile's forward progress beyond the intended target. Target shooting may not occur within one mile of any private residence or occupied structure. Targets shall be constructed of cardboard and paper or similar non-breakable materials. All targets must be removed and properly discarded after use. No projectile may be intentionally fired into any tree.

B. All roads, trails, and routes of travel on public land within the North Fork of the Kaweah Special Management Area are closed to off-highway vehicles registered or identified under section 38020 of the California Vehicle Code except as permitted by the Authorized Officer.

C. All roads, trails, and routes of travel within the Case Mountain/Milk Ranch Peak area are closed to the operation of any motor vehicle, except for access to private real estate by property owners or persons they specifically designates as having access to their property, public employees, public agency volunteers in the course of their duties, or such access as authorized under permit, easement, or lease by the authorized officer.

D. The operation of motor vehicles within the North Fork of the Kaweah Special Management Area is limited to designated roads. Designated roads includes roads maintained by federal, state, or local government, roads leading to parking areas created by the BLM, Shepherd's Saddle Road, and Overlook Road. Overlook Road extends west from Shepherd's Saddle Road 0.8 miles from the intersection of Shepherd's Saddle Road and North Fork Drive. Designated roads may not be used for off-highway vehicle free-play. Vehicles may not be parked in a way which restricts the flow of traffic through parking areas or on roads. Any vehicle parked in a way which obstructs other passenger vehicles, or blocks access to fire road gates may be towed and stored at the owners expense.0

E. Within the Case Mountain/Milk Ranch Peak area, and the North Fork of the Kaweah Special Management Area, property may not be left unattended for more than three days without the prior approval of the Authorized Officer. Any such unattended property will be considered abandoned, and may be removed and stored by law enforcement personnel at the owner's expense.

F. Within the Case Mountain/Milk Ranch Peak area, and the North Fork of the Kaweah Special Management Area, all litter, trash, and refuse must be kept within a container or receptacle and removed when leaving public land. Litter, waste, or refuse may not be thrown onto or stored on the ground.

G. Within the Case Mountain/Milk Ranch Peak area, and the North Fork of the Kaweah Special Management Area, a permit or written authorization from BLM shall be required for all research activities which involve the taking, or placement of, any natural or man-made object, thing, plant, or animal on these lands. A permit or written authorization shall also be required if the research involves the disturbance of any animal, plant, cultural or historic resource, soil, or federal property. Restrictions regarding the disturbance of animal and plant resources do not apply to the California Department of Fish and Game or the U.S. Fish and Wildlife Service as long as the activities are in accordance with their trustee responsibilities for managing wildlife resources. Leisure activities such as astronomy, or bird watching are not intended to be covered by this supplementary rule.

H. Within the Case Mountain/Milk Ranch Peak area, a state of California Fire Permit is required for any camping, cooking, or warming fire ignited on these lands. Portable gas or propane stoves are exempted from this requirement. If any more restrictive fire provisions are established by any governing authority or public officer having jurisdiction, then persons must comply with these.

I. Within the Case Mountain/Milk Ranch Peak area, and the North Fork of the Kaweah Special Management Area, all laws of the State of California applicable to the possession, use, or distribution of controlled substances and/or the protection of persons or property are in effect. These laws may not be violated by any person.

J. Within the Case Mountain/Milk Ranch Peak area and the North Fork of the Kaweah Special Management Area, no person may be under the influence of a controlled substance. No person may be under the influence of alcohol in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others.

SUPPLEMENTARY INFORMATION: The above supplementary rules are being implemented for the following purposes:

The above defined lands contain valuable watershed resources, groves of Sequioa Trees, and regionally significant recreational resources. Improved public access through acquired easements has increased visitation. These supplementary rules are effected to maintain the area's traditional uses consistent with hiking, bicycle riding, equestrian use, and other

low impact recreational activities. The concerns of local residents and property owners are also addressed by these supplementary rules.

This order is in no way intended to affect the rights or existing privileges of private land owners or their interests within the defined public land. Existing public easements, county roads, state highways, private lanes or driveways, and private real estate is exempt from these supplementary rules. Further, this order does not infer any Bureau of Land Management jurisdiction over private or state owned lands. These supplementary rules will be in effect until replaced by a more comprehensive recreational management plan for the areas. These supplementary rules are in compliance with the Caliente Resource Management Plan of May 1997.

Federal, State, and local law enforcement officers and California peace officers, as defined in Chapter 4.5 of the California Penal Code, are exempt from these supplementary rules in the course of their official duties. Limitations upon the use of motorized vehicles do not apply to emergency vehicles, fire suppression and rescue vehicles, law enforcement vehicles, and other vehicles performing official duties, or as approved by an authorized officer of the BLM.

These supplementary rules, having been previously published in the **Federal Register** (65 FR 40124, June 29, 2000) for public comment, will take effect upon publication in the **Federal Register.**

Penalties

The authorities for these closures and supplementary rules are 43 CFR 8341.2, 8364.1, and 8365.1–6. Violations of these supplementary rules are punishable by fines of up to $1,000 and/or imprisonment not to exceed 12 months as well as the penalties provided under State law.

Dated: November 22, 2000.

Mike Pool,

California State Director.

[FR Doc. 00–33418 Filed 12–29–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935; COC–48469]

Proposed Extension of Withdrawal; Opportunity for Public Meeting; Colorado

December 14, 2000.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Agriculture, Forest Service, proposes to extend Public Land Order No. 6846 for another 10-year period. This order withdrew National Forest System lands from location and entry under the mining laws, to protect wild and scenic values on the South Platte River. The lands have been and remain open to Forest management and to mineral leasing. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by April 2, 2001.

ADDRESSES: Comments and meeting requests should be sent to the Colorado State Director, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius at 303–239–3706.

SUPPLEMENTARY INFORMATION: On December 13, 2000, the U.S. Department of Agriculture, Forest Service, requested that Public Land Order 6846 be extended for an additional 10 year period. This withdrawal was made to protect wild and scenic values on the South Platte River. Public Land Order 6864 will expire April 11, 2001.

This withdrawal comprises approximately 4,584 acres of National Forest System lands along the South Platte River in the Pike National Forest in Tps. 10, 11, and 12 S., R. 71 W., and T. 13 S., R. 72 W., 6th Principal Meridian, in Douglas, Jefferson, Park and Teller Counties, Colorado. A complete description of the lands can be provided by the Colorado State Office at the address shown above.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension, or to request a public meeting may present their views in writing to the Colorado State Director at the address shown above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed extension. Any interested persons who desire a public meeting for the purpose of being heard on this proposed action should submit a written request to the Colorado State Director within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days prior to the scheduled date of the meeting.

This extension will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 00–33416 Filed 12–29–00; 8:45 am]

BILLING CODE 3410–11–M

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–724 (Review)

Manganese Metal From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on manganese metal from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on manganese metal from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is February 21, 2001. Comments on the adequacy of responses may be filed with the Commission by March 19, 2001. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 2, 2001.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 01–5–060, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On February 6, 1996, the Department of Commerce issued an antidumping duty order on imports of manganese metal from China (61 FR 4415). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as all forms of manganese metal containing by weight not less than 95 percent manganese.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as all producers of the domestic like product.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is February 6, 1996.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 21, 2001. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is March 19, 2001. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest

possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1994.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2000 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2000 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2000 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: December 19, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–32983 Filed 12–21–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States, et al.* v. *Montrose Chemical Corporation of California, et al.,* No. CV 90–3122–R (C.D. Cal), was lodged on December 19, 2000 with the United States District Court for the Central District of California. The consent decree resolves claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, brought against defendants Montrose Chemical Corporation of California (''Montrose''), Aventis CropScience USA, Inc. (''Aventis''), Chris-Craft Industries, Inc. (''Chris-Craft''), and Atkemix Thirty Seven, Inc. (''Atkemix–37'') (Collectively, the ''DDT Defendants''), for damages for injuries to natural resources caused by releases of DDT from the Montrose plant to the Pacific Ocean, and associated contamination of sediments on the Palos Verdes shelf in the vicinity of Los Angeles, California, and for response costs incurred and to be incurred by the United States Environmental Protection Agency in connection with responding to the release and threatened release of hazardous substances at the same area.

The proposed consent decree provides that the DDT Defendants will pay $73 million to resolve their liability to the United States and State of California for natural resource damages and response costs as described above. The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

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. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of the RCRA. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States, et al.* v. *Montrose Chemical Corporation of California, et al.,* No. CV 90–3122–R (C.D. Cal), DOJ Ref. #90–11–3–159 and DOJ Ref. #90–11–3–511.

The proposed consent decree may be examined at the office of the United States Attorney, Central District of California, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, D.C. 20044. In requesting copies please refer to the referenced case and enclose a check in the amount of $13.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–33384 Filed 12–29–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States and State of Hawaii* v. *University of Hawaii,* Civil Action Number Cv 00–00806 DAE BMK, was lodged with the United States District Court for the District of Hawaii on December 18, 2000. On the same day, the United States and the State of Hawaii filed a Complaint pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6928, and Hawaii Revised Statutes Chapter 342J–9 against the University of Hawaii (UH), alleging violations of federal and state hazardous waste laws at four of the University's facilities. The violations included operating hazardous waste treatment, storage, or disposal (TSD) facilities without a permit or interim status; failing to mark stored containers as ''Hazardous Waste''; failing to mark the accumulation start dates on containers in storage facilities; and failing to determine whether hazardous wastes were being stored in various storage facilities.

The proposed Consent Decree, which settles the liability of UH for the violations alleged in the Complaint, provides that UH will undertake extensive injunctive relief, pay a civil penalty of $505,000 to be divided between the United States and the State and perform a Supplemental Environmental Project (SEP) valued at $1.2 million. Under the SEP, UH will investigate and implement pollution prevention or waste minimization projects on its campuses.

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 Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044; and refer to *United States and State of Hawaii* v. *University of Hawaii,* DOJ Ref. #90–7–1–06130.

The proposed settlement agreement may be examined at the Office of the United States Attorney, PJKK Federal Building, 300 Ala Moana Blvd., Honolulu, Hawaii and at the Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.25 (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. 00–33385 Filed 12–29–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for replacement/initial nonimmigrant arrival-departure document.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 31, 2000 at 65 FR 64989, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 1, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Justice Desk Officer, 725—17th Street, N.W., Room 10235, Washington, DC 20530; 202–395–4718.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the form/collection:* Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–102. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collection will be used by an alien temporarily residing in the United States to request a replacement of his or her arrival evidence. The information provided can be used to verify status and for determination as to the eligibility of the applicant for replacement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 25 minutes (.416 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,320 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 26, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–33387 Filed 12–29–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for action on an approved application or petition.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 31, 2000 at 65 FR 64990, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 1, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725—17th Street, NW., Room 10235, Washington, DC 20530; Attention: Lauren Wittenberg, Department of Justice Desk Officer, 202–395–4318.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–824, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection is used to request a duplicate approval notice, to notify and to verify to the U.S. Consulate that a petition has been

approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 43,772 responses at 25 minutes (.416 hours) per response.

An estimate of the total public burden (in hours) associated with the collection: 18,209 annual burden hours.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instruments Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 26, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–33388 Filed 12–29–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Nonimmigrant checkout letter.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 30, 2000 at 65 FR 64722, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 1, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725—17th Street, N.W., Suite 10235, Attention: Lauren Wittenberg, Department of Justice Desk Officer, Washington, DC 20503; 202–395–4718.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Nonimmigrant Checkout Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–146, Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used in making inquiries of persons in the United States or abroad concerning the whereabouts of aliens, and also requests departure information by the INS when initial investigation to locate the alien or verify his or her departure is unsuccessful.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,320 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, N.W., Suite 1220, Washington, DC 20530.

Dated: December 26, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–33389 Filed 12–29–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Request for certification of military or naval service.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 31, 2000 at 65 FR 64988, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 1, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725–17th Street, NW., Room 10235, Washington, DC 20530; Attention: Lauren Wittenberg, Department of Justice Desk Officer; 202–395–4318.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Request for Certification of Military or Naval Service.

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Justice Sponsoring the Collection:* From N–426, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected Public who will be Asked or Required to Respond, as well as a Brief Abstract:* Primary: Individuals or Households. This form will be used by the Service to request a verification of military or naval service claim by an applicant filing for naturalization on the basis of honorable service in the U.S. armed forces.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 45,000 responses at 45 minutes (.75 hours) per response.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the Collection:* 33,750 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 26, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–33390 Filed 12–29–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for temporary protected status.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 31, 2000 at 65 FR 64988, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 1, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725—17th Street, NW., Room 10235, Washington, DC 20530; Attention: Lauren Wittenberg, Department of Justice Desk Officer; 202–395–4318.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Temporary Protected Status.

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Justice Sponsoring the Collection:* Form I–282, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected Public who will be Asked or Required to Respond, as well as a Brief Abstract:* Primary: Individuals or Households. The information provided on this collection is used by the INS to determine whether an applicant for Temporary Protected Status (TPS) meets the eligibility requirements. Such TPS benefits include employment

authorization and relief from the threat of removal or deportation from the U.S. while in such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 181,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 90,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 26, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–33391 Filed 12–29–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Applicant survey.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 26, 2000 at 65 FR 64238, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 1, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–4718.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Applicant Survey.

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Justice Sponsoring the Collection:* Form G–942, Human Resources Branch, Immigration and Naturalization Service.

(4) *Affected Public who will be Asked or Required to Respond, as well as a Brief Abstract:* Primary: Individuals or Households. This form is required to ensure compliance with Federal laws and regulations which mandate equal opportunity in the recruitment of applicants for Federal employment.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 75,000 responses at 4 minutes (.066 hours) per response.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the Collection:* 4,950 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 26, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–33392 Filed 12–29–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for waiver of grounds of excludability.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 18, 2000 at 65 FR 56330, allowing for emergency OMB review and approval and a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 1, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–4718.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Excludability.

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Justice Sponsoring the Collection:* Form I–690, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected Public who will be Asked or Required to Respond, as well as a Brief Abstract:* Primary: Individuals or Households. The information on this application will be used by the Service in considering eligibility for legalization under sections 210 and 245A of the Immigration and Naturalization Act.

(5) *As Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondents to Respond:* 85 responses at 15 minutes (.25 hours) per response.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the Collection:* 21 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additional, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 26, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–33393 Filed 12–29–00; 8:45 am]

BILLING CODE 4410–10—M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Refugee/Asylee relative petition.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 26, 2000 at 65 FR 64238, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 1, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–4718.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Justice Sponsoring the Collection:* Form I–730, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected Public who will be Asked or Required to Respond, as well as a Brief Abstract:* Primary: Individuals or Households. This form will be used by an asylee or refugee to file on behalf of his or her spouse and/or children provided that the relationship to the refugee/asylee existed prior to their admission to the United States. The information collected on this form will be used by the Service to determine eligibility for the requested immigration benefit.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 86,400 responses at 35 minutes (.583 hours) per response.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the Collection:* 50,371 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 26, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–33394 Filed 12–29–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for issuance or replacement of Northern Mariana Card.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 31, 2000 at 65 FR 64987, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 1, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–4718.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Issuance or Replacement of Northern Mariana Card.

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Justice Sponsoring the collection:* Form I–777, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected Public who will be Asked or Required to Respond, as well as a Brief Abstract:* Primary: Individuals or Households. This information collection is used by applicants to apply for a Northern Mariana identification card if they received United States citizenship pursuant to Public Law 94–241 (Covenant to Establish a Commonwealth of the Northern Mariana Island).

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 100 responses at 30 minutes (.50 hours) per response.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the Collection:* 50 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 26, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–33395 Filed 12–29–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application to file declaration of intention.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 31, 2000 at 65 FR 64989, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 1, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725—17th Street, NW., Room 10235, Washington, DC 20530; Attention: Lauren Wittenberg, Department of Justice Desk Officer; 202–395–4318.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to File Declaration of Intention.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–300, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used by permanent residents to file a declaration of intention to become a citizen of the United States. This collection is also used to satisfy documentary requirements for those seeking to work in certain occupations or professions, or to obtain various licenses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 433 responses at 45 minutes (.75 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: December 26, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–33396 Filed 12–29–00; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL SCIENCE FOUNDATION

Numeric Panel in Advanced Computational Infrastructure & Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Computational Infrastructure & Research (#1185).

Date and Time: January 26, 2001, 8:30 am–5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 320, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Charles H. Koelbel, Advanced Computational Research Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8962.

Purpose of Meeting: To provide recommendations and advice concerning Parallel Algorithm Proposals submitted to NSF for financial support.

Agenda: To review and evaluate Proposals in the Advanced Computational Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 26, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–33436 Filed 12–29–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: January 22–23, 2001; 8:30 a.m. to 4:30 p.m.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Delcie Durham, Program Director, Materials Processing and Manufacturing, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–7060.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–33439 Filed 12–29–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications System (1196).

Date and Time: January 18–19, 2001; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, Room 680, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Usha Varshney, Program Director, Electronics, Photonics and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230. Telephone: (703) 292–8339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals in the EPDT program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–33442 Filed 12–29–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date and Time: February 27, 2001, 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, Rm. 1150.

Type of Meeting: Closed.

Contact Person: Dr. Charles Maddox, CISE Postdoctoral Research Associates in Experimental Computer Science, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Postdoctoral Research Associates in Experimental Computer Science proposals submitted in response to the program announcement (NSF 97–169).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 26, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–33437 Filed 12–29–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Special Emphasis Panel in Information and Intelligent Systems (1200).

Date and Time: January 23–26, 2001; 8:30 a.m.–5:00 p.m.

Place: The River Inn, Board Room, 924 25th Street, NW., Washington DC 20037.

Type of Meeting: Closed.

Contact Persons: Ephraim Glinert, Deputy Division Director, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8930.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information and Data Management proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–33438 Filed 12–29–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Information and Intelligent Systems (#1200):

Date/Time: January 15–16, 2001; 8:30 a.m.–5:00 p.m.; January 22–23, 2001; 8:30 a.m.–5:00 p.m.; January 23–24, 2001; 8:30 a.m.–5:00 p.m.; January 25–26, 2001; 8:30 a.m.–5:00 p.m.; January 30, 2001; 8:30 a.m.–5:00 p.m.; January 31–February 1, 2001; 8:30 a.m.–5:00 p.m.

Type of Meetings: Closed.

Contact Persons: Ephraim Glinert, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8930.

Minutes: May be obtained from the contact persons listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 26, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–33441 Filed 12–29–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (1203).

Dates & Times: January 29–30, 2001; 8 A.M.–5 P.M.

Place: National Science Foundation, 4201 Wilson Blvd., Room 380, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. LaVerne D. Hess, Program Director, Electronic Materials Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4937.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for support for the FY 2001 Nanoscale Science and Engineering (NSE) Initiative, Nanoscale Interdisciplinary Research Teams (NIRT) Structures, Phenomena, and Quantum Control (SPQC) proposals.

Reason for Closing: The proposals being evaluated include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 26, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–33434 Filed 12–29–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (1203).

Dates & Times: January 22–23, 2001; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 380, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Guebre X. Tessema, Program Director, National Facilities and Instrumentation Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–4943.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for support for the FY 2001 Nanoscale Science and Engineering (NSE) Initiative, Nanoscale Interdisciplinary Research Teams (NIRT) Synthesis, Structures, Phenomena, and Quantum Control (SPQC) proposals.

Reason for Closing: The proposals being evaluated include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–33435 Filed 12–29–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Materials Research (1203).

Date/Time: February 12th–13th, 2001; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 390, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Andrew J. Lovinger, Program Director, Polymers Program, Division of Materials Research, Room 1065, National Science Foundation, Arlington, VA 22230. Telephone (703) 292–4933.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for FY2001 Nanoscale Exploratory Research (NER) Proposals by the Polymers Program.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–33440 Filed 12–29–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–20]

Department of Energy; Three Mile Island, Unit 2, Independent Spent Fuel Storage Installation; Notice of Docketing of Materials License SNM–2508 Amendment Application

By letter dated October 4, 2000, the U.S. Department of Energy (DOE) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR Part 72, requesting the amendment of the Three Mile Island, Unit 2 (TMI–2) independent spent fuel storage installation (ISFSI) license (SNM–2508) for the ISFSI located at Idaho Falls, Idaho. DOE is seeking Commission approval to amend the materials license and the ISFSI Technical Specifications to grant an exemption to the requirements of 10 CFR 72.184, Safeguards Contingency Plan. The exemption would allow DOE to provide safeguards contingency planning as part of the safeguards resources currently provided for the Idaho National Engineering and Environmental Laboratory, where the TMI–2 ISFSI is located. DOE is also seeking Commission approval to amend the Technical Specifications to revise language regarding the physical protection plan, spent fuel contents, ASME Code exceptions, technical specifications bases control program, and essential program control. The requested changes do not appear to affect the design, operation, maintenance, or surveillance of the ISFSI.

This application was docketed under 10 CFR Part 72; the ISFSI Docket No. is 72–20 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this application, see the application dated October 4, 2000, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *Http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 8th day of December 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–33454 Filed 12–29–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF STATE

[Public Notice No. 3521]

Advisory Committee on International Law; Notice of Committee Meeting

A meeting of the Advisory Committee on International Law will take place on Friday, February 2, 2001, from 10 a.m. to approximately 5 p.m., as necessary, in Room 1205 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Acting Legal Adviser of the Department of State, James H. Thessin, and will be open to the public up to the capacity of the meeting room. The meeting will discuss the International Law Commission's draft articles on State Responsibility, the question of a right to a remedy under international law for human rights violations, the proposed Council of Europe Computer Crime Convention, recent legal developments relating to international criminal tribunals, cases pending before the International Court of Justice, and other current topics.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by Wednesday, January 31, 2001, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. This includes both government and non-government admittance. All attendees must use the ''C'' Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated: December 22, 2000.

D. Stephen Mathias,

Assistant Legal Adviser for United Nations Affairs, U.S. Department of State.

[FR Doc. 00–33431 Filed 12–29–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Anchorage, AK

AGENCY: Federal Highway Administration (FHWA), and Alaska Department of Transportation and Public Facilities (ADOT&PF).

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), the Federal Highway Administration (FHWA) is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed transportation improvement project in the Municipality of Anchorage (MOA), Alaska. The purpose of the proposed project is to mitigate congestion along an existing transportation corridor and to provide for future transportation demands.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

FOR FURTHER INFORMATION CONTACT: Tim A. Haugh, Environmental/Right-of-way Specialist, Federal Highway Administration, Alaska Division Office, 709 W. 9th Street, Room 851, P.O. Box 21648, Juneau, Alaska 99802–1648. Telephone 907/586–7430. Jim Childers, P.E., Project Manager, Alaska Department of Transportation and Public Facilities, Preliminary Design & Environmental, P.O. Box 196900, Anchorage, Alaska 99519–6900. Telephone 907/269–0544.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF), intends to prepare an EIS on a proposal to relieve congestion on the New Seward Highway from Rabbit Creek Road to 36th Avenue (Interstate Route I–A3–1) and to provide for future transportation demand in the corridor. Alternatives under consideration include but are not limited to:

(1) No build; continued current use of roadways, may include short-term minor restoration types of activities (safety and maintenance improvements) that maintain continuing operation of the existing roadway;

(2) Highway mainline, frontage road, and bicycle/pedestrian improvements, including new grade separations for improved east-west mobility and/or modifications to existing interchanges;

(3) Transportation System Management (TSM) and/or Transportation Demand Management (TDM) Strategies;

(4) Traffic Operations/Intelligent Transportation Systems (ITS);

(5) Public Transit Improvements:

- Commuter rail strategies
- Light rail strategies
- Other transit improvements;

(6) Other improvements to the existing arterial road system. The Campbell Creek wetlands and the Areawide Trails System would be accommodated as part of the proposed action alternatives. The project corridor is not currently served by other modes of public transportation, such as the ''People Mover'' bus system or the Alaska Railroad.

The proposed project is necessary to meet Anchorage's future transportation needs. An increase in population as well as new commercial and residential development in south and east Anchorage have resulted in a need to improve travel to and from these areas. The proposed action is an integral part of the Anchorage Metropolitan Area Transportation Study (AMATS) Long Range Transportation Plan and Transportation Improvements Plan, and the MOA Official Streets and Highways Plan.

The Anchorage area is currently listed as a serious non-attainment area relative to carbon monoxide emissions. This non-attainment is in part a result of traffic congestion. The proposed action would aid in relieving traffic congestion in south Anchorage.

The scoping process will include the use of newsletters, internet website, and meetings soliciting comments from appropriate Federal, State, and local agencies, beginning in December, 2000 and continuing throughout 2001. Private organizations and citizens who have an interest in this proposal will also be notified. A public hearing will be scheduled and a series of public meetings will be held in the communities adjacent to and served by the New Seward Highway. Public notice will be given of the time and place of the meetings and hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, written public input, comments and suggestions on environmental issues or concerns related to the proposed improvements are invited from all interested parties. Comments should be submitted to the Federal Highway Administration (FHWA) or the Alaska Department of Transportation and Public Facilities (ADOT&PF) at the addresses provided above. (Catalog of Federal Domestic Assistance Program Number 20–205, Highway Research, Planning and Construction)

Dated: December 20, 2000.

Karen A. Schmidt,

Assistant Division Administrator.

[FR Doc. 00–33376 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–EM–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–8584]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel NEELTJE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before February 1, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2000–8584. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–5129.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: NEELTJE. Owner: Bradley T. Marshall.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''L.O.A.—62 feet, L.O.D.—51 feet, Beam—12 feet, Displacement—35 tons.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Yacht charters carrying not more than 12 passengers. Mr. Marshall uses the boat primarily for personal pleasure sailing. He intends to engage in occasional charter activity.'' Geographic region: ''Chesapeake Bay, Delaware River, Intracoastal Waterway from Norfolk, VA through Florida. Note—NEELTJE is suitable for inland waterway use only and will not engage in ocean charters.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1902. Place of construction: Waddinxveen, The Netherlands.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''This waiver will have no direct impact on other commercial vessel operators. This vessel will be used for small yacht charters. There are a large number of small vessels engaged in this type of charter, and the only possible impact would be a very small increase in competition. Most charter customers are very specific in seeking out charter vessels with exactly the characteristics and amenities they desire. NEELTJE is an antique cargo vessel that has been converted into a yacht and as such is unique. There are no other vessels of her type currently in the U.S. The vessel is traditionally rigged and as such is very difficult to sail. The vessel is also slow in light winds (under 12 knots), and will not be to everyone's liking. In fact, those who would be likely to charter a vessel like NEELTJE would be few and would have to have a specialized interest in sailing an antique vessel. The vessel's competitiveness is further limited by her flat-bottom design and absence of a keel, rendering her unsuitable for ocean sailing. As such, the impact NEELTJE would have on the modern yacht charter business would be negligible.''

With regard to the operations of existing operators, there are no other vessels of NEELTJE's type currently in the U.S., although there are many other types of traditional sailing vessels engaged in the charter business in the specific geographic region. There are ample customers for such charter business that the impact on existing operators of the presence of another unique sailing vessel with limited appeal would be negligible.

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''The only possible impact would be positive insofar as all future repairs and modifications will be done in U.S. boatyards. Since Mr. Marshall acquired the vessel three years ago he has already spent over $100,000 in U.S. boat repair facilities.''

Dated: December 27, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–33445 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–8585]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WELLS GRAY.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below.

Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before February 1, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2000–8585. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–5129.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: WELLS GRAY. Owner: Captain Albert R. Manchester.

(2) Size, capacity and tonnage of vessel. According to the applicant: ''SIZE: Length—48′3″, Beam 11′6″, Depth 6′3″. CAPACITY: Six passengers. TONNAGE: 23 tons gross/18 tons net.''

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: ''Charter. Including wildlife viewing, photography, and kayaking.'' Geographic Region: ''Southeast Alaska, Inside Passage, B.C., and Puget Sound WA.''

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1927. Place of construction: Vancouver, B.C. Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: ''The Wells Gray will be offering unique and personalized charters that I feel would be difficult or impossible to find among existing operations. In contrast with other operators I wish to accommodate families and small groups of two to four persons seeking an affordable, personalized, and educational experience. Coupled with the strong demand for charters in my area of operation I think impact on existing operators to be practically non-existent.'' ''Typically, and with sound economic reason, most small vessel charter operators in my area are targeting 6 passenger fishing trips or a minimum of between 6 to 12 passengers on touring trips. The larger vessel operators consist of ''Fast Boat'' Day trips carrying up to 60 persons and the larger vessels doing overnight tours might carry 18 to 40 persons, and, of course, the cruise ships with thousands aboard.''

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: ''Positive. In excess of $150,000 has been spent in rebuilding the Wells Gray in the Port Townsend, WA shipyard. Future work scheduled for 2001 and routine maintenance will be done there as well.''

Dated: December 27, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–33446 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8349]

Reports, Forms, and Record Keeping Requirements

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

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before March 2, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Edward Jettner, NHTSA, 400 Seventh Street, SW., Room 5320, NPS–11,Washington, DC 20590.

Mr. Jettner's telephone number is (202) 366–4917. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an

agency must ask for public comment on the following:

(i) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Assigning DOT Code Numbers (Glazing Material Manufacturers).

OMB Control Number: 2127–0038.

Affected Public: Business or for-profit.

Abstract: Title 49, Chapter 30115 of the U.S. Code specifies that the Secretary of Transportation shall require every manufacturer or distributor of a motor vehicle or motor vehicle equipment to furnish the distributor or dealer at the time of delivery certification that each item of motor vehicle equipment conforms to all applicable Federal Motor Vehicle Safety Standards (FMVSS).

Using this authority, the agency issued FMVSS No. 571.205, ''Glazing Materials''. This standard specifies requirements for glazing materials for use in passenger cars, multipurpose passenger vehicles, trucks, buses, motorcycles, slide-in campers and pickup covers designed to carry persons while in motion. Also, this standard specifies certification and marking of each piece of glazing materials. Certification for the items listed comes in the form of a label, tag or marking on the outside of the motor vehicle equipment and is permanently affixed and visible for the life of the motor vehicle equipment.

The purpose of this standard is to aid in reducing injuries resulting from impact to glazing surfaces, and to ensure a necessary degree of transparency for driver visibility. Both glass and plastics are considered to be glazing materials which provide safety and minimize the possibility of occupants being thrown through the vehicle window in the event of a crash.

Estimated Annual Burden: 11.5 hours.

Number of Respondents: 23.

Issued on: December 26, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–33412 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–00–8350]

Reports, Forms, and Record Keeping Requirements

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

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before March 2, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Edward Jettner, NHTSA, 400 Seventh Street, SW., Room 5320, NPS–11,Washington, DC 20590.

Mr. Jettner's telephone number is (202) 366–4917. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected;

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Consolidated Labeling Requirements for Motor Vehicles (Except the VIN)

OMB Control Number: 2127–0512.

Affected Public: Business or for-profit.

Abstract: 49 U.S.C. 30111 authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS) and regulations. The agency, in prescribing a FMVSS or regulation considers available relevant motor vehicle safety data, and consults with other agencies as it deems appropriate. Further, the statute mandates that in issuing any FMVSS or regulation, the agency considers whether the standard or regulation is ''reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed,'' and whether such a standard will contribute to carrying out the purpose of the Act. The Secretary is authorized to invoke such rules and regulations as deemed necessary to carry out these requirements. Using this authority, the agency issued the following FMVSS and regulations, specifying labeling requirements to aid the agency in achieving many of its safety goals:

FMVSS 105, Hydraulic and Electric Brake Systems;

FMVSS 135, Passenger Car Brake Systems;

FMVSS 205, Glazing Materials;

FMVSS 209, Seat Belt Assemblies; and

Part 567, Certification.

FMVSS 105, Hydraulic and Electric Brake Systems and FMVSS 135, Passenger Car Brake Systems require that each vehicle shall have a brake fluid warning statement in letters at least one-eighth of a inch high on the master cylinder reservoirs and located so as to be visible by direct view.

FMVSS 205, Glazing Materials, requires that manufacturers mark their automotive glazing with certain label information, including:

Manufacturer's distinctive trademark;

Manufacturer's ''DOT'' code number;

Model of glazing (alpha-numerical designation); and

Type of glazing (there are currently 21 items of glazing ranging from plastic windows to bullet resistant windshields).

In addition to these requirements which apply to all glazing, certain specialty items such as standee windows in buses, roof openings and interior partitions made of plastic require that the manufacturer affix a removable label to each item. The label specifies cleaning instructions which will minimize the loss of transparency. Other information may be provided by the manufacturer but is not required.

FMVSS 209, Seat Belt Assemblies, requires safety belts to be labeled with the year of manufacture, the model, and the name or trademark of the manufacturer (S4.5(j)). Additionally, replacement safety belts that for specific models of motor vehicles must have labels or accompanying instruction sheets to specify the applicable vehicle models and seating positions (S4.5(k)). All other replacement belts are required to be accompanied by an installation instruction sheet (S4.1(k)).

Seat belt assemblies installed as original equipment in new motor vehicles need not be required to be labeled with position/model information. This information is only useful if the assembly is removed with the intention of using the assembly as a replacement in another vehicle; this is not a common practice.

Part 567, Certification, responds to 49 U.S.C. 30111 that requires each manufacturer or distributor of motor vehicles to furnish to the dealer or distributor of the vehicle a certification that the vehicle meets all applicable FMVSS. This certification is required by that provision to be in the form of a label permanently affixed to the vehicle. Under 49 U.S.C. 32504, vehicle manufacturers are directed to make a similar certification with regard to bumper standards. To implement this requirement, NHTSA issued 49 CFR part 567. The agency's regulations establish form and content requirements for the certification labels.

Estimated Annual Burden: 72959 hours.

Number of Respondents: 1214.

Issued on: December 26, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–33413 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–8459; Notice 1]

Continental General Tire, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Continental General Tire, Inc., (Continental) has determined that approximately 22,500 P235/75R15 Grabber AT OWL passenger car tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Continental has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS No. 109 requires that each tire shall have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different. (S4.3(e)).

The noncompliance with S4.3(e) relates to the mold number. Mold numbers 33316 and 33317 ran for the production period of March 28, 1999 through August 25, 2000 with an incorrect sidewall stamping. The stamping at the rim line read: ''Tread 5 plies—2 Steel + 2 Polyester +1 Nylon.'' It should have read: Tread 4 Plies—2 Steel + 2 Polyester.

Continental states that the sidewalls of the tire have all the proper markings, except the subject plies, per 49 CFR Section 571.109 and that in all applications the tire service information is correct and no unsafe conditions would be created due to the noncompliance.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: (30 days after Publication Date).

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 26, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–33411 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–8247; Notice 1]

Cooper Tire & Rubber Company, Receipt of Application for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) has determined that approximately 8,824 motorcycle tires produced at the Melksham, England, tire manufacturing facility of Cooper-Avon Tyres Limited, do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New Pneumatic Tires for Vehicles Other than Passenger Cars''.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Cooper has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The noncompliance relates to the mislabeling of approximately 8,824 tires. The tires, produced during the first twenty weeks of 2000, are the MT90–16 71H, Load Range B, motorcycle tires sold to one original equipment manufacturer/customer under the brand names AVON MT90–16 Roadrunner, AVON MT90–16 Gangster, and Avon MT90–16 Indian. These tires were produced with the incorrect maximum load rating on the serial side of the tire during the first through the twentieth production weeks of 2000. Approximately 8,124 of the tires involved have been accounted for in either Cooper's inventory or the inventory of original equipment manufacturer/customer, leaving an estimated 700 tires not accounted for in either inventory.

According to Cooper, this mislabeling does not present a safety-related defect. The tires involved are designed to carry a heavier load (770 lbs.) than the incorrect labeling specified (760 lbs.). Consequently, any misapplication of the tire would be for the user to carry a lighter load than the load for which the tires are designed. The tires produced from this mold during the aforementioned production periods comply with all other requirements of 49 CFR 571.119.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: February 1, 2001.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 26, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–33410 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–98–4470]

Pipeline Safety: Meetings of Pipeline Safety Advisory Committees

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of advisory committee meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) notice is given of the following meetings of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). Both the TPSSC and the THLPSSC are statutorily mandated advisory committees that advise the RSPA's Office of Pipeline Safety (OPS) on proposed safety standards and other safety policies for hazardous liquid and natural gas pipelines. Each committee has an authorized membership of 15 persons—five each representing government, industry, and the public. The committees typically meet twice a year, in May and November. However, the next advisory committee meetings will be held on February 6–7, 2001, to allow the committees to review several proposed rules early in the year to allow for the timely completion of these projects.

ADDRESSES: You may submit written comments by mail or deliver to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except federal holidays. You also may submit written comments to the docket electronically. To do so, log onto the following Internet Web address: http://dms.dot.gov. Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should identify the docket number stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

The conference room numbers for this meeting will be posted on the OPS web page approximately 15 days before the meeting date at http://ops.dot.gov.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Juan Carlos Martinez at (202) 366–1933.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, OPS, (202) 366–4431 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: On Tuesday, February 6, 2001, at 9 a.m., the Technical Pipeline Safety Standards Committee (TPSSC) will meet. The preliminary agenda includes discussion of the following issues:

1. Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipeline).
2. Revision to Gas Incident/Annual Report Form.
3. Gas Gathering Line Definition.
4. Plastic Pipe Data Committee.

On Tuesday, February 6, 2001, from 1–4 p.m., the TPSSC will be joined by members of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) for a joint session. The preliminary agenda includes discussion of the following topics:

1. An Overview of the State of the Pipeline Safety Program (including Reauthorization, Inspector General and General Accounting Office Reports, and National Transportation Safety Board Recommendations, Research and Development Plans).
2. Drug Testing—Notice of Proposed Rulemaking (Vote).

On Wednesday, February 7, 2001, from 9 a.m.–11 a.m., the joint meeting will continue with a demonstration of the National Pipeline Mapping System (NPMS). The Committee will also hear a report on concepts for community right-to-know reporting.

The Technical Hazardous Liquid Pipeline Safety Standards Committee will meet on Wednesday afternoon from 1 p.m.–4 p.m. The preliminary agenda includes discussion of the following topics:

1. Producer—Operated Outer Continental Shelf Gas & Hazardous Liquid Pipelines that Cross Directly into State Water—Notice of Proposed Rulemaking (Vote).
2. Pipeline Integrity Management in High Consequence Areas for Hazardous Liquid Pipelines < 500 Miles—Notice of Proposed Rulemaking (Vote).

3. Controlling Corrosion on Hazardous Liquid and Carbon Dioxide Pipelines—Notice of Proposed Rulemaking (Vote).

4. Advisory on Response Plans Under the Oil Pollution Act.

All three meetings are open to the public. An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Juan Carlos Martinez, Room 7128, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–1933, not later than January 26, 2001, on the topic of the statement and the time requested for presentation. The presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC on December 22, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–33255 Filed 12–29–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33973]

Dallas Area Rapid Transit—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company

Dallas Area Rapid Transit (DART), a political subdivision of the State of Texas, has filed a notice of exemption under 49 CFR 1150.41 to acquire (by purchase) approximately .75 miles of rail line owned by Union Pacific Railroad Company (UP) between approximately milepost 746.25 and approximately milepost 745.5 in the vicinity of Rowlett, TX.[1] DART certifies that its projected revenues will not result in the creation of a Class II or Class I rail carrier.

The earliest the transaction could be consummated was December 21, 2000, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33973, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Kevin M. Sheys, 1350 Eye Street, NW., Suite 200, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 22, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–33366 Filed 12–29–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Applicant states that it will grant trackage rights to UP (or UP's designee) on the subject line and that freight railroad operations on the subject line will be conducted by UP (or UP's designee) pursuant to the trackage rights. According to DART, UP (or UP's designee) will seek the Board's approval for the trackage rights in a separate filing.

Federal Register

Tuesday,
January 2, 2001

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 229

Locomotive Cab Sanitation Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. FRA 2000–8545, Notice No. 1]

RIN 2130–AA89

Locomotive Cab Sanitation Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend its regulations by adding standards that address toilet and washing facilities for employees who work in locomotive cabs. The proposal provides exceptions for certain existing equipment and operations, and establishes servicing requirements.

DATES: *Written Comments:* Written comments must be received on or before March 5, 2001. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public Hearing: A public hearing will be held, if requested, in Washington, D.C. to allow interested parties the opportunity to comment on specific issues addressed in the NPRM. FRA will announce at a later date in the **Federal Register** if a hearing has been requested and the date and location of the hearing.

ADDRESSES: *Written Comments:* Submit one copy to the Department of Transportation Central Docket Management Facility located in Room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. All docket material on the proposed rule will be available for inspection at this address and on the Internet at *http://doms.dot.gov.* Docket hours at the Nassif Building are Monday-Friday, 10:00 a.m. to 5:00 p.m., excluding Federal holidays. Persons desiring notification that their comments have been received should submit their comments with a stamped, self-addressed postcard. The postcard will be returned to the addressee with a notation of the date on which the comments were received.

Public Hearing: If requested by a member of the public, the date and location of a public hearing will be announced in this publication. Requests for a public hearing must be in writing, and must be addressed to the FRA docket clerk at the address above.

FOR FURTHER INFORMATION CONTACT: Brenda Hattery, Office of Safety Compliance, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6326), or Christine Beyer, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–493–6027).

SUPPLEMENTARY INFORMATION:

Background

I. Statutory and Regulatory Framework

The Federal Railroad Administration (FRA) has broad statutory authority to regulate all areas of railroad safety. Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in Title 45 of the United States Code. On that date all of the acts were repealed and their provisions were recodified into Title 49. The older safety laws were enacted in piecemeal approach and addressed specific fields of railroad safety. Pertinent to this proceeding, the Locomotive Inspection Act (the ''LIA''), enacted in 1911, prohibits the use of unsafe locomotives and authorizes FRA to issue standards for locomotive maintenance and testing. (Formerly 45 U.S.C. 22–34, now 49 U.S.C. 20701–20703.) In order to further FRA's ability to respond effectively to contemporary safety problems and hazards as they arise in the railroad industry, the Congress enacted the Federal Railroad Safety Act in 1970 (the ''Safety Act''). (Formerly 45 U.S.C. 421, 431 *et seq.*, now Subtitle V of Title 49.) The Safety Act grants the Secretary rulemaking authority over all areas of railroad safety and confers all powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the FRA Administrator. (49 CFR 1.49.)

Pursuant to this statutory authority, FRA promulgates and enforces a comprehensive regulatory program to address railroad track, signal systems, railroad communications, rolling stock, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety. In the area of workplace safety, the agency has issued a variety of standards designed to protect the health of railroad employees. For instance, FRA promulgated ladder and handhold requirements for rail equipment in order to prevent employee falls (49 CFR Part 231), and requires locomotive cab floors and passageways to remain clear of debris and oil to prevent employee slips, trips, and falls (49 CFR 229.119). In Part 218, FRA requires blue signal protection to prevent employees working on railroad equipment from injuries due to the unexpected movement of the equipment. FRA addresses the risk of falling from railroad bridges and of being struck by moving trains in 49 CFR Part 214.

As a general rule, FRA exercises its statutory jurisdiction over railroad employee working conditions where employees are engaged in duties that are intrinsic to railroad operations, that could not occur in typical industrial settings, and when the hazard falls within the scope of FRA's expertise to regulate. Often, railroad working conditions are so unique that a regulatory body other than FRA would not possess the requisite expertise to determine appropriate safety standards. Historically, the concept of ''railroad safety'' has been viewed to include the health and safety of employees when they are engaged in railroad operations. In its Statement of Policy concerning employee workplace safety published in 1978, FRA stated

> The term ''safety'' includes health-related aspects of railroad safety to the extent such considerations are integrally related to operational safety hazards or measures taken to abate such hazards.

43 FR 10585. Hazards that impact the health of railroad employees engaged in railroad operations may also result in adverse impacts on railroad safety, and so there is often a logical connection between railroad safety and employee health.

In part 229 of Title 49 of the Code of Federal Regulations, FRA established minimum federal safety standards for locomotives. These regulations prescribe inspection and testing requirements for locomotive components and systems, and minimum locomotive cab safety requirements. However, FRA's existing locomotive safety standards do not require sanitation facilities for employees working in the cab.

The statutory and regulatory treatment of locomotive cab sanitation by the pertinent federal and state bodies is complex, and has caused some confusion in the industry. For purposes of this rulemaking, it is important to understand where the legal tensions occur. Generally, requirements for sanitation in the workplace are governed by the U.S. Occupational Safety and Health Administration (OSHA); [1] however a Federal agency can oust OSHA jurisdiction by issuing sanitation standards of its own, as FRA

[1] *See,* 29 CFR Part 1910 (general industry standards); 29 CFR Part 1926 (construction industry standards); 29 CFR Part 1917 (marine terminals); 29 CFR Part 1918 (longshoring operations); and 29 CFR Part 1928 (agricultural operations).

is proposing to do in this proceeding.[2] OSHA's sanitation standards generally apply to permanent places of employment, and some courts have determined that a locomotive constitutes a 'permanent place of employment' for purposes of OSHA's jurisdiction.[3] However, by operation of an existing legislative option, a state may withdraw from the Federal OSHA program, and develop and enforce its own occupational safety and health regulations.[4] If a locomotive is situated in a 'Federal-OSHA state,' the Federal OSHA standard would most likely apply, so long as the pertinent reviewing court concurred with the determination that a locomotive constitutes a permanent place of employment. However, if the locomotive resides in a 'State-Plan state,' any state locomotive sanitation standard may be nullified because the LIA has been interpreted to occupy the field of locomotive safety, including appurtenances in locomotives. Consequently, the LIA would preempt state provisions relating to appurtenances in locomotives,[5] and federal courts have held that a toilet constitutes an appurtenance.[6] Conversely, and despite the prevailing alternate view, certain state courts in 'Federal-OSHA states' have ruled that the LIA does not preempt state regulation of flush toilets on locomotives, and those states have promulgated and enforce such standards within their boundaries.[7]

In 1992, Congress enacted Section 10 of The Rail Safety Enforcement and Review Act (RSERA) (Public Law 102–365, September 3, 1992, codified at 49 U.S.C. 20103, note) in response to concerns raised by employee organizations, congressional members, and recommendations of the National Transportation Safety Board concerning working conditions in locomotive cabs. In this legislation, Congress included mandates concerning locomotive crashworthiness and cab working conditions. Section 10 of RSERA, entitled Locomotive Crashworthiness and Working Conditions, required FRA ''to consider prescribing regulations to improve the safety and working conditions of locomotive cabs'' throughout the railroad industry. In order to determine whether regulations would be necessary, Congress asked FRA to

> assess the extent to which environmental, sanitary and other working conditions in locomotive cabs affect productivity, health and the safe operation of locomotives.

The interest Congress placed on locomotive cab sanitation reflected concerns for railroad safety, employee productivity, and the serious health consequences that may result if employees are exposed to unsanitary conditions or lack access to facilities. It is widely known that exposure to human fecal matter or untreated sewage waste can lead to diarrheal diseases such as amebiasis, giardiasis, shigellosis and viral diseases such as hepatitis. Transmission of some illnesses can occur through physical contact with waste, or with the toilet or other surfaces used by an infected human. Given the right environmental conditions, transmission may also occur through inhalation of affected microorganisms. In addition, disease transmission may occur through hand-to-mouth ingestion after physical contact with an infected source. The risk of contracting these illnesses underscores the importance of maintaining clean, operable toilet and washing facilities in the workplace, including locomotive cabs.

In addition to the disease transmission concerns outlined above, there are health affects that may arise when access to toilet facilities is limited or prevented. Healthy adults consuming the recommended amounts of fluids can expect to void once every four hours during the day and once during the night. The urination process begins when the kidneys filter waste and water from the blood to form urine. The urine travels to the bladder and the nervous system sends 'full' signals to the muscles that it is time to urinate. If urination doesn't occur when needed, incontinence, urinary tract infections, and kidney infections may occur. Prolonged distention of the bladder may lead to a disturbance of the elastic components of the bladder wall, which could weaken the evacuation power of the bladder. When the bladder is unable to empty completely, residual urine remains and can cause infection. Delaying bowel movements can lead to chronic constipation and other intestinal problems, and chronic constipation is often a factor in abnormal bladder emptying. In addition, a variety of health conditions may alter or increase the need to urinate and defecate, including pregnancy, benign prostate hypertrophy, prostate cancer, prostatitis, renal stone disease, hypertension, diabetes, stroke, and conditions of the central nervous system and spinal cord. These factors underscore the importance of providing adequate access to toilet and washing facilities for employees in the workplace.[8]

In response to the Congressional mandate set forth in Section 10 of RSERA, FRA studied a variety of working conditions in locomotive cabs, including sanitation, noise, temperature, air quality, ergonomics, and vibration. FRA prepared the Locomotive Crashworthiness and Cab Working Conditions Report to Congress (''Report''), dated September 1996, that outlines the results of these studies. (The Report is available for review in the docket of this matter.)

II. The Report to Congress

FRA conducted a survey of locomotive cab sanitation facilities and an evaluation of the chemicals used to clean, disinfect, and deodorize toilets. The primary focus of the survey was equipment owned by Class I railroad carriers, but units operated by small entities were also included in the study. FRA found a wide range of conditions in the course of the survey. The conditions varied due to many factors, including weather, type of sanitation system in place, carrier maintenance and service programs, and locomotive model. In addition, some locomotives surveyed were not equipped with sanitation facilities.

FRA surveyed 234 locomotives during both typical and environmentally extreme working conditions. As the Report states, FRA found unsanitary, unpleasant conditions, and in some instances, inoperable units. FRA inspectors observed dirty floors and toilet seats, missing toilet seats, poor ventilation, offensive odors, and lack of

[2] 29 U.S.C. 653(b)(1).

[3] *State of Maine* v. *Springfield Terminal Ry.,* CV–90–258, citing *Gade* v. *National Solid Waste Management Ass'n,* 505 U.S. 88 (1992).

[4] 29 U.S.C. 667.

[5] *Napier* v. *Atlantic Coast Line RR.,* 272 U.S. 605 (1926).

[6] *CSX Transportation* v. *Pitz,* 699 F.Supp. 127 (W.D. Mich. 1988).

[7] *Norfolk and Western Ry.* v. *Pennsylvania Public Utility Comm'n,* 413 A.2d 1037 (Pa. 1980).

[8] *See,* Rowland RG, Foster RS, Donohoe JP, *Adult and Pediatric Urology,* St. Louis, Mosby-Year Book, Inc. (1996); Barry MJ, Fowler, FJ, Bin L, Pitts CJ, Mulley AG, *The Natural History of Patients with Benign Prostatic Hyperplasia as Diagnosed by North American Urologists,* J. Urol., 157, 10–15, (1997); Lapides, J., *The Key to Urinary Infection,* The Female Patient, 5, 11–13 (1980); Lapides, J., *Primary Cause of Recurrent Urinary Tract Infection in Women,* Journal of Urology, 100, 552–555 (1968); Darlow, H.M. and Bale, W. R., *Infective Hazards of Water-Closets,* Lancet 1: 1196–1200 (1959); Hendlev, J., Wenzel, H., Gwaltney, H., *Transmission of Rhinovirus C Colds by Self-Inocculation,* New England Journal of Medicine, 288, 1361–1364 (1973); Gaber, C., Wallis, C., and Melnick, J., *Microbiological Hazards of Household Toilets: Droplet Production and the Fate of Residual Organisms,* Applied Microbiology 30: 229–236 (1975); U.S. Occupational Safety and Health Administration, *Field Sanitation, Final Rule,* 52 FR 16050 (1987).

toilet paper. During the winter months, FRA inspectors noted that certain toilet systems would freeze and become inoperable. Of the cabs surveyed, approximately thirty percent were deficient in some manner related to the use of sanitation facilities.

During the survey, FRA determined that both employees and railroads play a role in the condition of sanitary facilities; poor sanitary conditions aboard locomotives are caused by inadequate maintenance and/or heavy use or misuse by operating crews. FRA determined that most railroad carriers have programs in place to service toilet and washing units, and that the program requirements often vary from property to property depending on degree of use, toilet system in place, and weather conditions. In addition, FRA found that adherence to the servicing programs is uneven throughout the industry, and that in many situations, poor servicing is the primary cause of unsanitary, offensive sanitation facilities.

FRA also determined that nearly all of the cleaning agents used to disinfect and deodorize locomotive cabs are over-the-counter products available to the general public. However, a small percentage of the cleaning agents used involve health risks, and so management supervision and employee training must take place in order to safeguard employee health. The Report explains that the locomotive safety standards (49 CFR part 229) do not require sanitation facilities in locomotive cabs, and some of the oldest equipment surveyed had no sanitation facilities on board. The Report also notes that there is some disparity in the legal treatment of sanitation in locomotive cabs among state and federal regulatory and enforcement bodies (as discussed in greater detail above), and confusion exists among industry members concerning applicable standards and guidelines.

In conclusion, the Report notes FRA's concern about the potential for disparate regulatory treatment of sanitation in locomotives, and the unsanitary conditions that existed on some properties. Nonetheless, given the significant role that basic servicing plays in creating a sanitary workplace, and the relative ease with which servicing programs may be instituted, FRA was hopeful that the issue of locomotive sanitation could be resolved through management and labor cooperation to resolve the problem of absent, defective, or unsanitary facilities on locomotive cabs.

III. Railroad Safety Advisory Committee Recommendations to FRA

Following publication of the Report, FRA continued to receive employee complaints about the state of sanitation in locomotive cabs, and the health and safety risks associated with working in an unsanitary area. Generally, throughout the national railroad system, employees continued to encounter dirty conditions and facilities in need of maintenance, and in some circumstances, difficulty in obtaining access to facilities at all.

FRA also received complaints from employees of one carrier concerning the disposal method required by a particular sanitation system in use. The system, by design, involves the placement and temporary storage of plastic bags containing untreated waste into sealed waste containers, and presents perceived health concerns to some who handle the bags, and others in proximity to the waste containers. In addition, there were concerns about the expansion of this system as the railroad's territory increased, the increase of 'power sharing' arrangements among the carriers, and the administrative difficulties that would arise in maintaining disparate systems as railroad equipment is mixed among carriers.

Finally, some State agencies expressed frustration with FRA concerning the practical effect of the interplay of OSHA's program, the broad preemption provisions found in the LIA, and the uneven treatment given locomotive sanitation by the state and federal courts. The presence of LIA preemption and the inconsistent application of locomotive cab sanitation standards prevented certain State agencies from regulating this area of sanitation.

In light of these concerns, FRA determined that cab sanitation must be revisited and addressed so that cab employees would have access to adequate sanitary facilities, and to ensure uniform application of the law. Despite the considerable acrimony that had developed in the industry surrounding this issue, FRA remained convinced that it should be addressed cooperatively, with the assistance of the stakeholders who possess the knowledge and expertise to resolve the problem effectively. Therefore, on June 24, 1997, FRA presented the subject of locomotive cab working conditions, including sanitation, to the Railroad Safety Advisory Committee (RSAC).

RSAC was formed by FRA in March 1996 to provide a forum for consensual rulemaking and program development. The Committee includes representation from all of the agency's major customer groups, including railroad carriers, labor organizations, suppliers, manufacturers, and other interested parties. FRA typically assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. If a working group comes to consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. If the working group is unable to reach consensus on recommendations for action, FRA will move ahead to resolve the issue through traditional rulemaking proceedings.

When FRA presented the subject of locomotive cab working conditions to RSAC in June 1997, the agency stated the purpose of the task as follows: to safeguard the health of locomotive crews and to promote the safe operation of trains. RSAC accepted this task, formed a Locomotive Cab Working Conditions Working Group (''Working Group''), and designated this assignment Task No. 97–2. As to sanitation, RSAC asked the Working Group to

> Research comparable workplace requirements in an effort to develop minimum acceptable regulations, guidelines, or standards as appropriate for the locomotive cab environment.

The Working Group established by RSAC consists of representatives of the following organizations, in addition to FRA:

American Association of State Highway & Transportation Officials
American Public Transit Association
American Short Line and Regional Railroad Association
Association of American Railroads
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes (Nonvoting Member)
International Brotherhood of Electrical Workers
National Railroad Passenger Corporation (Amtrak)
Railway Progress Institute
Sheet Metal Workers' International Association
Transport Workers Union of America
United Transportation Union

The Working Group's goal was to produce recommendations for locomotive cab sanitation standards

warranted by an assessment of the available information and data, including the FRA survey of sanitary facilities and complaint information. The Working Group, or its designated subgroup, met regularly over a period of 15 months to discuss locomotive cab sanitation in the railroad industry. The discussions covered all aspects of sanitation facilities in the locomotive cab, including toilet systems, washing facilities, potable water, ventilation, lighting, trash disposal, provisions for toilet paper and bottled water, servicing, and unique operations or characteristics that might require specialized regulatory treatment.

As a result of its deliberations, the Working Group provided to the full RSAC recommendations for locomotive cab sanitation standards. On December 7, 2000, the full RSAC voted to forward these recommendations to FRA for rulemaking action, and in large measure, this Notice of Proposed rulemaking (NPRM) incorporates the Working Group's product. FRA worked closely with the Working Group in the development of its recommendations, and believes they comprehensively and effectively address sanitation for cab employees. FRA has greatly benefitted from the open, informed exchange of information that has taken place in the Working Group meetings. Although all participants may not agree on each recommendation offered, there is general consensus among labor, management, and manufacturers concerning the primary principles FRA sets forth in this NPRM. FRA believes that the expertise the Working Group industry representatives possess enhance the value of the recommendations, and FRA has made every effort to incorporate them in this proposal. Also, FRA and the Working Group will reassemble after the comment period for this NPRM has closed to consider all comments received, and make recommendations concerning development of a final standard.

IV. Regulatory Treatment of Sanitation by Other Governmental Agencies

In addition to incorporating many of the recommendations of the Working Group in this proposal, FRA reviewed the existing body of regulatory requirements concerning sanitation in the workplace across the governmental spectrum, in order to gain insight on useful regulatory approaches to a subject that is fraught with subjectivity and potential enforcement difficulties. FRA has utilized language and fundamental concepts from these standards, where appropriate, to ensure that railroad employees receive at least an equivalent level of protection as other employees in the United States. Listed below is a summary of the regulatory treatment of potable water, toilet and washing facilities, and access to facilities, which FRA reviewed in preparation of this proposal. This summary is not exhaustive, but attempts to capture the overall regulatory approach taken to the topic of sanitation in the workplace.

Potable Water

In common parlance, potable water is water that is fit or safe to drink. Generally, regulations promulgated by the U.S. Food and Drug Administration (FDA) and the U.S. Environmental Protection Agency (EPA) govern the quality and public consumption of water. As part of FDA's program to control communicable diseases (21 CFR part 1240) and to control interstate conveyance sanitation (21 CFR part 1250), FDA requires operators of a conveyance engaged in interstate traffic to provide only potable water for drinking and culinary purposes. 21 CFR 1240.80 and 1250.82. Interstate traffic is ''the movement of any conveyance or the transportation of persons or property'' within a State and between states, but does not include movement exclusively for repair, rehabilitation, or storage. 21 CFR 1240.3(h). The term ''conveyance'' means any land or air carrier, and most passenger ships and towing vessels. 21 CFR 1250.3(e).

OSHA regulates the quality of water in most workplaces, and requires employers to provide potable water for drinking, washing, and cooking. 29 CFR 1910.141(b), 29 CFR 1926.51(a). These OSHA standards would not apply to workplaces covered by another federal agency's regulations on point; where Memoranda of Understanding between OSHA and other federal agencies oust OSHA's authority; where operation of statutory preemption clauses oust OSHA's authority; or where OSHA has approved a State to address occupational safety and health issues. 29 U.S.C. 651, *et seq.* (For the most part, states that have chosen to run their own occupational safety and health program, issue standards quite similar to the federal OSHA standard, except where a local concern requires more rigorous treatment.)

FDA defines potable water as water that meets EPA's Primary Drinking Water Regulations, which are set forth in 40 CFR part 141. EPA's primary drinking water standards do not succinctly define potable water; rather, the standards set maximum contaminant levels (MCL's) for organic and inorganic chemicals and contaminants, turbidity, radium, particle radioactivity, and other hazardous agents that may not be exceeded in public water systems. The EPA standards also prescribe monitoring, notification, filtration, and disinfection requirements, and address the control of lead and copper in public water systems. Therefore, FDA requires public water systems used for human consumption to meet all of the MCL's and administrative standards set forth in EPA's standards.

OSHA defines potable water in essentially identical fashion [29 CFR 1910.141(a)(v), 29 CFR 1926.51(a)(6)], but the definition includes an outdated citation, which may unnecessarily confuse the issue. OSHA states that potable water is water that meets the quality standards set forth in the U.S. Public Health Service Drinking Water Standards, located at 42 CFR part 72. The Public Health Service administered federal safe drinking water programs prior to EPA, but EPA's current standards (40 CFR part 141) supersede the old regulations referred to in OSHA's definition.

Where nonpotable water is in use, FDA and OSHA require operators and employers to post signs to indicate that the water is not suitable for drinking, washing, or culinary purposes. 29 CFR 1910.141(b)(2), 29 CFR 1926.51(b), 21 CFR 1250.67(b). In addition, systems that carry nonpotable water or other nonpotable substances must be designed and operated to prevent backflow or seepage into the potable water system. 29 CFR 1910.141(b)(2); 29 CFR 1926.51(b); 21 CFR 1250.30(d), 1250.42, and 1250.67. Nonpotable water may be used for cleaning work premises in limited circumstances and where the nonpotable water doesn't contain unsanitary or harmful products such as chemicals and fecal coliform. Nonpotable water may not be used for cleaning areas where food preparation takes place, or in toilet, shower or wash rooms. 29 CFR 1920.141(2).

FDA requires water systems in conveyances to be ''complete and closed from the filling ends to the discharge taps, except for protected vent openings.'' In addition, filling pipes or connections used for filling tanks on conveyances, must be positioned on both sides of all new railway conveyances and on existing conveyances when they undergo heavy repairs. The filling connections must be easy to clean, and located and protected to minimize the risk of contamination. On all new or reconstructed conveyances, water coolers must be an integral part of the closed water system.

Water filters may be used only if they are maintained to prevent contamination. Constant temperature bottles and other containers used for storing potable water must be kept clean and subjected to effective bacteriological treatment as necessary to prevent any contamination. 21 CFR 1250.42. (In another section of part 1250, FDA defines ''new railroad conveyance'' as ''any conveyance placed into service for the first time after July 1, 1972.'' 21 CFR 1250.51. Presumably this definition applies to all requirements in part 1250, but that is unclear from the structure of the subpart.)

FDA has authority to approve water systems. Generally, FDA approves watering points that meet EPA's Primary Drinking Water Regulations, and where the methods of delivery, facilities used for delivery, and the sanitary conditions surrounding the delivery of water prevent the introduction, transmission, or spread of communicable diseases. This approval may be based on the investigations of State departments of health. 21 CFR 1240.83. The FDA will approve the treatment of water aboard conveyances if the system or apparatus produces potable water. This approval may be based on investigations conducted by State representatives. 21 CFR 1240.90.

The states may regulate the quality and consumption of water through their general public health authority. Generally, the states define and treat the subject of potable water in the same way that federal agencies do. The term is defined in a number of ways, but all have essentially the same meaning: Water that has been approved by the State department of health (Tennessee); water that is fit for human consumption in accordance with accepted water supply principles and practices (Illinois); water that complies with the standard for water systems under the California Safe Drinking Water Act (California); water that is safe for drinking, culinary, and domestic purposes, and which meets the requirements of the department of health (Colorado); or water having bacteriological, physical, radiological, and chemical qualities that make it safe and suitable for human drinking, cooking, and washing uses (Louisiana). The states generally require that only potable water be used for human consumption, and any sources that contain nonpotable water must be marked as unsuitable for consumption.

Toilet and Washing Facilities

OSHA's general industry standards (29 CFR part 1910) and construction industry standards (29 CFR part 1926) set forth federal standards for toilet and washing facilities that apply to most workplaces. The general industry standards require employers to provide toilet facilities at all places of employment, except where mobile crews or typically unattended work locations are involved. 29 CFR 1910.141(c). In the case of mobile crews and unattended work stations, employers may avoid providing toilet facilities, so long as ''these employees working at these locations have transportation immediately available to nearby toilet facilities.'' OSHA defines toilet facility as a fixture maintained within a toilet room for the purposes of defecation or urination, or both. 29 CFR 1910.141(a)(2). The general industry standards require employers to provide specific numbers of toilets, based on the number of employees at the site. The sewage disposal method must not endanger the health of the employees. 29 CFR 1910.141(c).

With regard to temporary labor camps, OSHA's general industry standards require employers to provide toilet facilities ''adequate for the capacity of the camp.'' 29 CFR 1910.142(d). The toilet rooms must be located within 200 feet of the sleeping rooms, and the number of toilets provided must be in a ratio of one per 15 employees. 29 CFR 1910.142(d). The toilet rooms must be lighted naturally or artificially with other ''safe lighting at all hours of the day and night,'' and ''an adequate supply of toilet paper must be provided.'' Toilets must ''be kept in a sanitary condition'' and ''cleaned at least daily.'' 29 CFR 1910.142(d).

OSHA's construction standards require employers to provide toilets at all sites. Under temporary field conditions, employers must provide at least one toilet. 29 CFR 1926.51(c). However, job sites not equipped with a sanitary sewer must have a privy, chemical toilet, recirculating toilet, or combustion toilet, unless prohibited by local health codes. 29 CFR 1926.51(c)(3). These requirements do not apply to mobile crews so long as the crews have ''transportation readily available to nearby toilet facilities.'' 29 CFR 1926.51(c)(4).

In addition to the construction and general industry standards, OSHA has promulgated standards for marine work sites, longshoring operations, and agricultural workers. The standards for marine terminals (29 CFR 1917.127) and longshoring operations (29 CFR 1918.95) are nearly identical. Marine terminal employers must provide ''accessible washing and toilet facilities sufficient for the sanitary requirements of employees.'' Longshoring operations must ''provide accessible washing and toilet facilities sufficient for the sanitary requirements of employees'' that are ''readily accessible at the work site.'' The marine and longshoring facilities must include water, soap, hand towels or blowers, and fixed or portable toilets with latch-equipped doors, and the washing and toilet facilities must ''be regularly cleaned and maintained in good order.''

OSHA's regulations for field sanitation in the agricultural industries (29 CFR 1928.110) apply to any agricultural establishment where 11 or more employees are engaged on any given day in hand-labor operations in the field. OSHA defines toilet facility here as

> a fixed or portable facility designed for the purpose of adequate collection and containment of the products of both defecation and urination, which is supplied with toilet paper adequate to employee needs. Toilet facility includes biological, chemical, flush and combustion toilets and sanitary privies.

These toilet facilities must be ''adequately ventilated,'' screened, and have doors that can be locked. The toilet facilities must be ''maintained in accordance with appropriate public health sanitation practices,'' must ''be operational and maintained in clean and sanitary condition,'' and ''disposal of wastes from facilities shall not cause unsanitary conditions.''

FDA has promulgated standards for toilet facilities on conveyances. Toilet and lavatories for food-handling employees must be of ''suitable design and construction'' and must be ''maintained in a clean condition.'' 21. CFR 250.38. In addition, FDA requires that

> where toilet and lavatory facilities are provided on conveyances they shall be so designed as to permit ready cleaning. On conveyances not equipped with retention facilities, toilet hoppers shall be of such design and so located as to prevent spattering of water filling pipes or hydrants.

21 CFR 1250.50. When railroad conveyances that are ''occupied or open to occupancy by travelers, are at a station or servicing area,'' toilets must be kept locked unless measures are taken to prevent contamination of the area or station. 21 CFR 1250.51(c). Human waste may not be discharged from any new railroad conveyance, except at servicing areas approved by the FDA. However, human waste that has been treated to prevent the spread of communicable diseases may be discharged from conveyances, except at stations. 21 CFR 1250.51(a). New railroad conveyance used here means any equipment placed into service after

July 1, 1972. Equipment initiated into service prior to July 1972, may not discharge untreated waste, except where a passenger conveyance operator has filed for and received an extension of time in which to comply. 21 CFR 1250.51(b).

OSHA's general industry standards require that washing facilities ''be maintained in a sanitary condition.'' Lavatories must be provided in all places of employment. However, lavatories need not be present where mobile crews or unattended work sites are involved, so long as employees at these locations have ''transportation readily available to nearby washing facilities.'' 29 CFR 1910.141(d). Each lavatory must have hot and cold, or tepid running water; hand soap or similar cleansing agent; and hand towels or blowers. For purposes of these requirements, lavatory is ''a basin or similar vessel used exclusively for washing of the hands, arms, face, and head.'' 29 CFR 1910.141(a).

OSHA's construction industry standards require employers to provide adequate washing facilities for

> employees engaged in the application of paints, coating, herbicides, or insecticides, or in other operations where contaminants may be harmful to the employees. Such facilities shall be in near proximity to the work site and shall be so equipped as to enable employees to remove such substances.

29 CFR 1926.51(f). Washing facilities must be ''maintained in a sanitary condition.'' Lavatories must be provided at all work sites, except where mobile crews or unattended work sites are involved and employees at these locations have ''transportation readily available to nearby washing facilities.'' Lavatories must have hot and cold, or tepid running water; hand soap or similar cleansing agents; and hand towels or blowers. 29 CFR 1926.51(f).

OSHA's regulations for marine terminals and longshoring activities require employers to provide washing facilities that include, hot, cold, or tepid running water at one accessible location. Where work is being done away from permanent facilities, potable water may provided in lieu of running water. 29 CFR 1917.127(a); 29 CFR 1918.95(a). Also, the facilities must include soap, and hand towels or blowers. The washing facilities must be ''regularly cleaned and maintained in good order.''

OSHA's washing standards for agricultural operations where 11 or more employees are working on any given day, require one hand washing facility for every 20 employees. 29 CFR 1928.110(c)(2). Hand washing facility means a ''basin, container, or outlet with an adequate supply of potable water, soap and single-use towels.'' 29 CFR 1928.110(b). Washing facilities must be maintained

> in accordance with appropriate public health sanitation practices, including * * * hand washing facilities shall be refilled with potable water as necessary to ensure an adequate supply and shall be maintained in a clean and sanitary condition. * * *

29 CFR 1928.110(c)(3).

Generally, the federal OSHA workplace sanitation standards preempt state workplace sanitation standards, except where a state has chosen to operate its own occupational safety and health regulatory program. These programs must be approved by OSHA. [The State-Plan States are Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (covers public employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virgin Islands, Virginia, Washington, Wyoming.] The State-Plan states inspect and enforce their state standards utilizing state personnel. Any fines collected go into the federal general treasury fund, which are usually syphoned back to OSHA and then to the state.

For the most part, the State-Plan states adopt and enforce the federal OSHA general industry (29 CFR part 1910) and construction industry (29 CFR part 1926) standards concerning sanitation facilities in the workplace. However, some of the State-Plan states may adopt a different standard. For instance, California has issued regulations in the State Labor Code, Sanitary Conditions in Factories and Establishments, which provide

> Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. Where there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Cal. Lab. Code section 2350. The State has also issued several sanitation standards for food establishments that include employee facilities. In general, the standards provide that sanitation facilities must be kept separate from food processing and handling, toilet paper must be provided, and the facilities must be ''maintained in a clean and sanitary condition.'' Cal Health & Saf Code section 113335. For milk product plants, California provides that ''a suitable toilet, with self-closing door, and lavatory facilities, soap, and clean towels shall be provided for employees.'' Cal Food & Agr Code section 33777. Also, California adopted a standard for toilets in railroad cabooses:

> It shall be unlawful for any owner or operator of a railroad running through * * * California * * * to operate for or transport the public or its employees in a caboose which is not provided with flush-type toilet facilities, or chemical type toilet facilities. * * *

Cal Pub Util Code section 7614.

Oregon has promulgated sanitation standards that vary slightly from the federal OSHA standards. For instance, Oregon's sanitation requirements for construction projects provide that every construction project estimated to cost $1 million or more must have toilet facilities and facilities for maintaining personal cleanliness for employees. The workplace must include flush toilets, and washing facilities with warm water, wash basins, and soap. ORS section 654.150. Oregon also enforces sanitation standards for agricultural workers, and requires toilet facilities to be ''maintained in clean and sanitary condition.'' In addition, ''hand washing facilities must provide clean water, soap or other suitable cleansing agent, paper towels, and a method for disposal of used towels.'' ORS section 654.174.

Aside from these State-Plan state regulations, a few states that are generally covered by the federal OSHA program have promulgated sanitation standards for employees not covered by the OSHA's standards. Texas issued sanitation standards that apply to employees of city, county, and state offices, who are typically exempted from OSHA's protections. These regulations require that ''adequate toilet facilities'' and water closets be provided, and that the sewage or treatment system comply with the local health authority requirements. 25 TAC section 295.106(n)(2). For purposes of this requirement, ''toilet facility'' is a water-flushed fixture maintained in a toilet room for the purpose of defecation, and ''water closet'' is a toilet facility that is connected to a sewer and flushed with water. 25 TAC section 295.106(d).

The Texas standard also includes ventilation rates that must be met. If there is no applicable local ventilation requirement, the standard imposes a rate measured in cubic feet, per minute, per person. Also, the standard references ventilation recommendations published by the American Society of Heating and Ventilation Engineers and

the American Conference of Governmental Industrial Hygienists. The standard requires toilet rooms to be provided with a minimum ventilation rate of 35 cubic feet of air per minute, per water closet or urinal installed. 25 TAC section 295.106(k). An ''adequate supply of toilet paper with holder shall be provided at every water closet.'' 25 TAC section 295.106(n). The Texas standard also permits the use of chemical toilets, so long as they are maintained ''in a sanitary condition'' and are the type approved by local health authorities. 25 TAC section 295.106(q).

Also, Texas has issued sanitation regulations that apply to temporary places of employment, including maintenance-of-way operations on railroads, agricultural operations, transitory or seasonal work, and work of a mobile nature that may involve a series of locations and movement between them. 25 TAC section 295.161. These regulations do not apply to places of employment already covered by federal OSHA standards or to the operation of railroad rolling stock. Employers who have no more than ''6 employees working at a temporary place of employment on any work day may, on such days,'' are exempt from providing toilet and hand washing facilities, so long as the employer arranges for ''immediate transportation'' to nearby facilities. Employers must provide toilet facilities for all temporary places of employment, that are ''readily accessible to all employees during all working hours and rest periods.'' The facility may be fixed or portable. 25 TAC section 295.166(a). Toilet facility is a ''plumbing device for the purpose of defecation or urination, or both, including water closets and biological or chemical toilets and urinals.'' 25 TAC section 295.162. Toilet rooms and facilities must be

> maintained in a sanitary condition, free of objectionable toilet odors, during all work hours and rest periods. * * * An adequate supply of toilet paper in a suitable holder shall be maintained for each toilet. Covered waste receptacles shall be provided in all toilet rooms used by women.

25 TAC section 295.166(a)(6). Texas has one of the few standards that attempts to define ''sanitary condition.'' It is ''that condition of good order and cleanliness which precludes the probability of disease transmission.'' 25 TAC section 295.162.

This Texas standard also sets specifications for toilets at fixed facilities and portable toilets. At fixed facilities, the toilets must be in a compartment equipped with a latch, installed so that the space around it can be easily cleaned, and provided with some sort of ventilation. Portable toilet facilities must be readily accessible, private, ventilated mechanically or by use of screening, and where waste is stored in a tank, the tank must be vented to the outside. 25 TAC section 295.166(b). In temporary places of employment, employers must provide hand washing facilities that are convenient and maintained in a sanitary condition. They must have running, potable water, a ''suitable cleansing agent,'' and hand towels and proper receptacles for disposal. 25 TAC section 295.167(a).

Access to Sanitation Facilities

The federal OSHA general industry and construction industry standards require employers to provide sanitation facilities at nearly all work sites. However, where mobile crews or unattended work locations are involved, sanitation facilities are not required on-site so long as employees ''have transportation immediately available to nearby toilet facilities'' that otherwise meet the federal requirements. 29 CFR 1910.141; 29 CFR 1926.51(c). In addition to the concept of the presence of facilities, the employer must permit employees to use the available facilities as the need arises. In a recent interpretation released April 6, 1998, OSHA explains that employers may not impose unreasonable restrictions on employee use of sanitary facilities. In support of this interpretation, OSHA states that this view is implicit in the language of the regulation. Furthermore, OSHA states that individuals vary greatly as to the frequency with which they need to use sanitary facilities. This is due to a variety of factors, including pregnancy, stress incontinence, prostatic hypertrophy, use of certain medications, environmental factors such as cold temperatures, high fluid intake, and diet. Access to toilet facilities as needed is critical to preventing the adverse health affects that may develop from voluntary retention.

OSHA regulates access to sanitary facilities in the marine terminal, longshoring, and agricultural workplaces as well. In the marine terminal standards, the access issue is handled minimally: ''the employer must provide accessible washing and toilet facilities sufficient for the sanitary requirements of employees.'' 29 CFR 1917.127 (a). The treatment is similar in the longshoring regulation: ''Accessible washing and toilet facilities sufficient for the sanitary requirements of employees shall be readily accessible at the work site.'' 29 CFR 1918.95(a).

OSHA's agricultural field sanitation standards (29 CFR 1928.110) provide more detail in outlining how an employer must provide access to sanitary facilities. Toilet and hand washing facilities must be ''accessibly located'' and in close proximity to each other. The facilities must be located ''within a one-quarter mile walk'' of each hand laborer's location in the field. If this is not possible because of the local terrain, the facility must be located ''at the point of closest vehicular access.'' Also, access to on-site toilet and hand washing facilities is not required at all for employees who perform field work for a period of 3 hours or less, including transportation time to and from the field during the work day. Employers must notify employees of the location of the sanitation facilities and water, and must give employees ''reasonable opportunities during the workday to use them.'' OSHA also requires agricultural employers to explain the importance of good hygiene, such as using all facilities, drinking sufficient water, washing hands, and so forth.

For the most part, the states regulate access to sanitation facilities in similar fashion. There are a few notable exceptions. Texas' standard for sanitation at temporary places of employment requires that where a site has only 6 employees on any given work day, the employer may avoid providing on-site facilities so long as the employer has arranged for ''immediate transportation for these persons to travel to and from nearby facilities.'' 25 TAC 295.161(d). Also, the Texas standard sets a maximum unimpeded walking distance of no more than 440 yards (400 meters or ¼ mile) from the work site to the facility. If the walk is impeded (requires some climbing), the distance must be shorter, and not to exceed 5 minutes. If it is not possible to comply with this travel distance, the employer must provide facilities at the nearest possible location, and must arrange for transportation during both work and rest periods for immediate travel to and from the facilities. The time needed to reach the facility may not exceed 5 minutes. 25 TAC 295.161(f). The Texas sanitation standard for temporary workplaces also requires that facilities be ''readily accessible to all employees during all working hours and rest periods.'' 25 TAC 295.166(a).

North Dakota has issued sanitation regulations that address access in a different manner than OSHA. The North Dakota standard requires facilities to be

> readily accessible to all employees. Toilet facilities so located that employees must use

more than one floor-to-floor flight of stairs to or from them are not considered as readily accessible. As far as is practicable, toilet facilities should be located within two hundred feet of all locations at which workers are regularly employed.

N.D. Admin. Code 33–03–20–06.

Section-by-Section Analysis

It is important to note that FRA's proposed rule text set forth below differs in some respects from the other federal and state standards because of the unique characteristics of the railroad operating environment. The working environment for railroad cab employees is quite different than the typical American worker. Existing locomotive toilet systems and corresponding maintenance needs are not uniform throughout the industry. Employees may work on a different locomotive and a variety of routes each day of the week. Employee assignments and actual time spent in the cab may vary significantly during a typical week, and toilet systems might vary significantly on each of these occasions. The time it takes to complete a particular route might vary greatly from day-to-day, due to traffic, load, and weather conditions. Small operators typically possess older equipment, and some units may not be equipped with toilet facilities at all. On these properties, employees may generally have access to adequate sanitation facilities along the right-of-way, but there may be occasions when that is difficult to achieve.

There are significant economic and operational barriers to requiring a ''one-size-fits-all'' sanitation standard, given all of these factors, and consequently FRA has made every effort in this proposal to be flexible. The basic requirement set forth in the proposal is that each cab employee should have access to clean, operable toilet facilities, as the need arises for each individual. There may be instances where that basic principle is frustrated, but FRA believes the proposal minimizes that likelihood to the fullest extent possible.

Definitions

The NPRM begins with proposed definitions for key terms used, which would be placed in section 229.5 with the other definitions established for part 229. The definitions are set forth alphabetically. For the terms commuter service, switching service, and transfer train service, please see the detailed discussion of the exceptions to the general requirements, discussed in conjunction with section 229.137(b) below. The proposed definition of the term modesty lock relates to a rudimentary lock that would be required on the door of the sanitation compartment. As proposed, the modesty lock is a lock or latch that is operated by the occupant of the sanitation compartment to provide privacy while in use. It is not required that a modesty lock be designed to prevent deliberate forced entry. For example, some locks could be designed to provide emergency access, to accommodate carrier concerns that access may be required in the event of an accident or health problem. Such access could be gained, for example, by using a coin to turn a slotted pin or using a pencil inserted into a hole to slide a latch. Such simple measures would prevent inadvertent intrusion, thereby maintaining privacy while allowing prompt emergency access. Most locomotives are now equipped with a modesty lock that would meet the proposed definition, and these existing locks vary from property to property. In addition, there are a variety of products available on the market that would meet the requirements of this proposed definition, which vary in price, sophistication, and size. For example, a very simple surface-applied slide latch may be employed to meet the requirements of the proposed definition. At this time, FRA sees no need to prescribe more specific requirements for the modesty lock, so that each railroad carrier may choose the best device among the variety of products available to suit their equipment and cost needs, and so that existing locks which serve the intended purpose of privacy may remain in place.

The proposed definition for potable water references the requirements of the U.S. Environmental Protection Agency drinking water standards, which are recognized as the pertinent reference standard. This proposed definition also states that commercially available bottled water is deemed to be potable water for purposes of the sanitation standards. So long as employees have potable water available in adequate supply for drinking and washing purposes, that is bottled and a recognized commercial product, the running water that might be present in the sanitation facility on some locomotives would not have to strictly meet the EPA drinking water guidelines. On many older locomotives in use, tanks of water are present, and may have been used at one time for drinking and washing purposes. Nothing in this proposal would require the removal of these water tanks. However, with the advent of bottled water, and the knowledge that it is sometimes difficult to maintain ''potable'' water in the large, on-board tanks, carriers typically now provide packs of bottled water to cab employees. Also, on many of the newer locomotives, there is no large water holding tank for employee use, and carriers with these units also utilize the convenience and safety aspects of commercially available bottled water. FRA sees no adverse consequences associated with this usage, and believes it may decrease the risk of illness to cab employees.

The NPRM proposes definitions for the terms sanitary and unsanitary, respectively, which involve the absence or presence of filth, trash, and waste that would cause a reasonable person to believe that the condition might constitute a health hazard; and persistent odor sufficient to deter normal use of the facility or to give rise to a reasonable concern with respect to exposure to hazardous fumes. FRA believes that providing these definitions would add clarity to this issue and would ultimately help the industry to comply with the proposed standard. These terms when used in ordinary discussion are somewhat subjective, and might produce different inferences among different people. Therefore, FRA's proposed definition incorporates the perceptions of a reasonable person, or the average reaction to sanitation facilities, and includes specific examples that would constitute unsanitary conditions. Sanitary conditions are thus defined as the absence of those conditions. The list provided in the proposal is illustrative, not exhaustive, and should serve as guidance to the industry of what FRA would consider noncompliant. Undoubtedly, FRA inspectors and the industry will have to utilize on-the-spot judgments in order to distinguish conditions that are acceptable from those that are not. These proposed definitions are inserted to guide those local decisions in an area that can be very subjective. FRA invites comment on these definitions, including additional or alternate language that may enhance the clarity of the terms.

In discussions subsequent to the last Working Group meeting, some of the railroad representatives expressed frustration at the subjective nature of defining terms like ''sanitary'' and ''unsanitary'' and proposed an alternate definition for the term ''sanitary.''

The railroad's suggested language suggests that only an ''accumulation'' of filth, trash, or human waste is unacceptable whereas visible dirt would not constitute an unsanitary condition. On this point, the RSAC parties generally accept that immaculate conditions cannot be expected, any more than one would expect such

conditions in a public rest room in an airport or office building. However, sanitation compartments are expected to be clean and tidy following periodic servicing and cleaning. However, since the duty to remedy an unsanitary condition arises only at the daily inspection, it is particularly appropriate to specify a standard that describes conditions most people would find unacceptable. The definitions of sanitary and unsanitary that appear in the proposed rule text reflect consideration of this issue of accumulation by including the phrase ''any significant amount of filth, trash, or human waste.''

The Working Group further discussed another important issue raised by the railroads' suggested language: what perception must the reasonable person have before a condition is unacceptable? What amount of filth, trash, or human waste is considered significant by the reasonable person? FRA's approach to the subject is governed by the need to encourage use of sanitary facilities on a regular basis as a matter of good health. Even if a condition is objectively harmless (as determined by later laboratory analysis), the fact that it gives the appearance of possible unhealthfulness could discourage use of the facility and contribute to degraded health.

The railroads' suggested language tries to address the topic of to what extent the railroad is responsible for conditions there were left behind by careless employees or trespassers. To limit the disruption of service because of conditions over which the carrier has limited control, the carriers suggested that certain conditions be treated as unsanitary only if ''caused by mechanical or maintenance failure in the compartment.'' This language may present enforcement difficulties for FRA in determining whether a mechanical or maintenance failure has occurred. This raises issues that could legitimately bear on the exercise of FRA enforcement discretion, yet FRA believes such issues shouldn't serve as a defense to failure to address unsanitary conditions at the daily inspection. No railroad employee should have to contend with unsanitary conditions left behind by a trespasser or prior employee user of the facility.

With the exception of branch lines discussed elsewhere in the preamble, as of the daily inspection, railroads should be prepared to clean a sanitation compartment and service a toilet facility or to place the unit in a trailing position if the sanitation compartment is no longer sanitary or operative.

FRA invites comment on these proposed definitions from all interested parties. This is a very difficult area, and one in which other regulatory bodies have opted to leave these terms undefined. Nonetheless, FRA would like to arrive at suitable definitions for these subjective terms that are consistent with the spirit of the Working Group discussions, and that provide adequate notice to the industry as to what constitutes compliance.

FRA proposes to define sanitation compartment as an enclosed compartment on a locomotive that contains a toilet for employee use. Depending on the type of locomotive, these compartments may be located in the nose of the unit or behind the engineer's seat. Further discussions below explain in detail what each sanitation compartment must contain.

FRA proposes to define toilet facility as a system that automatically or on command of the user removes waste to a place where it is treated, eliminated, or retained such that no solid or non-treated liquid waste is thereafter permitted to be released into the bowl, urinal, or room and that prevents harmful discharges of gases or persistent offensive odors. FRA developed this proposed definition with the assistance of the Working Group. There are a variety of toilets available on the market for use on board locomotives, and FRA did not wish to exclude the use of any of the systems that effectively meet human sanitation needs. Therefore, this definition attempts to establish performance criteria that all of the adequate facilities meet when operating as intended.

To clarify FRA's intent concerning some of the language proposed with respect to toilet facility, ''automatically * * * removing the waste'' does not mean that waste is removed by gravity. Rather, this language is intended to cover systems that possess sensors which flush waste once the occupant leaves the toilet area. It is FRA's understanding that some toilets that may be used on locomotives utilize this feature, and FRA believes it is an effective tool. However, FRA does not intend that systems, without a device to separate the waste tank from the user (such as a deflector), which simply permit waste to flow to holding tanks below the toilet bowl and remain there until emptied, meet this proposed definition. These systems are prone to overfilling and noxious odors, and may go uncleaned for some time because the cleaning or emptying process is very unpleasant and hence doesn't get accomplished. The term ''on command of the user'' means that a flush mechanism is present and functions as intended.

The definition for toilet facility also includes the terms ''harmful'' and ''offensive,'' which may give rise to differing subjective interpretations. FRA and the Working Group discussed these words and ultimately determined that a certain amount of subjectivity is inevitable when personal preferences for cleanliness are involved. Individuals may differ as to what seems ''offensive'' or even ''harmful.'' FRA intends that the toilet system must effectively remove or treat the waste so that odors generated in the toilet area do not linger and penetrate the cab working environment. FRA will use its reasonable judgment in determining whether odors rise to the level of offensiveness or harmfulness.

FRA proposes to define washing system as a system for use by employees to maintain personal cleanliness. As defined here, the facility may include a secured sink, water, antibacterial soap and paper towels; or antibacterial waterless soap; or antibacterial moist towelettes and paper towels; or any combination of antibacterial cleansing agents. It is critical that all employees have available to them a system in which they are able to clean and sanitize their hands after using the toilet. FRA wishes to be as flexible as possible in prescribing washing systems for locomotive cabs. There are a variety of antibacterial agents available on the market that effectively sanitize and disinfect after toilet use. In addition, there are many locomotive units that do not possess sinks and running water for employees to use as washing facilities. As a result of discussions with the Working Group, it is FRA's understanding that most cab crews receive a package of items for use on each trip, and this ''crew pack'' typically includes the sort of washing system that is permitted by this definition. Therefore, so long as employees are provided with one of the options included in the definition, or others that may be developed in the future that provide an equivalent level of sanitation, this portion of the sanitation requirement has been met.

Members of the Working Group expressed concern about restrictions on the placement of ''crew packs.'' Some items in these packages are used by employees while in the sanitation compartment, but these packages also include items that employees use while working or eating in the cab, such as paper towels. In addition, crew packs are available for pick up by locomotive crews at on-duty points throughout the railroad network, and employees often grab several of them to keep in the cab. It is likely that some of these packs won't be placed in the sanitation

compartment when brought on board, and will be placed, as a convenience, near the employee cab stand for use throughout the work shift. For these reasons, FRA sees no reason to require by regulation that crew packs remain at all times in the sanitation compartment and so, this proposal would not place restrictions on the placement or contents of crew packs issued by the railroad carrier.

FRA will revisit these definitions to determine if they may be streamlined without losing clarity, and whether we should provide additional definitions for terms used in the rule text. For instance, a definition of ''defective'' might be helpful to understanding the application of this rule. FRA invites comment from the industry about all of the definitions proposed here and any other terms that should be defined.

Amendment to Section 229.9, Movement of Non-Complying Locomotives

FRA proposes to add paragraph (g) to section 229.9, which prescribes requirements for the movement of non-complying locomotives. The purpose of this addition is to clarify that the provisions set forth in proposed sections 229.137 and 229.139 establish criteria for the movement or handling of locomotives that are discovered to have defective or unsanitary sanitation compartments at the time of the daily inspection. These new, proposed criteria for units with defective sanitation compartments would supercede those set forth in paragraphs (a)–(c) of section 229.9, which require moving designated locomotives as lite or dead, under certain circumstances, and sometimes require en route failures to be addressed at the nearest forward point where the necessary repairs can be accomplished. These new, proposed criteria for units with defective sanitation compartments would also supercede the language in section 229.21(a) and (b), that requires defective items to be repaired prior to departure. As FRA and the Working Group examined the issue of sanitation on locomotives, it was determined that alternative requirements would be more appropriate for the handling of locomotives that are otherwise fit for service, but possess a defective toilet or ventilation system in the sanitation compartment. The power available in these units can be utilized in the train consist, without introducing safety hazards associated with the equipment and train movement. The hazards employees face in the presence of defective or unsanitary facilities are addressed by the requirements set forth in the new proposed sections 229.137 and 229.139. However, FRA invites comment on this and all other provisions set forth in the NPRM.

Amendment to Section 229.21, Daily Inspection

FRA proposes to revise section 229.21 to be consistent with the new proposed requirements in sections 137 and 139. As currently written, section 229.21 requires railroad carriers to repair all items noted on the daily inspection report prior to using the locomotive. However, the new sections 137 and 139 would permit locomotive units with certain non-complying conditions to remain in service beyond the date on which the daily inspection occurs. For instance, carriers may utilize a locomotive with a defective toilet facility in switching service for a period of up to 10 days, at which time the unit must be repaired or used in the trailing position. Also, the railroad may continue to use a locomotive that possesses a defective modesty lock until the next 92-day inspection, at which time the modesty lock must be repaired. The fourth sentence of paragraphs (a) and (b) have been revised to note this change as a result of the new proposed requirements in sections 137 and 139. In addition, the fifth sentence of paragraphs (a) and (b) has been modified to note that the railroads may choose to record repairs of conditions that don't comply with sections 229.137 and 229.139 electronically, rather than on the daily inspection report. Some of the carriers have stated that they have electronic repair reporting systems in place that work more efficiently than paper records. FRA sees no reason to thwart these ongoing programs, so long as they are capable of being audited and effectively track repairs.

Section 229.137(a) Sanitation, General Requirements

This portion of the proposed sanitation standard sets forth the primary requirements for equipping lead locomotives in use with sanitation facilities. FRA's primary concern is providing locomotive crews in the lead units with access to private toilet and washing facilities, that are equipped with adequate ventilation, toilet paper, and trash containers. Paragraph (a)(1) proposes that each lead locomotive in use must contain a sanitation compartment, except as indicated in paragraph (b) where proposed exceptions to this requirement are set forth, or where a unit is designed such that no sanitation compartment exists. For instance, certain locomotive units used by Amtrak have toilet facilities located in the engine room, which is enclosed by a door and otherwise meet the requirements of this paragraph. For purposes of this standard, FRA proposes that the engine room on those Amtrak units constitutes the sanitation compartment for those units.

The sanitation compartment must be adequately ventilated; equipped with a door that closes and possesses a modesty lock; equipped with a toilet facility that meets the requirements of the definition described above; equipped with a washing system that meets the requirements of the definition described above, unless the railroad otherwise provides the washing products to employees when they report for duty or occupy the cab for duty (typically in crew packs), or where the locomotive possesses a stationary sink that is located outside the sanitation compartment; equipped with sufficient toilet paper to meet employee needs, unless the railroad carrier otherwise provides toilet paper to employees when they report for duty or occupy the cab for duty (typically in crew packs); and equipped with a trash receptacle, unless the railroad carrier otherwise provides portable trash receptacles for use in the sanitation compartment to employees upon reporting for duty or occupying the cab for duty (typically in crew packs).

With respect to ventilation in the sanitation compartment, the Working Group and FRA determined that, on much of the existing equipment, a simple vent in the sanitation compartment that opens to facilitate the exchange of fresh air with air in the toilet area sufficiently addresses ventilation. According to discussions with the Working Group, which consists of parties who use and maintain locomotives, these vents adequately diffuse offensive odors, so long as the toilet is sanitary and operating. This vent must be capable of opening or closing on command or control of the user in order to meet the requirement of ''adequately ventilated.'' Other ventilation systems in place on older locomotive equipment must operate as intended, evacuating the air in the sanitation compartment, in order to meet the proposed standard.

The ventilation systems on new locomotive equipment is more complex. The cab's air flow is controlled and pressurized to maximize air flow and equipment performance, and minimize noise levels in the cab. In order to meet the proposed requirement concerning ventilation for these newer units, that portion of the ventilation system required to provide air movement in the sanitation compartment must be

operative, or other, effective alternative provisions for ventilation of the sanitation compartment must be made.

If the ventilation system for the sanitation compartment is defective as of the daily inspection, the railroad carrier may not use the unit in the lead position, unless repaired. If not repaired, the railroad carrier may use the locomotive in trailing position, in switching service consistent with the requirements of section 137, paragraph (b)(1)(ii), or in transfer train service consistent with the requirements of section 137, paragraph (b)(1)(iii). The rationale for permitting this usage when the ventilation system is inoperative, is that trailing units are typically unoccupied, and so no harm would come from utilizing the locomotive in that position, and the exceptions set forth in section 139(b)(1)(ii) and (iii) require the carriers to provide access to adequate facilities elsewhere.

It is important to note that a clean, operable toilet facility will prevent harmful gases or persistent, offensive odors from developing in the first place, and so the most productive way to eliminate the risk of noxious air in the cab is to focus attention on maintaining the toilet facility properly. It is also important to note that if the toilet room door is designed to be equipped with seals, when the seals are maintained and replaced as needed, odors are less likely to migrate to the interior of the cab. If applicable, replacing faulty sanitation compartment door seals would be advisable to further protect the cab occupants from offensive odors, although this proposal does not require such replacement.

In section 137(a)(2), FRA proposes that the sanitation compartment must possess a door that closes, and the door must be equipped with a modesty lock. A door which closes is one that, by design or device, stays shut when the user closes it. For instance, a typical interior, residential door with a door knob is a door that closes. Also, a door that possesses a spring device that pulls the door closed after opening constitutes a door that closes. Similarly, doors used to enclose bathrooms on airplanes close when pulled shut, by way of a device similar to a door knob, and would meet the proposed standard set forth here. (These doors also possess modesty locks to prevent unwanted intrusion). FRA does not mandate the type of closing door the locomotive must possess, so long as the door closes by design or on command of the user. This proposed requirement is necessary to provide basic privacy to employees using the sanitation facilities. A modesty lock is a device operated by the occupant from inside the toilet compartment that prevents entry by a person who is not aware that the compartment is occupied. A modesty lock can typically be disabled from the outside in the event of an emergency that requires entry from outside the toilet compartment. FRA believes employees should have the expectation of privacy when using toilet facilities, consistent with similar standards issued by other regulatory bodies and common sense. A door that closes and that possesses a modesty lock provides that privacy.

The railroad carriers on the Working Group expressed some concerns about a modesty lock that would prevent entry in the event of an emergency, such as an accident or health problem. As defined in this proposal, the railroads may utilize modesty locks that can be disabled in an emergency, so long as the lock prevents an accidental or unnecessary intrusion. FRA does not prescribe specific requirements concerning the form of the modesty lock in this NPRM. Some of the railroad carriers utilize fairly sophisticated, expensive devices, and some utilize an inexpensive, rudimentary slide device. These achieve the desired level of privacy, and also provide the employer with the ability to enter the compartment in the event of an emergency. Either would meet the requirement proposed in this paragraph. As FRA understands it, most locomotives are currently equipped with closing doors that have modesty locks, and if not, the costs associated with adding modesty locks to unequipped units are minimal. In the Working Group discussions, the industry representatives indicated that all units could be equipped with modesty locks by [18 months after publication of the final rule].

As currently drafted, this proposal would require all sanitation compartments to be equipped with a closing door as of the daily inspection. However, if the modesty lock is defective as of the daily inspection, the railroad carrier would not be required to remove a locomotive from service. The carrier would be required to repair the modesty lock on or before the next 92-day inspection required by part 229.

The requirements proposed in § 229.137(a)(3)–(a)(4) require toilets and washing systems in lead locomotives in use. FRA understands that there are many varieties of toilet facilities that function effectively on board locomotives, and there are likely to be technological improvements that will bring about new units in the future. The proposal takes a performance approach to toilet and washing systems, rather than specifying units by name in the definition, so that effective existing systems and systems not yet developed, would not be unintentionally excluded.

As discussed above, FRA does not wish to prescribe a particular type of washing system. However, each lead locomotive must have one of the systems outlined in the proposed definition available for employee use. As currently proposed, this paragraph states that the washing system must be located in the sanitation compartment, unless it is otherwise provided to employees when they report for duty, enter the cab for duty, or where the locomotive possesses a stationary sink that is not located in the sanitation compartment. Based on discussions with the Working Group, FRA understands that on some locomotives washing systems are located in the toilet compartment, but in many cases they are provided to employees in crew packs. Many railroads give crew packs to employees as they begin each work shift, and they typically contain antibacterial soap, paper towels or moist towelettes, toilet paper, and perhaps bottled water. As stated above, FRA sees no need to require the railroad carrier to maintain washing products in the sanitation compartment, so long as employees receive them in crew packs at the beginning of their shift. The crew packs will be made available to crews at their reporting point or onboard the locomotive. The employer must provide these items to employees in order to meet the proposed standard.

This paragraph also permits sinks located adjacent to the sanitation compartment to remain outside the sanitation compartment. According to information received from the Working Group, at least one Class I railroad carrier maintains locomotives with stationary sinks that are not in, or capable of being placed in, the sanitation compartment. FRA sees no safety or health risk associated with this configuration and, therefore, the proposed standard would not prohibit this.

Section 229.137(a)(5) proposes that the sanitation compartment contain toilet paper in sufficient quantity to meet employee needs, unless the railroad carrier otherwise provides employees with toilet paper when they report for duty or occupy the cab for duty. FRA chose not to prescribe a specific amount of toilet paper for each employee in the cab, believing that this issue is best handled through common sense decision making at the local level. As FRA understands it, some railroad carriers maintain toilet paper in the sanitation compartment, and some rely

on crew packs for dissemination of toilet paper. FRA believes either method is adequate, so long as reasonable amounts of toilet paper are provided to meet typical daily needs. If it is determined during the daily inspection that a locomotive is not equipped with sufficient toilet paper, the unit must be equipped prior to departure. For most railroads, this requirement would be accomplished by the use of crew packs, which contain ample toilet paper for each employee's work shift.

Section 229.137(a)(6) proposes to require that each sanitation compartment contain a trash receptacle, unless the railroad carrier provides portable trash receptacles in the employee crew packs. This proposed requirement attempts to provide flexibility to the railroad carrier where space limitations in locomotive sanitation compartments prevent the application of an across-the-board requirement for permanent trash cans or similar fixtures in all sanitation compartments. Therefore, as drafted here, the trash receptacle may be a permanent trash can or similar fixture located in the sanitation compartment, or the trash receptacle may be a small plastic bag that hangs from the door handle or is posted to an interior wall. In addition, where the space limitations in the sanitation compartment prohibit placing any sort of trash receptacle in the sanitation compartment, portable trash bags that can be included in the employee crew packs may be placed outside the sanitation compartment. In these instances, the Working Group and FRA expect that the trash bags will be placed at a location that is as far from the cab stand as possible, such as in the nose of the cab. FRA and members of the Working Group wish to segregate sanitation-related trash from the area where employees work and often eat during the course of the work shift. In large measure, where a trash receptacle cannot be placed in the sanitation compartment, the location of the portable trash bags will be controlled by the employees working in the cab, who have a natural interest in keeping the sanitation-related trash away from the work and eating areas of the cab.

As currently drafted, if it is determined during the daily inspection that the sanitation compartment is not equipped with a trash receptacle, or the crew has not been provided one in a crew pack, the railroad carrier must equip the locomotive with a trash receptacle prior to departure. This may be accomplished by placing a trash receptacle in the sanitation compartment, or by providing portable trash receptacles to employees in their crew packs when they report for duty or occupy the cab for duty.

Section 229.137(b) Exceptions

Paragraph (b) of section 229.137 sets forth exceptions to the general requirements proposed in paragraph (a), discussed above. Paragraph (b)(1)(i)–(v), set forth exceptions to the general requirement of a sanitation compartment in each lead locomotive in use. These exceptions are proposed in order to accommodate certain unique circumstances.

Paragraph (b)(1)(i) would exempt locomotives used in commuter operations where employees have access to sanitation facilities at frequent intervals, either at stations or elsewhere on the train. For purposes of this proposal, commuter service means commuter or short-haul railroad passenger service in a metropolitan or suburban area, and commuter service that was operated by the Consolidated Rail Corporation on January 1, 1979, that runs on rails or electromagnetic guideways, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation. (*See*, 49 CFR part 209, Appendix A) This definition is consistent with the types of railroads that Congress intended to be subject to FRA's jurisdiction under the Safety Act; see 49 U.S.C. 20102(1). Most commuter runs are relatively short in duration, providing multiple times during the day's work shift when facilities can be used at downtown or outlying terminals. Typically, cab crews on commuter operations may use sanitation facilities in the stations they service in the course of their route, or in the passenger cars they are hauling. Therefore, FRA sees no need to require the locomotive cabs on commuter operations to also possess a sanitation facility. In most cases, the configuration of commuter locomotives differs from traditional freight locomotives. Most do not currently possess sanitation compartments and there may be no additional space to add such a compartment.

This exception makes clear that the sanitation facilities employees use must be provided by the commuter railroad carrier. In other words, the employer may not utilize this exception to the general requirement if employees are forced to use sanitation facilities in businesses along the right-of-way that have no connection to the employer, such as restaurants, manufacturing plants, or convenience stores. FRA believes that each commuter railroad operation subject to these standards is responsible for providing sanitation facilities, and employees must not be placed in situations where they are forced to request permission to use the sanitation facilities of foreign establishments during the workday. So long as these conditions are met, and because the nature of commuter operations affords employees the opportunity for frequent access throughout the shift, FRA sees no reason to impose a new, costly requirement for cab toilets on commuter railroad locomotives.

Paragraph (b)(1)(ii) would permit all locomotives engaged in switching service, where employees have access to railroad carrier-provided sanitation facilities outside of the cab, to operate without a sanitation compartment in the cab. For purposes of this paragraph, switching service is defined as the classification of freight cars according to commodity or destination; assembling cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing locomotives and cars for repair or storage; or moving rail equipment in connection with work service that does not constitute a train movement. This definition has developed over time in the railroad industry, and as used here, is consistent with customary usage.

This exception is similar to and based on the same general principle as the exception proposed for commuter service. Employees engaged in switching service are typically in the cab for relatively short periods of time, and have access to sanitation facilities in rail yard buildings or at railroad carrier facilities along the right-of-way as needed. Generally, these employees are not captive in a locomotive cab for interminable time periods, where a sanitation facility clearly must be provided. Therefore, FRA proposes that locomotives involved in switching service need not possess a toilet in the cab, so long as employees have ready access to railroad carrier-provided sanitation facilities along the right-of-way or in yard facilities at frequent intervals during the work shift. If a railroad carrier is unable to conform with this concept, this proposed exception could not apply. If the switching routes place cab employees at remote locations where railroad carrier sanitation facilities are not accessible to employees, then the carrier must provide a locomotive that is equipped with all of the items required by paragraph (a) of this section, which is discussed below. (It is important to note that this NPRM would prohibit the removal of toilet facilities from locomotives engaged in switching service, where those locomotives are

equipped with a toilet on the effective date of the final standards. This is discussed in greater detail below.)

Paragraph (b)(1)(iii) relates to transfer trains, and tracks the same logic as the exceptions proposed for commuter operations and switching service. Transfer trains are trains that travel between a point of origin and a point of final destination not exceeding twenty miles and do not perform switching service. *See*, 49 CFR 232.13(e)(1) (Specifying the air brake test required for transfer trains.) Because the cab employees engaged in transfer train service generally have the opportunity to use railroad carrier-provided sanitation facilities, as needed during the course of their work shift, FRA proposes that the existing locomotives used in transfer service need not possess a sanitation compartment. These employees are less likely to face long periods of time in the locomotive without access to sanitation facilities in rail yard buildings or at railroad carrier-owned facilities along the right-of-way. If the railroad carrier is unable to provide such facilities to accommodate employee needs, then the carrier must utilize locomotives that possess toilet facilities that otherwise meet the requirements of this proposal. (It is important to note that this NPRM would prohibit the removal of toilet facilities from locomotives engaged in transfer service, where those locomotives are equipped with a toilet on the effective date of the final standards. Also, all locomotives manufactured after the effective date of the final rule in this matter must be equipped with a toilet facility accessible without going outside the locomotive. These requirements are discussed in greater detail below.)

Paragraph (b)(1)(iv) proposes to exempt locomotives of Class III railroad carriers that are not equipped with toilet facilities, and that are not engaged in switching or transfer train service, from the requirement of having a toilet facility in the cab. However, as is stated in the proposed exception, these Class III railroad carriers must provide or arrange for sanitation facilities along the right-of-way. (It is important to note that the NPRM would prohibit the removal of toilet facilities from locomotives, if those locomotives are equipped with a toilet on the effective date of the final standards. This is discussed in detail below.)

Class III railroad carriers are small businesses with limited capital margins. (The current definition of these entities, as established by the Surface Transportation Board, is a railroad carrier that earns $20 million or less in annual operating revenues.) Typically, purchasing new locomotives would be out of the question for these companies, and spending considerable funds to retrofit old units could mean that critical safety programs in other disciplines would suffer. The older locomotive equipment generally cascades down to the Class III railroad carriers, and over time the Class III railroad carriers will acquire toilet-equipped locomotives. Currently, many of the older locomotive units are not equipped with toilet facilities, and some of the units actually lack space for toilet facilities, depending on the purpose it was originally intended to serve. FRA believes that it would create great financial hardship for these entities to require sanitation retrofits or new locomotive purchases. Some of the small operators might simply opt out of the market, and for others, the diversion of funds could create safety problems elsewhere. Therefore, FRA proposes this exception to ensure that the proposed sanitation standards do not give rise to additional safety concerns or destroy otherwise productive business concerns. However, the Class III railroad carriers that choose to avail themselves of this exception must provide or arrange for adequate sanitation facilities, which means they must be available to employees readily, frequently, and as needed along the right-of-way.

This proposed exception would not permit a Class III railroad carrier to advise employees to use sanitation facilities at restaurants and other public establishments that have no business connection to the carrier. These Class III employers may not assume that employees will locate sufficient sanitation facilities on their own. The Class III railroad carrier must take affirmative action to see that the cab employees have frequent access as needed to adequate sanitary facilities. If it is not possible for the railroad carrier to provide adequate sanitary facilities along the right-of-way, then it is expected that the carrier will consult with customers or other businesses along the route for the specific purpose of garnering access to adequate sanitation facilities for employees who must work in cabs without sanitation compartments. In addition, the Class III railroad carrier must communicate to employees the locations and, as appropriate, hours of availability of access to the sanitation facilities provided by the carrier via customers or other businesses along the route. FRA and the Working Group expect that the Class III carrier will consider 24-hour railroad operations in these determinations, and which facilities will be available during every work shift.

Paragraph (b)(1)(v) proposes that the locomotives of scenic, tourist, historic, or excursion railroads, which are not steam-powered, which operate on the general system, and are otherwise covered by the locomotive safety standards set forth in 49 CFR part 229 would not be required to be equipped with compliant toilet facilities, so long as employees working in these locomotives have access to appropriate facilities at frequent intervals during their work shift. The rationale for this proposal is similar to the proposed exceptions for Class III entities. The railroads addressed by this paragraph, for the most part, have limited profit margins and utilize older equipment that may not possess sanitation facilities on board. The costs to retrofit these units would adversely impact the viability of these operations, and on some of the present equipment, may not be possible. FRA believes that so long as the employees who work on these units are provided appropriate facilities throughout the course of the work shift, there would be no reason to require these locomotives to be equipped with sanitation facilities. FRA invites comment on this, and all other proposals set forth in the NPRM, particularly with respect to long-distance excursion operations that typically employ locomotives already equipped with toilet facilities. Finally, it's important to note that representatives of tourist and excursion railroads have suggested that FRA modify the language in this paragraph to clarify that the tourist operator is responsible for providing access to adequate toilet facilities rather than the railroad owner of the track on which the tourist organization travels. FRA believes that this would be advisable in the final rule, and invites comment on it now.

It is difficult to define with specificity the terms ''ready access'' and ''frequent intervals,'' which are used in paragraphs (b)(1)(i)–(b)(1)(v) of this section of the NPRM. FRA and the Working Group spent a great deal of time discussing the terms and the concepts they infer. All struggled with appropriate language that would capture the concepts accurately and still provide sufficient flexibility to accommodate the changeable nature of railroad operations. The Working Group discussed establishing specific time periods or distances traveled that might equate to a satisfactory and concise definition of these terms. However, members of the Working Group recognized that individuals' access needs vary greatly from person-to-

person and from day-to-day. Further, the Working Group noted that it may take 5 hours to traverse 5 miles on a given day, depending on traffic, weather, load, and other considerations. Therefore, the Working Group rejected the notion of a hard and fast time or mileage limit as an appropriate solution to this question.

Instead, the Working Group offered an explanation of the concept of adequate access to sanitation facilities, where locomotives covered by these exceptions are not equipped with a toilet facility: The crew members would have immediate accommodations made by the local railroad carrier officials on reasonable demand or need by a crew member to provide access to a railroad carrier's sanitation facilities at frequent intervals during the course of their work shift. As used here, the term ''immediate accommodations'' means that the employer would begin the process of providing access to sanitation facilities when the employee requests it.

The general principle that FRA and the Working Group intend to capture with these terms is that employees would have access to sanitation facilities, as the need arises, that are located in close proximity to the work site, and that are owned or operated by the railroad carrier. In many circumstances, these terms simply mean an employee could disembark from a locomotive in a yard, use a toilet in a nearby building, and then return to the locomotive cab. However, if employees work in remote locations where sanitation facilities do not exist, the railroad carrier would be required to provide employees with alternate transportation to a nearby site, in order to make use of one of the proposed exceptions listed above. These terms follow the logic of the OSHA standards and recent interpretation, which place priority on access as the need arises. This principle is important because of the adverse health effects that may occur if access is denied. Also, this principle enhances an employee's ability to focus on the work being done, and improves the likelihood that safe train movements will occur.

It is important to note that each of these exceptions would require the carriers to provide facilities that ''meet otherwise applicable sanitation standards.'' With this language, FRA intends that the alternate sanitation facilities offered by the carrier must meet the standards for sanitation equipment and servicing that apply to that workplace. For instance, if the alternate facility is located in an office building along the right-of-way that falls within the authority of OSHA for purposes of sanitation, FRA expects that the carrier will ensure that those OSHA standards concerning the presence and condition of toilet and washing facilities will be met. If this proposed standard is adopted as a final rule, FRA would be exercising jurisdiction over cab employee access to sanitary facilities, specific sanitation equipment on rolling stock, and the servicing and use of that equipment on rolling stock. FRA does not intend to oust OSHA's existing authority with respect to sanitation equipment, or its maintenance, where it exists elsewhere.

Paragraphs (b)(2)(i) and (b)(2)(ii) propose temporary exceptions to the requirement of a toilet facility that conforms with the proposed definition of toilet facility, until those nonconforming toilet facilities have been replaced with compliant ones. Paragraph (b)(2)(i) addresses a specific type of toilet facility that a Class I railroad carrier possesses on approximately 500 locomotive units. This toilet, referred to as a ''Bogan,'' is similar to portable toilets that are often used at outdoor events, where the need for mobile, basic toilet facilities exists. This toilet, which does not meet the requirements of the proposed definition for toilet facility, has no flush mechanism and simply permits waste to flow to a tank below the toilet seat for storage, treatment, and periodic disposal. Chemicals are placed in the storage tank to treat the waste and minimize odors that would otherwise accumulate. Maintenance of these toilets may be a greater challenge than is the case with more contemporary technology, and failure to properly maintain them could result in unacceptable conditions.

The Class I railroad carrier owner of the Bogan toilets is replacing these units as they become defective, and is retiring them as the locomotives on which they are situated are retired. The Bogan toilets are being replaced with toilets that incorporate advanced technology. For that reason, the Working Group recommended that FRA permit these toilets to remain in use until they are retired by the railroad carrier as part of the railroad carrier's retirement plan. The proposed rule text permits the Bogan toilet to remain in service on this Class I railroad carrier until they become defective or are replaced with conforming units, whichever occurs first. Although FRA would prefer more modern systems in place on all locomotives, FRA is not presently aware of an imminent, serious safety or health risk associated with this type of unit that would mandate immediate removal. Given the costs associated with toilet retrofit and the railroad carrier's own plan to replace the units, FRA believes that in this instance an exception is appropriate. Finally, it is important to note that this carrier objects to and disagrees with any inference or statement that the current systems in place are inadequate or are not properly maintained.

As written, this exception would apply only to the Class I railroad carrier that FRA knows possesses these toilet systems. FRA is unaware of any other railroad carriers that utilize this toilet. However, FRA requests comments from the industry as to whether this system exists on other properties, and if so, what plans those employers may have for retiring or replacing the toilets. If the system is more prevalent than FRA now believes it is, final rule text language may need to be altered to accommodate the use of the systems on those properties. In making this determination, FRA would consider a variety of factors, including the number of toilets involved, the operational characteristics of the railroad operations in which the toilets are used, the programs the employer has in place to retire or retrofit the toilets, the economic status of the railroad carrier involved, and the effectiveness of the existing maintenance and servicing program for the toilet. As is stated above, FRA wishes to restrict and eventually eliminate the use of toilets that do not meet the definition of toilet facility proposed in this NPRM. In connection with this exception and the exception set forth in paragraph (b)(2)(ii) below, it is important to note that certain enforceable state standards may require flush toilets for cab employees, and the final standard FRA issues in this proceeding would preempt those standards. Therefore, FRA wishes to make every effort to minimize the use of non-flush systems in this proceeding. Clearly, FRA and the Working Group have no desire to issue or recommend standards that ultimately permit the use of systems that are more rudimentary than those permitted by existing state standards. However, FRA understands that certain accommodations may be necessary in the short term in order to achieve that goal.

Paragraph (b)(2)(ii) addresses a similar situation that exists on another Class I railroad carrier, in which the toilet facility in place on a majority of the carrier's locomotives does not comply with the proposed definition of toilet facility. These toilet facilities utilize carrier-provided plastic liners to collect human waste; these liners are then sealed, placed in sealed waste containers, and delivered by the

employees to the carrier for disposal. Although the carrier believes that this system adequately addresses sanitation needs for cab employees, concerns about the system have been raised by employees, landowners along the right-of-way, and certain State agencies. Further, as the carrier recognizes, proper administration of this system off the carrier's home lines sometimes is not practicable, and ''power sharing'' arrangements in the railroad industry are growing. FRA agrees that this system should be retired, but also recognizes the significant capital and labor costs associated with a massive retrofit campaign. The carrier has initiated a replacement program in which approximately 30 locomotives per month are being retrofitted with new toilet facilities that would satisfy this proposed rule. In addition, this carrier has decided not to deliver locomotives with the older toilet facilities in the lead position to other carriers in interchange, and this proposal would incorporate that restriction for the period of retrofit. Finally, this carrier has stated its intention to make every reasonable effort to place compliant locomotives in the lead position on its system wherever possible. This sort of consist management commitment is sometimes difficult to achieve, given the competing priorities that other safety requirements and safety risks present. However, FRA and the Working Group are satisfied at this point in time that the retrofit program and the carrier's commitment to place locomotives with compliant toilets in the lead where possible, is the best solution to the problem presented. Based on the number of units in need of retrofit, FRA and the Working Group estimate that all of the carrier's locomotives are capable of being in compliance with the proposed sanitation standards by July 1, 2003. Therefore, based on all information currently available, FRA proposes to permit the Class I railroad carrier to operate locomotives in the lead position on its lines with non-compliant units until July 1, 2003. After that date, all lead units would be required to possess compliant toilet facilities. Finally, it is important to note that this carrier objects to and disagrees with any inference or statement that the current systems in place are inadequate or are not properly maintained.

As written, this exception would apply only to the Class I railroad carrier that FRA knows possesses these toilet systems. FRA is unaware of any other railroad carriers that utilize this toilet. However, FRA requests comments from the industry as to whether this system exists on other properties, and if so, what plans those employers may have for retiring or replacing the toilets. If the system is more prevalent than FRA now believes it is, final rule text language may need to be altered to accommodate the use of the systems on those properties. In making this determination, FRA would consider a variety of factors, including the number of toilets involved, the operational characteristics of the railroad operations in which the toilets are used, the programs the railroad carrier has in place to retire or retrofit the toilets, the economic status of the railroad carrier involved, and the effectiveness of the existing maintenance and servicing program for the toilet. As is stated above, FRA wishes to restrict and eventually eliminate the use of toilets that do not meet the definition of toilet facility proposed in this NPRM. However, FRA understands that certain accommodations may be necessary in the short term in order to achieve that goal.

With respect to paragraphs (b)(2)(i) and (b)(2)(ii), it is important to clarify that the proposed exceptions relate only to the type of toilet facility in use. The other proposed requirements set forth in this NPRM would apply to these railroads and their equipment according to their terms. For instance, the requirements set forth in paragraphs (a)(1)–(2), and (a)(4)–(6) would apply to these locomotive units. Similarly, section 229.139, which relates to servicing and operative equipment, would require the units covered by paragraphs (b)(2)(i) and (b)(2)(ii) to operate as intended and be located in sanitation compartments that are ventilated and free of debris and waste.

Paragraph (c) of section 137 would prohibit a railroad carrier from placing a locomotive with an unsanitary or defective toilet facility in the lead position. This determination would be made as of the time of the daily inspection required by 49 CFR § 229.21. En route failures that occur after the daily inspection would impose no burden on the railroad carrier, until the next daily inspection is due. However, according to Working Group members, the current railroad practice with respect to en route toilet failures involves moving defective toilet units into a trailing position, where it is possible to do so. Although the NPRM does not require such movement, the enhanced focus on sanitation facilities that will naturally occur as a result of this standard should increase the likelihood that the practice will proliferate. In addition, Working Group members stated that currently, employees may require changes in train consist where imminent safety hazards are present. Nothing in this proposal would alter that process.

The requirement set forth in paragraph (c) reflects the fundamental need to provide employees with a clean, safe workplace. It is inconsistent with notions of decency and the minimum requirements for workplaces in other industries to expect employees to work effectively and safely if unsanitary waste or deplorable odors are present. The Working Group agrees with this principle and believes that the proposed standard in the NPRM is appropriate for the railroad industry.

In order for a locomotive to be placed or remain in the lead position as of the daily inspection, all aspects of the toilet facility must be operating as intended and it must be clean. The chemicals required by certain systems must be supplied in the appropriate amount so that the toilet will operate as intended; if the system calls for antifreeze, it must be present during winter months to prevent freezing; any integral flush mechanisms or sensors must operate as intended; and all components of the system intended to be present must be present.

As discussed above, FRA has proposed definitions for the terms 'unsanitary' and 'sanitary' to assist the industry and FRA inspectors to determine conditions that are noncompliant. FRA believes that most individuals have a general sense of conditions that would constitute unsanitary facilities, and FRA inspectors would utilize that sensible approach to enforcing this standard, but the definition should provide additional clarity to that process. As for mandating specific servicing requirements, FRA and the Working Group currently believe that the railroad carriers, in consultation with their labor forces, are in the best position to determine when toilet facilities must be emptied and cleaned. These decisions are based on a variety of factors, including degree of use, length of trip, weather conditions, size of crew, and the specifications of the system in place. However, FRA may consider adopting more specific requirements for servicing the toilets, due to concerns that have been raised by railroad employees, and this issue is discussed in greater detail below.

In discussions with members of the Working Group subsequent to the last Working Group meeting, some of the carriers raised concerns about the difficulties of providing a substitute locomotive that possesses a sanitary, operable toilet facility on branch lines in remote locations. The carriers stated

that in remote areas, there may be only one locomotive available and if it does not comply with the sanitation standards as of the daily inspection, the crew could not move the locomotive for repair or to another location where additional units would be available. Presumably, the crew would have to wait for a compliant locomotive to arrive at the remote location, and this would give rise to other issues, such as hours of service restrictions, traffic problems, and the availability of sanitation facilities. Therefore, this NPRM contains an exception to the requirement set forth in paragraph (c) for branch lines where locomotives with defective or unsanitary toilet facilities as of the daily inspection may be located and the facilities cannot be repaired, cleaned, or switched with another, compliant locomotive. Although this situation is probably rare, FRA and the Working Group believe it would be prudent to craft an exception to cover this scenario. The proposal includes this exception, but we invite comment from members of the industry on whether the language could be refined further to more artfully capture the narrow instances in which the exception is intended to apply. Conventional industry language may use the term ''branch line'' where it has broad meaning and application, and FRA does not wish to insert that broader meaning here. The exception is intended to cover remote locations where traffic is limited, and FRA invites comment on how the language might be improved to state this clearly. Paragraph (c)(i) sets forth all of the conditions that must be present in order for the railroad to utilize this exception and continue to use the locomotive:

—The defective or unsanitary condition must be discovered at a location where there are no other suitable (*i.e.,* has sufficient power to complete the haul) locomotives available for use, it isn't possible to switch another locomotive into the lead position, or which is not equipped for repair or cleaning;

—The locomotive, while noncompliant, didn't travel through a location where it could have been cleaned, repaired or switched with a compliant locomotive since its last required daily inspection;

—Upon reasonable request, the carriers must arrange for access to toilet facilities for employees assigned to work on the locomotive during the time they must work on it;

—If unsanitary conditions exist, the sanitation compartment door must be closed and sufficient ventilation provided to the cab compartment so that employees aren't exposed to strong, persistent chemical or human waste odors sufficient to deter use of the facility or to give rise to a reasonable concern with respect to exposure to hazardous fumes; and

—The locomotive must be repaired, cleaned or switched with a compliant unit at the next daily inspection or the next location at which such service can take place, whichever occurs first.

It is important to note that this exception cannot be used where a second locomotive exists, but it also contains a defective or unsanitary sanitation compartment. The proposed rule does not encourage deferral of necessary maintenance and cleaning where locomotives can reasonably be expected to be pressed into service as lead units at any time. This proposed exception is available only where there is just one locomotive available and it possesses a defective or unsanitary sanitation compartment, or where there is no additional track to use to facilitate switching a compliant locomotive into the lead position, and all of the other conditions listed above and in the rule text are present. Some members of the Working Group expressed concern about how this exception might play out when push-pull service is in use on a branch line. FRA invites comment on this issue from the industry. FRA does not believe that the proposal would be unworkable in push-pull service, but asks interested parties to discuss any difficulties that might arise.

It is also important to note that to use this exception, the proposed rule requires the railroad carrier to arrange for access to a toilet facility outside the lead locomotive, upon reasonable request of an employee assigned to work onboard the locomotive. While it remains the responsibility of the railroad to provide access to a toilet facility, in most cases, FRA expects access will be achieved by a means as simple as the crew making use of a toilet facility at a known place of business, such as a restaurant, that is regularly frequented by the crew during their breaks. On the other hand, access to a toilet facility outside the locomotive that meets otherwise applicable sanitation standards may not be available to the crew during the work shift for reasons such as personal safety while not on railroad property or simply that the time required for an employee to walk to a toilet facility may impede railroad operations. In such situations, the railroad may meet a reasonable request by providing transportation to a toilet facility during the work shift. This concept is distinct from the other exceptions in paragraph 137(b) of the proposed rule that use the terms ''ready access to carrier-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift.'' In view of the fact that the branch line situation typically involves remote locations where ''ready access'' may be unavailable and should occur rarely, the proposed rule would impose a different standard than is required in other operational settings.

Paragraph (d) of section 137 provides that if a railroad carrier determines that a toilet facility is defective or unsanitary at the time of the daily inspection, the carrier may utilize the unit in a trailing position. However, if the unit is subsequently used to haul employees, the unit must be cleaned prior to occupancy and defective toilet facilities must be clearly marked as unavailable for use. This paragraph and others that follow establish the requirement that occupied locomotives should not expose employees to unsanitary conditions. FRA recognizes that locomotive toilets periodically malfunction. The railroad carrier should not be penalized for these events, and under prescribed circumstances, should be able to utilize the available power in the equipment. However, the railroad carrier must minimize employee exposure to the hazards of untreated waste and other unsanitary conditions. Therefore, the carrier should clean any trailing units if they will be occupied, and must mark defective toilet facilities so that employees understand the toilet facility cannot be used.

During this process, the Working Group did not believe it necessary to recommend specific requirements for identifying defective sanitation units, and FRA sees no reason to do so either. The Working Group will reassemble to consider comments to this proposed rule and develop recommendations for the final standard, and so may reconsider this issue at that time. Currently, some carriers use a red tag to indicate defective conditions, and some railroads tape the toilet seat so that it cannot be used. Either method, and others that may be in use, are sufficient, so long as a reasonable person entering the cab would understand that the toilet facility is defective and should not be used.

Paragraph (e) proposes that when it is determined during the daily inspection that a road locomotive toilet facility is defective, but sanitary, the railroad carrier may move the locomotive into switching or transfer train service for a very brief period of time, consistent with the requirements for that service,

as discussed above. The unit may be used in this service for a period not to exceed 10 days, at which time it must be repaired or used in trailing position. If the railroad carrier chooses to utilize the equipment in this manner prior to its repair, the carrier must clearly mark the defective toilet facility so that a reasonable person would know not to use the toilet facility. The Working Group and FRA do not expect the railroads to reassign locomotives from road to yard service solely for the purpose of circumventing any part of this regulation. FRA understands that there are overriding incentives for railroads to keep road units with defective toilets in trailing road service until the next periodic inspection, rather than reassigning them to yard service. [It is also important to note here that this 10-day period may be shortened due to the fact the carriers may not need this amount of time to make effective repairs. See the discussion for proposed requirement for section 229.139(d) below for a more detailed discussion of this issue.]

Paragraph (f) of this section proposes that if the railroad carrier discovers during the daily inspection that a lead locomotive is not equipped with sufficient toilet paper, washing facilities, or a trash receptacle, the carrier must equip the unit prior to departure. This proposal reflects FRA's belief that it would be unwise to require a railroad carrier to change the consist makeup due to a lack of toilet paper, washing facilities, or a trash bag. However, FRA believes these items would be relatively easy to locate and supply to cab crews, and so should be provided before any employee is expected to depart. Therefore, the railroad carrier must simply equip the locomotive with these items prior to departure. As FRA understands present railroad practice, most railroad carriers supply these items to cab employees as they begin their work shift, and so this proposed requirement should not impose excessive burdens on the industry.

Paragraph (g) proposes that when it is discovered during the daily inspection that the sanitation compartment ventilation is defective, the carrier must repair it prior to departure, or place the locomotive in trailing position, in switching service consistent with the requirements of paragraph (b)(1)(ii), or in transfer service consistent with the requirements of (b)(1)(iii). As discussed earlier, the rationale for permitting this usage when the ventilation system is inoperative, is that trailing units are typically unoccupied, and so no harm would come from utilizing the locomotive in that position. In addition, the exceptions set forth in section 137(b)(1)(ii) and (iii) require the carriers to provide access to adequate facilities elsewhere, and so employees would be using ventilated facilities in those circumstances.

Paragraph (h) of section 137 provides that if the sanitation compartment is not equipped with a door that closes when pulled shut as of the daily inspection, the door must be repaired prior to departure, or the locomotive must be moved from lead position to trailing, transfer service, or switching service. In addition, this paragraph proposes that if the modesty lock, required to be present in order to prevent unintended intrusion, is defective as of the daily inspection, the locomotive may remain in use in the lead so long as the lock is repaired by the date on which the next 92-day inspection. [See discussion for section 229.139(e) below.] The rationale for this proposed paragraph is that the first priority for cab employees is to have the benefit of a door that closes while using toilet facilities, for each assignment in a lead locomotive in use. Therefore, the door must close as designed, as of the daily inspection. So long as the compartment door closes as it should, a unit with a defective modesty lock may remain in service until the date on which the next 92-day inspection would be required. FRA believes that affirming an employee's expectation of privacy while using toilet facilities will contribute to appropriate use of the facilities and consequent good health, and that this proposal accomplishes that end effectively. The proposal balances legitimate employee privacy needs, by requiring a door that closes, and the legitimate difficulties associated with making use of a locomotive while moving it to the correct repair facility, by permitting the locomotive with a defective modesty lock to remain in service for a limited time period.

Paragraph (i) provides that all locomotives which are equipped with a toilet facility on the effective date of the final sanitation rule, must retain and maintain those toilet facilities, even where the locomotive units might be relegated to switching service or transfer train service, where toilet facilities are not always required by this proposal. There is a small exception to this proposed requirement, which involves cabs that are not occupied. Where a railroad carrier downgrades a locomotive to ''booster'' or ''slug'' service, removing many of the interior appurtenances, so that the unit is no longer intended to be occupied in movement, the carrier may also remove the toilet facility. FRA strongly believes that this proposed paragraph is necessary to ensure that employee protections in the area of sanitation are not diminished as a result of this rulemaking. It would be ironic and unwise if FRA initiated a rulemaking, in consultation with industry representatives, to improve employee working conditions and railroad safety, which ultimately resulted in a workplace that was more hazardous to employees and railroad safety. Based on the proposed exceptions for switching and transfer train service, some railroad carriers might opt to remove toilet facilities in units being used in that service, to avoid maintenance and servicing costs. FRA proposes here to eliminate that alternative. Railroad carriers must retain toilets in equipped units in order to provide the most accommodating access to sanitation facilities available—an operable toilet on board the locomotive. Clearly, a toilet facility on the locomotive is preferable to one along the right-of-way. Employees can utilize it as the need arises, which diminishes the risk of health problems. They would not be forced to leave running equipment on the track or slow planned operations, which can create safety risks. Also, as older locomotives cascade down to the Class III railroads carriers, this proposal enhances the likelihood that small entities will inherit locomotives equipped with toilet facilities.

Paragraph (j) proposes that all new locomotive purchases made subsequent to the effective date of this rule, with two narrow exceptions, must include a toilet facility accessible to cab employees without walking outside. The design may require walking out of the cab into other compartments of the locomotive, but walking outside to use the toilet is disfavored. This paragraph reflects FRA's desire that all cab employees will work in a locomotive equipped with a toilet facility in the future.

The two narrow exceptions to this proposed requirement relate to switching units that are built exclusively for switching service and commuter locomotives designed exclusively for commuter service. With respect to the switching service exception, the Working Group and FRA recognize that these units that are created exclusively for yard service, and are often too small and oddly shaped to accommodate a toilet facility. Also, because of their size and configuration, these units are not used on long hauls over the road on which employees would clearly need toilet facilities in the cab. Under all circumstances, these

units would be used in yard service, where railroad carrier-provided sanitation facilities exist along the right-of-way, and are available for employee use. New units used in transfer train service would be required to be fitted with toilet facilities.

Similarly, the Working Group and FRA presently believe that commuter operations provide cab employees with sufficient access to sanitation facilities, along the right-of-way and elsewhere on the train. Therefore, FRA believes that the new construction requirements proposed in this paragraph need not include commuter locomotives.

With this requirement, FRA does not wish to chill innovation in the design of new equipment, but believes that toilet facilities should be located in close proximity to cab employees in lead locomotives, switching service, and transfer train service. Members of the industry agree that this proposal is appropriate.

Finally, paragraph (k) requires that where the washing system in place on the lead locomotive includes the use of water, the water must be potable. This proposed requirement is consistent with the principle that nonpotable water should not be used by humans for personal cleanliness, due to bacteria that may be present. As discussed above, railroad carriers may use waterless soaps, now available commercially, which would not require water; they may use bottled water that is potable; or they may use water in holding tanks located in the toilet compartment, so long as it meets the safe drinking water standards.

Section 229.139 Sanitation, Servicing Requirements

Section 229.139 proposes minimum servicing standards to ensure that sanitation compartments in occupied locomotives are not unsanitary or defective. Paragraph (a) states that the railroad carrier must service the sanitation compartments of lead locomotives in use so that they are sanitary. This proposed requirement means that the floors, toilet facility, and washing system must be free of trash and waste. It is reasonable to expect that, as a locomotive is used, some amount of dust and trash would accumulate. However, in order to meet the requirements of paragraph (a), the trash must be removed at regular intervals, and used, soiled paper products or human waste may not be present on the floor.

Paragraph (b) of section 139 requires that all components required by paragraph (a) of section 137 for the lead locomotive must be present consistent with the requirements of sections 137 and 139, and must be maintained so that they operate as intended. In this NPRM, FRA does not dictate when and how railroad carriers must empty, clean, and service toilets. Members of the Working Group advised FRA that these decisions vary greatly from property to property, and depend on weather conditions, degree of use, and the toilet system in place. These members further advised that a federal standard that established specific thresholds and time limits could result in unnecessary costs for some entities, and could actually reduce the level of safety and sanitation on others. Based on that information, FRA proposes language that requires each railroad carrier to develop an effective servicing program that suits the traffic, use, weather, equipment and other needs of the system so that cab employees are not exposed to full toilet bowls, missing seats, offensive odors, frozen units, dirty floors, ineffective ventilation systems, or any other condition that can reasonably be deemed unsanitary.

Following the Working Group's final meeting on sanitation and after FRA initially formulated this NPRM, a labor organization submitted information to FRA concerning a toilet system prevalent in the industry that utilizes a bacteriological treatment system. When this system functions as intended, water (with no biohazards remaining) is discharged to the track structure. The commenter alleges that this system may expose employees along the right-of-way to untreated human waste, or to substances that are otherwise harmful if the railroad carrier fails to service the toilet properly. This toilet meets the proposed definition of toilet facility, and presumably would continue to exist in large numbers throughout the industry after publication of any final rule in this proceeding. The regulations of the FDA, discussed above, prohibit the discharge of untreated waste from railroad equipment placed in service after July 1, 1972, and permit the discharge of waste that has been suitably treated to prevent disease. The bacteriological toilet system at issue meets the requirements of this FDA standard, so long as the system is being serviced and maintained to operate as intended. Based on the information provided concerning instances in which railroad employees along the right-of-way may be placed at risk if this system is not maintained properly, FRA will consider whether more specific servicing requirements are necessary in the final rule.

For instance, FRA could require that all railroads follow a maintenance program for each of the toilet systems in service on their property for the purposes of the servicing requirements in section 139. FRA could simply establish a requirement that all railroads follow the manufacturer's maintenance program for the toilet system in use. Alternatively, FRA could establish a requirement that each railroad would develop a maintenance program to meet appropriate effectiveness measures for each part of the toilet system. For example, to work properly, the aerobic bacteriological treatment toilet system presently employed by some carriers requires that, first, the treatment remain aerobic, and second, that bacteria be killed as the effluent exits the system. Although other chemicals or technology methods may be available in the future, presently, this second step is performed through the use of chlorine. As the aerobic bacteriological process must remain intact and not go septic, converting to anaerobic conditions, clear effectiveness indicators are required. Indicators that the process is no longer intact include very strong, putrid odors; observance that a full treatment tank will not drain; or large air bubbles returning to the toilet bowl via the waste flap following the flush cycle. To ensure the effectiveness measure of a railroad's maintenance of the whole aerobic bacteriological treatment toilet system may require statistical sampling of effluent for live organisms, including the bacteria. FRA might also require that, if such a toilet system ceases to function properly, presenting a risk that untreated waste might be discharged to the track, the unit must be plugged to prevent any such leakage in order to be used in a trailing position pending servicing. FRA seeks comments from all industry members on these proposals, the rule text language set forth in the NPRM, alternative language that would effectively eliminate the risks that employees along the right-of-way may face, and any other hazards that may exist which FRA has not addressed in this paragraph. FRA notes that a performance-oriented approach to this issue is preferred by FRA and others in the Working Group. However, FRA needs more information to determine how successful implementation of a performance-oriented approach could be monitored. FRA seeks comments on the issues and options associated with this type of toilet system. These comments will be considered by the Working Group prior to issuance of a final rule.

Paragraph (c) of section 139 proposes that any unit used in switching service,

transfer train service, or in the trailing position that is equipped with a toilet facility, must be sanitary if the locomotive is occupied. This requirement would address those units that might fall within the exceptions proposed in sections 229.137(b)(1)(ii) and (b)(1)(iii) because of the operations they are engaged in, but nonetheless possess a toilet facility on board. If that is the case, employees may opt not to use the toilet facility, preferring to utilize other facilities along the right-of-way. However, carriers must not expose these employees to unsanitary conditions while they are in the units. Therefore, the toilet facilities may actually be defective while the unit is occupied, but they cannot be unsanitary.

Paragraph (d) proposes that where a locomotive is equipped with a toilet facility that has become defective, and the locomotive is utilized briefly in switching or transfer train service consistent with the requirements of sections 229.137(b)(1)(ii) and (b)(1)(iii), the railroad carrier must mark the toilet facility as defective. The locomotive with the defective, but sanitary toilet facility, can be used in switching or transfer train service for a period not to exceed 10 calendar days from the date on which it became defective, at which time it must be repaired. However, the facility must remain sanitary in this short period while it is occupied. The date on which the toilet facility became defective must be noted on the daily inspection report, so the unit will be repaired within the prescribed time period. The carriers may need to institute new internal procedures to ensure that these defects are corrected within the required time frame, because (as some members of the Working Group have suggested), defects that need not be repaired on a daily basis, as section 229.21 requires with many defective conditions, may be forgotten. This proposal would amend section 229.21(a) and (b) to permit the railroads to record repairs made electronically, rather than on the daily inspection report. Several carriers noted that they currently employ an electronic tracking system of defects and repairs, and would like to include violations of sections 229.137 and 229.139 in the existing electronic program. FRA wishes to facilitate this process, and so long as the system is capable of being audited, FRA does not believe it is necessary to regulate this internal mechanism with great specificity.

During this 10-day period, the exceptions set forth for switching and transfer train service would apply, and so the carrier would be required to provide the cab employees affected access to sanitation facilities to meet otherwise applicable sanitation standards. [As discussed previously, these defective units may also be utilized in trailing position where there is less likelihood that employees will be affected at all.]

Requiring that these defective units can remain in service for a period not to exceed 10 calendar days, at which time they must be repaired or used in trailing position, is consistent with FRA's and the Working Group's desire to preserve optimum access to sanitation facilities where they currently exist. If a locomotive is equipped with a toilet facility, FRA recognizes that it may become defective and yet the locomotive can continue to operate without jeopardizing the employee's health. However, the toilet facility should not be allowed to remain defective indefinitely. The Working Group and FRA do not expect the railroads to reassign locomotives from road to yard service solely for the purpose of circumventing any part of this regulation. FRA understands that there are overriding incentives for railroads to keep road units with defective toilets in trailing road service until the next periodic inspection, rather than reassigning them to yard service.

The 10-day period was selected as a result of Working Group discussions, in which the carriers noted that a period of 10 days may be required to get appropriate parts needed for repair to remote locations where these defective units may be situated. However, in subsequent discussions, the carriers indicated that they would likely haul the defective units to repair facilities, rather than wait for parts to be sent to remote locations. Also, Working Group members have stated that, in some instances, the carriers would only need additional time to make yard movements so that a compliant locomotive can replace the defective one. Therefore, FRA is considering reducing this 10-day time period to accurately reflect what would be reasonable given prevalent practice. FRA invites comment on this issue from interested parties concerning the time needed to haul units for repair, the time needed to replace the defective unit with another in the yard, and the extent to which those practices will occur.

Paragraph (e) proposes to require the railroad carrier to repair a defective modesty lock prior to the next 92-day inspection that the locomotive is subject to, pursuant to the requirements of part 229. This proposal was recommended by all members of the Working Group and balances the privacy concerns that led to the modesty lock requirement, against the industry's interest in keeping otherwise fit locomotives in service. FRA believes that this proposal reaches a reasonable accommodation of both aims.

In addition to the foregoing issues, the Working Group discussed blue signal protection for railroad employees involved in the servicing of the sanitation compartment, and the substance of those discussions should be illuminated here. FRA issued regulations that require protections for employees engaged in the inspection, testing, repair, and servicing of rolling equipment, where those activities require employees to work on, under, or between equipment, and where the danger of personal injury exists. See 49 CFR part 218. These regulations state that ''servicing'' does not include supplying locomotives with sanitary supplies. Therefore, employees engaged in replenishing toilet paper in the sanitation compartment would not be ''servicing'' the locomotive for purposes of part 218, and, therefore, would not require blue signal protection. However, other duties that employees may be engaged in relating to the repair, service, maintenance or emptying of the locomotive toilet facility likely would fall within the scope of Part 218 and would require the protections set forth there. This determination may depend on the toilet system in place, and so each railroad carrier must assess the need for blue signal protection on its property based on the configuration of the system in place and the functions employees perform relative to it.

Finally, this NPRM does not propose new lighting requirements for the sanitation compartment. The existing locomotive safety standards already require that ''Cab passageways and compartments shall have adequate illumination.'' 49 CFR 229.127(b). This existing requirement effectively addresses the need for lighting in the sanitation compartment. The compartment must be illuminated so that occupants can clearly see all appurtenances, fixtures, and items present within the toilet area.

Appendix

FRA plans to revise Appendix B to part 229, Schedule of Civil Penalties, to include penalties for violations of those provisions as set forth in this proposal that will become part of the final rule. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. See U.S.C. 553(b)(3)(A). Nevertheless, interested parties are

welcome to submit their views on what penalties may be appropriate.

Environmental Impact

FRA has evaluated this proposal in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and related directives. The regulation of sanitation facilities on locomotives gives rise to two potential environmental concerns. The first relates to the handling of chemicals used to treat human waste while in transit or in storage awaiting permanent disposal. These chemical substances and employee exposure to them are currently regulated by EPA and OSHA, respectively, in order to prevent degradation of the environment and harm to employees. Nothing in this proposal alters those regulations, which protect the environment and employees from the hazards associated with regulated chemicals.

The second concern relates to the disposal of untreated waste along the railroad right-of-way, which would give rise to potential environmental and employee health hazards. As FRA understands it, nearly all locomotives utilize sanitation systems that either treat or burn the waste on board and release products that do not introduce environmental or personal safety hazards; or haul the waste in treatment containers to a site where it is removed and stored for approved processing. In any event, regulations promulgated by the FDA prohibit the release of untreated human waste along the railroad right-of-way, and nothing in this proposal alters that requirement. Therefore, FRA has determined that this proposal will not have a deleterious impact on the environment.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposal has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, DC. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of costs and a qualitative discussion of the benefits expected from the adoption of this proposed rule. Over a twenty-year period, the Present Value (PV) of the estimated costs is $75.4 million.

The major costs anticipated from adopting this proposed rule include: the on-going maintenance and servicing of toilet facilities that are not currently being serviced properly; an increase in the daily inspection burden to include additional components of the sanitation compartment; and providing a separate trash receptacle in the sanitation compartment and the removal of trash receptacles in regular intervals.

The major benefits anticipated from implementing this final rule include: guaranteed access to sanitary facilities; assurance that toilet facilities are maintained in a clean and sanitary manner; and the assurance that cab employees will have potable water to use. In addition, railroads should incur some savings from having a national and uniform regulation governing sanitation facilities. In the long-term, the FRA should see a decrease in complaints and correspondence related to toilet facilities.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Initial Regulatory Flexibility Assessment (IRFA) which assesses the small entity impact of this proposal. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, DC. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a railroad business ''line-haul operation'' that has fewer than 1,500 employees and a ''switching and terminal'' establishment with fewer than 500 employees. SBA's ''size standards'' may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published an interim policy which formally establishes ''small entities'' as being railroads which meet the line haulage revenue requirements of a Class III railroad. Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's (STB's) threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA proposes to use this alternative definition of ''small entity'' for this rulemaking. Since this is an alternative definition, FRA is using it in consultation with the SBA and requests public comments on its use.

For this rulemaking there are over 550 small railroads that could potentially be affected by these proposals. FRA estimates that small railroads own approximately 3,500 locomotives. In addition, the Agency estimates that only about one-third of these or less possess a toilet facility. FRA does not expect this proposal to impose a significant burden on small railroads because it provides them an exception from the requirement to have a functioning toilet in the lead occupied locomotive, so long as the railroad provides employee access to toilet and washing facilities at frequent intervals.

The impacts from this proposal are primarily a result of some of the compliance requirements for locomotives that have functioning toilet facilities. The most significant impacts are from compliance items associated with the proposed toilet facility requirements which include a trash receptacle in the toilet compartment, marking defective toilet facilities, and the daily inspection requirements. Most small railroads own locomotives that never had toilet facilities on them, or previously had them removed. FRA estimates that only six percent of the Regulatory Impact Analysis' (RIA) total cost over 20 years would impact small railroads.

The proposed requirement which impacts small railroads most is the requirement to provide ready access to appropriate toilet facilities. FRA has interpreted this requirement to mean that small railroad carriers must arrange for en route access to toilet facilities. The RIA has estimated that there would be a 2-hour burden per affected railroad during the first year of implementation. This burden is estimated to cost

$22,545. The burden for the following years is only 20 minutes per railroad per year to modify the toilet facility arrangements. FRA understands that it is common practice today for a Class III railroads to comply with the general requirements of providing ready access. Currently it is customary for a small railroad to drive out to a locomotive to carry a crew member to sanitary facilities when called. Hence, the concept of providing ready access to toilet facilities is not a new or significant burden for most Class III railroads since most of these railroads currently provide this service for their locomotive cab employees.

The Class III exemption from the requirement to have a toilet facility in the lead occupied locomotive is provided to ensure that feasible lower cost alternatives are provided for the potentially affected small entities. FRA and the Working Group understand the difficulties of retrofitting older locomotive units and see no reason to unduly burden small railroads, so long as access can be provided by alternative means. The Working Group and FRA believe that this exception is both necessary and acceptable.

The IRFA concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this proposed rule is not expected to have a ''significant'' economic impact on a ''substantial'' number of small entities. In order to determine the significance of the economic impact for the final rule's Regulatory Flexibility Assessment (RFA), FRA invites comments from all interested parties concerning the potential economic impact on small entities caused by this proposed rule. The Agency will consider the comments and data it receives, or lack thereof, in making a decision on the RFA for the final rule.

Federalism

FRA has analyzed the proposed rule according to the principles of Executive Order 13132 (''Federalism''). FRA has determined that this proposal, if adopted as a final rule, may have federalism implications. FRA's final sanitation standards would preempt all state efforts to regulate the nature and type of access to sanitation facilities generally required for cab employees. Further, FRA's final sanitation standards would preempt the maintenance of sanitation facilities located on board trains. As discussed above, the Locomotive Inspection Act has been interpreted to occupy the field of locomotive safety, including the regulation of appurtenances in locomotives, such as toilets. Nonetheless, some state regulatory bodies have promulgated and enforce state standards that require toilet facilities in locomotive cabs. FRA's sanitation standards would preempt those state standards. FRA believes this regulatory action is warranted, however, based on principles of interstate commerce and the need for uniformity of national standards. In addition, some State agencies have expressed the need for federal regulation in this area to provide uniform treatment and to prevent situations in which employees work without sanitation facilities where the State is powerless to enforce its requirements, due to operation of the occupational safety and health and railroad safety laws.

Consistent with the requirements of Executive Order 13132, FRA has and will continue to consult with State agencies as this rulemaking proceeds. This will be achieved primarily through the full RSAC Committee, which includes representatives of State interests. FRA will publish a federalism impact statement in the final rule that explains the concerns of the States, a description of the consultations with the states, and a statement of the extent to which the concerns of the States have been met in any final standards that are issued.

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 of 1995, 44 U.S.C. 3501 *et seq*. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response (seconds)	Total annual burden hours (hours)	Total annual burden cost
229.137(d)—Sanitation—Locomotive Defective or Unsanitary Toilet Facility Placed in Trailing Service— Clear Markings— Unavailable for Use.	Class I & II railroads.	15,600 notices.	90	390	$3,250
229.137(e)–Sanitation—Locomotive Defective Toilet Facility—Clear Markings—Unavailable for Use.	Class I & II railroads.	5,200 notices	90	130	3,250
229.139(d)—Servicing—Locomotive Used in Transfer/Switching Service with Defective Toilet Facility—Date Defective.	Class I & II railroads.	936,000 notations.	30	780	19,500

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB contact Robert Brogan at 202–493–6292.

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Comments must be received no later than March 5, 2001. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Robert Brogan, Federal Railroad Administration, RRS–21, Mail Stop 17,

1120 Vermont Ave., NW., MS–17, Washington. DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Comments Requested

FRA has made every attempt in this proposal to capture the principles of accessible, sanitary, toilet and washing facilities for locomotive cab employees, in such a way that railroad operations will not be adversely affected. However, FRA invites comment from all interested parties on all aspects of this proposal. FRA and the Working Group made every effort to discuss and address cab sanitation comprehensively in this NPRM, but there may be issues, equipment, or operations that require further information and consideration. FRA requests comments from the public and experts on the scope and exceptions set forth in this proposal, the definitions established to identify equipment and procedures, the proposed servicing requirements, and anything not addressed by this proposal that deserves consideration.

List of Subjects in 49 CFR Part 229

Locomotives, Penalties, Railroad safety.

For the reasons set forth in the preamble, 49 CFR Part 229 is amended as follows.

1. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 49 CFR 1.49.

2. Section 229.5 is amended by adding in alphabetical order new definitions of ''Commuter service'', ''Modesty lock'', ''Potable water'', ''Sanitary'', ''Sanitation compartment'', ''Switching service'', ''Transfer train'', ''Toilet facility'', ''Unsanitary'', and ''Washing system'.

§ 229.5 Definitions.

* * * * *

Commuter service means commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, that runs on rails or electromagnetic guideways, but does not include rapid transit operations in an urban area that are not connected to the general system of transportation. *See also,* 49 CFR part 209, Appendix A.

* * * * *

Modesty lock means a latch that can be operated in the normal manner only from within the sanitary compartment, that is designed to prevent entry of another person when the sanitary compartment is in use. A modesty lock may be designed to allow deliberate forced entry in the event of an emergency.

* * * * *

Potable water means water that meets the requirements of 40 CFR part 141, the Environmental Protection Agency's Primary Drinking Water Regulations, or water that has been approved for drinking and washing purposes by the pertinent state or local authority having jurisdiction. For purposes of this section, commercially available, bottled drinking water is deemed potable water.

* * * * *

Sanitary means the absence of any significant amount of filth, trash, human waste present in such a manner that a reasonable person would believe that the condition might constitute a health hazard; or of strong, persistent, chemical or human waste odors sufficient to deter use of the facility, or give rise to a reasonable concern with respect to exposure to hazardous fumes. Such conditions include, but are not limited to, a toilet bowl filled with human waste, soiled toilet paper, or other products used in the toilet compartment, that are present due to a defective toilet facility that will not flush or otherwise remove the waste; visible human waste residue on the floor or toilet seat that is present due to a toilet facility that overflowed; an accumulation of soiled paper towels or soiled toilet paper on the floor, toilet facility or sink; an accumulation of visible dirt or human waste on the floor, toilet facility, or sink; and strong, persistent chemical or human waste odors in the compartment.

Sanitation compartment means an enclosed compartment on a railroad locomotive that contains a toilet facility for employee use.

* * * * *

Switching service means the classification of railroad freight cars according to commodity or destination; assembling cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing locomotives and cars for repair or storage; or moving rail equipment in connection with work service that does not constitute a train movement.

Transfer train means a train that travels between a point of origin and a point of final destination not exceeding 20 miles and that is not performing switching service.

Toilet facility means a system that automatically or on command of the user removes human waste to a place where it is treated, eliminated, or retained such that no solid or non-treated liquid waste is thereafter permitted to be released into the bowl, urinal, or room and that prevents harmful discharges of gases or persistent offensive odors.

Unsanitary means any condition in which any significant amount of filth, trash, human waste are present in such a manner that a reasonable person would believe that the condition might constitute a health hazard; or strong, persistent, chemical or human waste odors sufficient to deter use of the facility or to give rise to a reasonable concern with respect to exposure to hazardous fumes. Such conditions include, but are not limited to, a toilet bowl filled with human waste, soiled toilet paper, or other products used in the toilet compartment, that are present due to a defective toilet facility that will not flush or otherwise remove the waste; visible human waste residue on the floor or toilet seat that is present due to a toilet facility that overflowed; an accumulation of soiled paper towels or soiled toilet paper on the floor, toilet facility, or sink; an accumulation of visible dirt or human waste on the floor, toilet facility, or sink; and strong persistent chemical or human waste odors in the compartment.

Washing system means a system for use by railroad employees to maintain personal cleanliness that includes a secured sink or basin, water, antibacterial soap, and paper towels; or antibacterial waterless soap and paper towels; or antibacterial moist towelettes and paper towels; or any other combination of suitable antibacterial cleansing agents.

3. Section 229.9 is amended by adding paragraph (g) to read as follows:

§ 229.9 Movement of non-complying locomotives.

* * * * *

(g) Paragraphs (a), (b), and (c) of this section shall not apply to § 229.137 and § 229.139. Sections 229.137 and 229.139 set forth specific requirements for the movement and repair of locomotives with defective sanitation compartments.

4. Section 229.21 is amended by removing the fourth and fifth sentences of paragraph (a) and adding in their place three new sentences and by removing the fourth sentence of paragraph (b) and adding in its place three new sentences to read as follows:

§ 229.21 Daily inspection.

(a) * * * Except as provided in §§ 229.9, 229.137, and 229.139, any conditions that constitute non-compliance with any requirement of this part shall be repaired before the locomotive is used. Except with respect to conditions that don't comply with §§ 229.137 or 229.139, a notation shall be made on the report indicating the nature of the repairs that have been made. Repairs made for conditions that don't comply with §§ 229.137 or 229.139 may be noted on the report, or in electronic form. * * *

(b) * * * Except as provided in §§ 229.9, 229.137, and 229.139, any conditions that constitute non-compliance with any requirement of this part shall be repaired before the locomotive is used. Except with respect to conditions that don't comply with §§ 229.137 or 229.139, a notation shall be made on the report indicating the nature of the repairs that have been made. Repairs made for conditions that don't comply with §§ 229.137 or 229.139 may be noted on the report, or in electronic form. * * *

5. Sections 229.137 and 229.139 are added to subpart C to read as follows:

§ 229.137 Sanitation, general requirements.

(a) *Sanitation compartment.* Except as provided in paragraph (b) of this section, all lead locomotives in use shall be equipped with a sanitation compartment. Each sanitation compartment shall be:

(1) Adequately ventilated;

(2) Equipped with a door that:

(i) Closes, and

(ii) Possesses a modesty lock by [18 months after publication of the final rule];

(3) Equipped with a toilet facility, as defined in this part;

(4) Equipped with a washing system, as defined in this part, unless the railroad carrier otherwise provides the washing system to employees upon reporting for duty or occupying the cab for duty, or where the locomotive is equipped with a stationary sink that is located outside of the sanitation compartment;

(5) Equipped with toilet paper in sufficient quantity to meet employee needs, unless the railroad carrier otherwise provides toilet paper to employees upon reporting for duty or occupying the cab for duty; and

(6) Equipped with a trash receptacle, unless the railroad carrier otherwise provides portable trash receptacles to employees upon reporting for duty or occupying the cab for duty.

(b) *Exceptions.*

(1) Paragraph (a) of this section shall not apply to:

(i) Locomotives engaged in commuter service on which employees have ready access to railroad carrier-provided sanitation facilities outside of the locomotive or elsewhere on the train, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift;

(ii) Locomotives engaged in switching service on which employees have ready access to railroad carrier-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift;

(iii) Locomotives engaged in transfer train service on which employees have ready access to railroad carrier-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift;

(iv) Locomotives of Class III railroad carriers engaged in operations other than switching service or transfer train service, that are not equipped with a sanitation compartment as [of the effective date of this section]. Where an unequipped locomotive of a Class III railroad carrier is engaged in operations other than switching or transfer train service, employees shall have ready access to carrier-provided sanitation facilities outside of the locomotive that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift, or the carrier shall arrange for en route access to such facilities; and

(v) Locomotives of tourist, scenic, historic, or excursion operations, which are otherwise covered by this part because they are not propelled by steam power and operate on the general railroad system of transportation, but on which employees have ready access to railroad carrier-provided sanitation facilities outside of the locomotive, that meet otherwise applicable sanitation standards, at frequent intervals during the course of their work shift.

(2) Paragraph (a)(3) of this section shall not apply to:

(i) Locomotives of a Class I railroad carrier which, prior to [the effective date of this section], were equipped with a toilet facility in which human waste falls via gravity to a holding tank where it is stored and periodically emptied, which does not conform to the definition of toilet facility set forth in this section. For these locomotives, the requirements of this section pertaining to the type of toilet facilities required shall be effective as these toilets become defective or are replaced with conforming units, whichever occurs first. All other requirements set forth in this section shall apply to these locomotives as of [the effective date of this section]; and

(ii) With respect to the locomotives of a Class I railroad carrier which, prior to [the effective date of this section], were equipped with a sanitation system other than the units addressed by paragraph (b)(2)(i) of this section, that contains and removes human waste by a method that does not conform with the definition of toilet facility as set forth in this section, the requirements of this section pertaining to the type of toilet facilities shall apply on locomotives in use shall apply on July 1, 2003. However, the Class I railroad carrier subject to this exception shall not deliver noncompliant toilet facilities to other railroad carriers for use, in the lead position, during the time between [the effective date of this rule] and July 1, 2003. All other requirements set forth in this section shall apply to the locomotives of this Class I railroad carrier as of [the effective date of this section].

(c) *Defective, unsanitary toilet facility; prohibition in lead position.* Except as provided in paragraphs (c)(1) through (5) of this section, if the railroad carrier determines during the daily inspection required by § 229.21 that a locomotive toilet facility is defective or is unsanitary, or both, the railroad carrier shall not use the locomotive in the lead position. The railroad carrier may continue to use a lead locomotive with a toilet facility that is defective or unsanitary as of the daily inspection only where all of the following conditions are met:

(1) The unsanitary or defective condition is discovered at a location where there are no other locomotives available for use, it is not possible to

switch another locomotive into the lead position, or which is not equipped to clean the sanitation compartment if unsanitary or repair the toilet facility if defective;

(2) The locomotive, while noncompliant, did not pass through a location where it could have been cleaned if unsanitary, repaired if defective, or switched with another compliant locomotive, since its last daily inspection required by this part;

(3) Upon reasonable request of a locomotive crewmember operating a locomotive with a defective or unsanitary toilet facility, the railroad carrier arranges for access to a toilet facility outside the locomotive that meets otherwise applicable sanitation standards;

(4) If the sanitation compartment is unsanitary, the sanitation compartment door shall be closed and adequate ventilation shall be provided in the cab so that it is habitable; and

(5) The locomotive shall not continue in service in the lead position beyond a location where the defective or unsanitary condition can be corrected or replaced with another compliant locomotive, or the next daily inspection required by this part, whichever occurs first.

(d) *Defective, unsanitary toilet facility; use in trailing position.* If the railroad carrier determines during the daily inspection required by § 229.21 that a locomotive toilet facility is defective or is unsanitary, or both, the railroad carrier may use the locomotive in trailing position. If the railroad carrier places the locomotive in trailing position, the carrier shall not haul employees in the unit unless the sanitation compartment is made sanitary prior to occupancy. If the toilet facility is defective and the unit becomes occupied, the railroad carrier shall clearly mark the defective toilet facility as unavailable for use.

(e) *Defective, sanitary toilet facility; use in switching, transfer train service.* If the railroad carrier determines during the daily inspection required by § 229.21 that a locomotive toilet facility is defective, but sanitary, the carrier may use the locomotive in switching service, as set forth in paragraph (b)(1)(ii) of this section, or in transfer train service, as set forth in paragraph (b)(1)(iii) of this section for a period not to exceed 10 days. In this instance, the railroad carrier shall clearly mark the defective toilet facility as unavailable for use. After expiration of the 10-day period, the locomotive shall be repaired or used in the trailing position.

(f) *Lack of toilet paper, washing system, trash receptacle.* If the railroad carrier determines during the daily inspection required by § 229.21 that the lead locomotive is not equipped with toilet paper in sufficient quantity to meet employee needs, or a washing system as required by paragraph (a)(4) of this section, or a trash receptacle as required by paragraph (a)(6) of this section, the locomotive shall be equipped with these items prior to departure.

(g) *Inadequate ventilation.* If the railroad carrier determines during the daily inspection required by § 229.21 that the sanitation compartment of the lead locomotive in use is not adequately ventilated as required by paragraph (a)(1) of this section, the railroad carrier shall repair the ventilation prior to departure, or place the locomotive in trailing position, in switching service as set forth in paragraph (b)(1)(ii) of this section, or in transfer train service as set forth in paragraph (b)(1)(iii) of this section.

(h) *Door closure and modesty lock.* If the railroad carrier determines during the daily inspection required by § 229.21 that the sanitation compartment on the lead locomotive is not equipped with a door that closes, as required by paragraph (a)(2)(i) of this section, the railroad carrier shall repair the door prior to departure, or place the locomotive in trailing position, in switching service as set forth in paragraph (b)(1)(ii) of this section, or in transfer train service as set forth in paragraph (b)(1)(iii) of this section. If the railroad carrier determines during the daily inspection required by § 229.21 that the modesty lock required by paragraph (a)(2)(ii) of this section is defective, the modesty lock shall be repaired pursuant to the requirements of § 229.139(e).

(i) *Equipped units; retention and maintenance.* Except where a railroad carrier downgrades a locomotive to service in which it will never be occupied, where a locomotive is equipped with a toilet facility as of [the effective date of the final rule], the railroad carrier shall retain and maintain the toilet facility in the locomotive consistent with the requirements of this part, including locomotives used in switching service pursuant to paragraph (b)(1)(ii) of this section, and in transfer train service pursuant to paragraph (b)(1)(iii) of this section.

(j) *Newly manufactured units; in-cab facilities.* All locomotives manufactured after [Effective date of the final rule], except switching units built exclusively for switching service and locomotives built exclusively for commuter service shall be equipped with a sanitation compartment accessible to cab employees without exiting to the out-of-doors for use.

(k) *Potable water.* The railroad carrier shall utilize potable water where the washing system includes the use of water.

§ 229.139 Sanitation, servicing requirements.

(a) The sanitation compartment of each lead locomotive in use shall be sanitary.

(b) All components required by § 229.137(a) for the lead locomotive in use shall be present consistent with the requirements of this part, and shall operate as intended.

(c) The sanitation compartment of each occupied locomotive used in switching service pursuant to § 229.137(b)(1)(ii), in transfer train service pursuant to § 229.137(b)(1)(iii), or in a trailing position when the locomotive is occupied, shall be sanitary.

(d) Where the railroad carrier uses a locomotive pursuant to § 229.137(e) in switching or transfer train service with a defective toilet facility, such use shall not exceed 10 calendar days from the date on which the defective toilet facility became defective. The date on which the toilet facility becomes defective shall be entered on the daily inspection report.

(e) Where it is determined that the modesty lock required by § 229.137(a)(2) is defective, the railroad carrier shall repair the modesty lock on or before the next 92-day inspection required by this part.

Issued in Washington, D.C. on the 15th of December, 2000.

Jolene M. Molitoris,

Administrator.

[FR Doc. 00–33363 Filed 12–29–00; 8:45 am]

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Federal Register

Tuesday,
January 2, 2001

Part III

Department of Housing and Urban Development

24 CFR Part 888

50th Percentile and 40th Percentile Fair Market Rents for Fiscal Year 2001; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4589–N–04]

50th Percentile and 40th Percentile Fair Market Rents for Fiscal Year 2001

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Fair Market Rents (FMRs) for Fiscal Year (FY) 2001.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually to be effective on October 1 of each year. FMRs are used (1) to establish payment standards for the Housing Choice Voucher program; (2) to determine initial contract rents in new commitments for Section 8 project-based assistance (currently available chiefly in the project-based voucher program); (3) to determine whether comparability applies to adjustment of contract rents during the term of existing HAP contracts for the former new construction, substantial rehabilitation and moderate rehabilitation programs; (4) as a limit on renewal rents for certain Section 8 projects (including mark-up-to-market projects); and (5) to determine maximum subsidy levels for HOME tenant-based rental assistance, and maximum rent levels in HOME multifamily rental housing. Other programs may also require the use of FMRs.

This notice sets final FMRs that reflect the 50th percentile rent levels for 39 areas, as determined by applying the criteria specified in HUD's interim rule amending the HUD regulation that establishes the methodology for setting FMRs for existing housing (24 CFR 888.113). The interim was published on October 2, 2000 (65 FR 58870), and became effective on December 1, 2000. To combine final Fiscal Year 2001 FMRs for all areas in one publication, this notice also re-publishes the 40th percentile rents for all other areas.

EFFECTIVE DATE: The 50th percentile FMRs published in this notice are effective on January 2, 2001. The 40th percentile FMRs were previously effective on October 1, 2000.

Electronic Data Availability: This **Federal Register** Notice is available electronically from the HUD news page: *http://www.hudclips.org/cgi/index.cgi.* **Federal Register** Notices also are available electronically from the U.S. Government Printing Office web site: *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

The data set of the 50th percentile FMRs is available electronically on the HUD web page: *http://www.huduser.org/datasets/pdrdatas.html.*

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, telephone (202) 708–0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Marie L. Lihn, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0590, Extension 5866 (e-mail: *Marie_L._Lihn@hud.gov*). Hearing-or speech-impaired persons may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1–800–877–8339. (Other than the ''800'' TTY number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to help lower income families rent decent, safe, and sanitary housing. The amounts of the housing assistance payments are limited by ''fair market rents'' (FMRs) established by HUD for all areas, and for different size units (expressed as number of bedrooms in a unit).

In the HUD voucher program, the FMR is used to determine the ''payment standard'' (the maximum monthly subsidy) for assisted families (see Section 982.503.) In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

FMRs are estimates of rent plus the cost of utilities, except telephone. FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition.

The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at either the 40th or 50th percentile rent—the dollar amount below which the rent for 40 or 50 percent of standard quality rental housing units falls. The 40th or 50th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers. Adjustments are made to exclude public housing units, newly built units and substandard units.

50th Percentile FMRs

Raising FMRs for certain areas to the 50th percentile rent level as provided in the interim rule, effective December 1, 2000, is designed to give lower-income families who participate in the voucher program access to a broader range of housing opportunities throughout a metropolitan area. FMRs have been increased to the 50th percentile rent in those metropolitan areas where a FMR increase is most needed to promote residential choice, help families move closer to areas of job growth, and deconcentrate poverty. New paragraph (c) Of Section 888.113 provides as follows:

(c) Setting FMRs at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area.

(1) HUD will set the FMRs at the 50th percentile rent for all unit sizes in each metropolitan FMR area that meets all of the following criteria at the time of annual publication of the FMRs:

(i) The FMR area contains at least 100 census tracts;

(ii) 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent; and

(iii) 25 percent or more of the tenant-based rental program participants in the FMR area reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(2) If the FMRs are set at the 50th percentile rent in accordance with paragraph (c)(1) of this section, HUD will set the FMRs at the 50th percentile rent for a total of three years.

(i) At the end of the three-year period, HUD will continue to set the FMRs at the 50th percentile rent only so long as the concentration measure for the current year is less than the concentration measure at the time the FMR area first received an FMR set at the 50th percentile rent. HUD will publish FMRs based on the 40th percentile rent for FMR areas that do not qualify for continued use of the 50th percentile rent.

(ii) For purposes of this section, the term ''concentration measure'' means the percentage of tenant-based rental program participants in the FMR area who reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(iii) FMR areas that do not meet the test for continued use of FMRs set at the 50th percentile will be ineligible to use FMR set at the 50th percentile for a period of three years.

(iv) A PHA whose jurisdiction includes one or more FMR areas that are no longer eligible to use FMRs set at the 50th percentile may be eligible for a higher payment standard under Section 982.503 (f).

Schedule B of this document lists the FMRs for all areas. Schedule B includes FMRs set at the 50th percentile rent for 39 FMR areas in accordance with Section 888.113 (c), and at the 40th percentile rent for all other FMR areas. In Schedule B, an asterisk identifies each of the 39 FMR areas for which HUD has determined 50th percentile FMRs.

HUD has set 50th percentile FMRs for the following metropolitan FMR areas:

Albuquerque, NM
Atlanta, GA
Austin-San Marcos, TX
Baton Rouge, LA
Bergen-Passaic, NJ
Buffalo-Niagara Falls, NY
Chicago, IL
Cleveland-Lorain-Elyria, OH
Dallas, TX
Denver, CO
Detroit, MI
Fort Lauderdale, FL
Fort Worth-Arlington, TX
Grand Rapids-Muskegon-Holland, MI
Houston, TX
Kansas City, MO-KS
Las Vegas, NV-AZ
Miami, FL
Minneapolis-St. Paul, MN-WI
Newark, NJ
Norfolk-Virginia Beach-Newport News, VA-NC
Oakland, CA
Oklahoma City, OK
Orange County, CA
Philadelphia, PA-NJ
Phoenix-Mesa, AZ
Richmond-Petersburg, VA
Sacramento, CA
Salt Lake City-Ogden, UT
San Antonio, TX
San Diego, CA
San Jose, CA
St. Louis, MO-IL
Tampa-St. Petersburg-Clearwater, FL
Tulsa, OK
Ventura, CA
Washington, DC-MD-VA
West Palm Beach-Boca Raton, FL
Wichita, KS

Manufactured Home Space FMRs Based on 50th Percentile Rent

As in the past, FMRs for the rental of manufactured home spaces in the tenant-based Housing Choice Voucher program are set at 40 percent of the applicable Section 8 existing housing program FMRs for two-bedroom units (section 888.113(e)). The manufactured home space FMR for each of the 39 areas for which HUD has set 50th percentile FMR, is set a 40 percent of the two-bedroom 50th percentile FMR.

Consideration of Public Comment

In response to the October 6, 2000 proposed 50th percentile FMRs for 39 areas, HUD received six public comments. No rental housing survey information was submitted with any of the comments. Two comments specifically discussed the implementation of the provisions under the interim rule and were not related to FMR areas. The six comments received and responses are summarized below:

Comment: The Housing Authority of the City of New Braunfels, Texas says its jurisdiction has high rents that are more comparable to Austin than San Antonio and that it has a very high turn-back rate for its Housing Choice Voucher program.

Response: The New Braunfels PHA does not appear to have taken advantage of its discretion to raise payment standards to 110 percent of the FMR. If the PHA were to continue to experience high turn-back rates, despite having increased its payment standard to 110 percent of the FMR, it could qualify for the success rate payment standard based on a 50th percentile rent. HUD also provides several additional mechanisms for obtaining exception payment standards above 110 percent of the 40th percentile FMR. (See 24 CFR 982.503.)

Comment: Two Public Housing Authorities (PHAs), The Housing Authority of the City of New Braunfels, Texas and the Oklahoma City Housing Authority request additional funding from HUD for their voucher programs. The New Braunfels PHA requests additional funding for a higher payment standard, the Oklahoma City PHA requests additional funding for the new 50th percentile FMRs.

Response: HUD's current procedures provide sufficient funding for PHAs to cover the increased costs resulting from higher payment standards or an FMR increase. Any additional costs resulting from the higher payment standard or higher FMR would be reflected in the PHA's costs per unit for the current year. Under HUD's renewal regulations (see 24 CFR 982.102), a PHA experiencing increased per-unit costs in year 1 will generally receive an increase in its funding in the following year in light of these higher per-unit costs. This enables PHAs to increase payment standards where necessary to ensure the successful use of Housing Choice Vouchers.

Comment: Foothill-West Associates, the administrator of a senior apartment complex, notes that rents in Butte County, California have increased countywide by an average of 12–13 percent and requests a survey by HUD.

Response: HUD is currently developing a list of potential areas that will be surveyed during the upcoming winter and summer. Chico-Paradise MSA (Butte County) will be placed on this list as a potential candidate and its need for a survey will be evaluated in comparison with the needs of other FMR areas.

Comment: The Council of Large Public Housing Authorities finds that the proposed rule is too restrictive in that it limits increasing the FMRs to only 39 metropolitan market areas. CLPHA also is concerned that the proposed rule lacks transparency because HUD has not identified the sources of information used to determine eligibility and has not established a method to appeal the designation of ineligibility.

Response: These comments go to the merits of the interim rule that provides for increased FMRs and success rate payment standards, rather than to HUD's calculations of the 50th percentile rent in accordance with the rule.

Comment: The Dallas Housing Authority supports the efforts of HUD to increase FMRs.

Calculation Errors

This notice corrects the 3-bedroom FMR for Utica-Rome, NY and makes it $626.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate Program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

Regulatory Flexibility Act

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because 50th percentile FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 Program.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (Section 8).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are amended as follows:

Dated: December 21, 2000.

Andrew M. Cuomo,

Secretary.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. *Metropolitan Areas*—FMRs are housing market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition. The FMRs shown in Schedule B incorporate OMB's most current definitions of metropolitan areas, with the exceptions discussed in paragraph (b). HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions.

b. *Exceptions to OMB Definitions*—The exceptions are counties deleted from several large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective States under the ''Metropolitan FMR Areas'' listing:

Metropolitan Area and Counties Deleted

Chicago, IL
DeKalb, Grundy and Kendall Counties
Cincinnati-Hamilton, OH-KY-IN
Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana
Dallas, TX
Henderson County
Flagstaff, AZ-UT
Kane County, UT
New Orleans, LA
St. James Parish
Washington, DC-MD-VA-WV
Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren Counties in Virginia

c. *Nonmetropolitan Area FMRs*—FMRs also are established for nonmetropolitan counties and for county equivalents in the counties in the United States, for nonmetropolitan parts of counties in the New England states and for FMR areas in Puerto Rico, the Virgin Islands and the Pacific Islands.

d. *Virginia Independent Cities*—FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan County. The full definitions of these areas, including the independent cities, are as follows:

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED WITH COUNTY

County	Cities
Allegheny	Clifton Forge and Covington.
Augusta	Staunton and Waynesboro.
Carroll	Galax.
Frederick	Winchester.
Greensville	Emporia.
Henry	Martinsville.
Montgomery	Radford.
Rockbridge	Buena Vista and Lexington.
Rockingham	Harrisonburg.
Southhampton	Franklin.
Wise	Norton.

2. Bedroom Size Adjustments

Schedule B shows the FMRs for 0-bedroom through 4-bedroom units. The FMRs for unit sizes larger than 4 bedrooms are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4 bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the 0 bedroom FMR.

3. FMRs for Manufactured Home Spaces

FMRs for manufactured home spaces in the Housing Choice Voucher program are 40 percent of the two-bedroom Housing Choice Voucher program FMRs, with the exception of the areas listed in Schedule D whose manufactured home space FMRs have been modified on the basis of public comments. Once approved, the revised manufactured home space FMRs establish new base-year estimates that are updated annually using the same data used to estimate the Housing Choice Voucher program FMRs. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

4. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area is listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

5. 50th Percentile FMRs

All 50th percentile FMRs are designated by an asterisk to differentiate them from the 40th percentile FMRs.

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SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

A L A B A M A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston, AL MSA	263	312	390	544	616	Calhoun
Aurburn-Opelika, Al MSA	262	367	471	612	774	Lee
Birmingham, AL MSA	402	454	528	717	794	Blount, Jefferson, St. Clair, Shelby
Columbus, GA-AL MSA	356	396	475	620	673	Russell
Decatur, AL MSA	350	354	445	577	690	Lawrence, Morgan
Dothan, AL MSA	317	324	403	554	562	Dale, Houston
Florence, AL MSA	297	341	438	547	613	Colbert, Lauderdale
Gadsden, AL MSA	263	322	37.2	483	594	Etowah
Huntsville, AL MSA	367	430	530	706	841	Limestone, Madison
Mobile, AL MSA	385	430	493	664	779	Baldwin, Mobile
Montgomery, AL MSA	402	429	507	691	832	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	347	371	493	678	717	Tuscaloosa

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	247	294	350	454	521
Bullock	247	294	350	454	521
Chambers	247	294	350	454	522
Chilton	256	294	350	454	521
Clarke	247	294	350	454	521
Cleburne	247	294	350	454	521
Conecuh	247	294	350	454	521
Covington	247	294	350	454	521
Cullman	247	294	350	466	566
Dekalb	247	294	350	454	521
Fayette	247	294	350	454	521
Geneva	247	294	350	454	521
Hale	247	294	350	454	521
Jackson	267	294	350	454	557
Lowndes	247	294	350	454	521
Marengo	247	294	350	454	521
Marshall	284	294	358	495	586
Perry	247	294	350	454	521
Pike	296	344	411	533	621
Sumter	247	294	350	454	521
Tallapoosa	248	294	350	454	521
Washington	247	294	350	454	521
Winston	247	294	350	454	521

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bibb	247	294	350	473	567
Butler	247	294	350	454	521
Cherokee	247	294	350	454	521
Choctaw	247	294	350	454	521
Clay	247	294	350	454	521
Coffee	247	347	451	628	705
Coosa	247	294	350	454	521
Crenshaw	247	294	350	454	521
Dallas	247	294	350	454	521
Escambia	247	294	350	454	521
Franklin	247	294	350	454	521
Greene	247	294	350	454	521
Henry	247	294	350	454	521
Lamar	247	294	350	454	521
Macon	270	303	404	506	567
Marion	247	294	350	454	521
Monroe	247	294	350	454	521
Pickens	247	294	350	454	521
Randolph	247	294	350	454	521
Talladega	247	294	350	454	521
Walker	247	305	360	465	591
Wilcox	247	294	350	454	521

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

A L A S K A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	507	599	794	1105	1304	Anchorage

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aleutian East	525	591	668	833	1091
Bethel	678	848	1074	1345	1505
Dillingham	655	666	886	1108	1241
Haines	489	605	689	937	965
Kenai Peninsula	444	566	682	947	1119
Kodiak Island	698	767	997	1246	1616
Matanuska-Susitna	469	635	714	970	1146
North Slope	784	803	993	1380	1608
Pr.Wales-Outer Ketchikan	366	582	670	929	982
Skagway-Yakutat-Angoon	448	456	590	740	830
Valdez-Cordova	548	672	746	952	1135
Wrangell-Petersburg	399	588	715	911	1001

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aleutian West	450	509	570	715	801
Bristol Bay	544	628	705	981	1067
Fairbanks North Star	413	562	738	1015	1196
Juneau	730	843	1073	1428	1484
Ketchikan Gateway	536	656	878	1222	1286
Lake & Peninsula	419	679	763	952	1069
Nome	690	854	959	1335	1506
Northwest Arctic	830	934	1048	1459	1721
Sitka	577	686	769	1071	1264
Southeast Fairbanks	460	483	582	729	818
Wade Hampton	392	590	666	832	932
Yukon-Koyukuk	523	589	665	831	962

A R I Z O N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ	438	474	615	825	991	Coconino
*Las Vegas, NV-AZ MSA	536	636	757	1054	1245	Mohave
*Phoenix-Mesa, AZ MSA	449	544	683	950	1119	Maricopa, Pinal
Tucson, AZ MSA	392	470	625	869	1025	Pima
Yuma, AZ MSA	378	438	583	810	816	Yuma

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Apache	365	384	488	637	757
Gila	365	384	488	637	757
Greenlee	365	384	488	637	757
Navajo	365	384	488	637	757
Yavapai	388	404	540	753	829

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cochise	365	384	488	637	757
Graham	365	384	488	637	757
La Paz	365	384	488	637	757
Santa Cruz	365	404	502	637	757

A R K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	310	390	513	693	717	Benton, Washington
Fort Smith, AR-OK MSA	337	341	449	600	630	Crawford, Sebastian
Jonesboro, AR MSA	365	397	467	644	680	Craighead
Little Rock-North Little Rock, AR MSA	382	424	504	697	814	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	396	462	542	753	791	Crittenden

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 3

A R K A N S A S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Pine Bluff, AR MSA	292	347	456	575	746	Jefferson
Texarkana, TX-Texarkana, AR MSA	311	380	464	612	649	Miller

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Arkansas	262	284	364	497	539
Baxter	239	304	404	520	633
Bradley	239	284	364	482	539
Carroll	281	307	364	482	576
Clark	262	284	369	482	582
Cleburne	271	284	364	482	546
Columbia	239	284	364	482	539
Cross	248	314	364	489	577
Desha	239	284	364	482	539
Franklin	250	284	364	482	539
Garland	239	304	407	568	671
Greene	256	284	364	482	539
Hot Spring	239	284	364	482	539
Independence	251	291	364	482	539
Jackson	247	284	364	482	539
Lafayette	250	284	364	482	539
Lee	263	284	364	482	539
Little River	239	284	370	513	605
Madison	273	284	370	482	539
Mississippi	272	295	395	521	584
Montgomery	239	284	364	482	539
Newton	239	284	364	482	539
Perry	239	284	364	482	539
Pike	239	284	364	482	539
Polk	239	284	364	482	539
Prairie	239	284	364	482	539
St. Francis	239	290	364	492	579
Searcy	239	284	364	482	539
Sharp	239	284	364	482	539
Union	299	316	380	510	624
White	239	284	364	498	539
Yell	248	284	364	482	539

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashley	239	284	364	482	570
Boone	283	288	382	532	628
Calhoun	239	284	364	482	539
Chicot	239	284	364	482	539
Clay	239	284	364	482	539
Cleveland	239	284	364	482	539
Conway	239	295	395	493	553
Dallas	239	284	364	482	539
Drew	239	309	413	571	581
Fulton	247	284	364	482	539
Grant	248	295	364	482	544
Hempstead	239	284	364	482	539
Howard	239	284	364	482	539
Izard	239	284	364	482	539
Johnson	239	284	364	482	539
Lawrence	239	284	364	482	539
Lincoln	258	284	370	494	539
Logan	250	284	364	482	539
Marion	239	284	364	482	539
Monroe	243	284	364	482	539
Nevada	239	284	364	498	539
Ouachita	279	284	364	502	592
Phillips	239	284	364	482	539
Poinsett	239	284	364	482	539
Pope	239	312	395	548	632
Randolph	239	284	364	482	539
Scott	239	284	364	482	539
Sevier	261	284	364	482	539
Stone	239	284	364	482	539
Van Buren	239	284	364	482	595
Woodruff	239	284	364	482	539

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 4

C A L I F O R N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	373	419	526	731	809	Kern
Chico-Paradise, CA MSA	341	439	584	800	957	Butte
Fresno, CA MSA	387	433	517	720	830	Fresno, Madera
Los Angeles-Long Beach, CA PMSA	516	618	782	1055	1260	Los Angeles
Merced, CA MSA	407	459	557	770	909	Merced
Modesto, CA MSA	451	485	592	825	972	Stanislaus
*Oakland, CA PMSA	761	921	1155	1583	1891	Alameda, Contra Costa
*Orange County, CA PMSA	774	845	1046	1455	1619	Orange
Redding, CA MSA	387	429	538	747	880	Shasta
Riverside-San Bernardino, CA PMSA	456	508	621	861	1018	Riverside, San Bernardino
*Sacramento, CA PMSA	486	547	685	950	1120	El Dorado, Placer, Sacramento
Salinas, CA MSA	548	641	773	1074	1127	Monterey
*San Diego, CA MSA	627	716	896	1247	1470	San Diego
San Francisco, CA PMSA	891	1154	1459	2001	2118	Marin, San Francisco, San Mateo
*San Jose, CA PMSA	1052	1199	1481	2030	2280	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA MSA	525	593	752	1045	1234	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	638	708	897	1250	1411	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	686	817	1091	1517	1777	Santa Cruz
Santa Rosa, CA PMSA	644	730	946	1315	1552	Sonoma
Stockton-Lodi, CA MSA	422	477	613	853	1006	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	619	703	857	1190	1405	Napa, Solano
*Ventura, CA PMSA	672	773	978	1301	1516	Ventura
Visalia-Tulare-Porterville, CA MSA	378	402	524	731	834	Tulare
Yolo, CA PMSA	487	556	688	953	1126	Yolo
Yuba City, CA MSA	336	393	505	704	814	Sutter, Yuba

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alpine	310	465	526	731	787
Calaveras	374	434	577	804	947
Del Norte	317	435	577	805	949
Humboldt	320	443	580	810	958
Inyo	321	434	556	730	787
Lake	349	444	593	747	972
Mariposa	335	426	547	717	845
Modoc	339	379	488	680	787
Nevada	388	531	707	983	1138
San Benito	534	628	786	1095	1281
Siskiyou	325	379	488	680	787
Trinity	348	379	488	680	787

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Amador	428	471	629	876	976
Colusa	339	379	488	680	787
Glenn	310	379	488	680	787
Imperial	350	438	539	751	787
Kings	359	418	522	726	854
Lassen	379	384	499	680	787
Mendocino	429	517	634	883	889
Mono	473	567	754	1049	1240
Plumas	342	379	488	680	787
Sierra	310	416	512	711	839
Tehama	324	379	488	680	787
Tuolumne	343	468	624	869	1024

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 5

C O L O R A D O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	552	661	848	1181	1392	Boulder
Colorado Springs, CO MSA	452	486	647	902	1065	El Paso
*Denver, CO PMSA	523	625	832	1154	1363	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	447	552	681	947	1118	Larimer
Grand Junction, CO MSA	411	427	534	720	857	Mesa
Greeley, CO PMSA	462	511	643	892	1055	Weld
Pueblo, CO MSA	433	449	561	755	901	Pueblo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alamosa	388	403	503	679	809
Baca	388	403	503	679	809
Chaffee	388	403	503	679	809
Clear Creek	388	453	512	713	840
Costilla	388	403	503	679	809
Custer	388	403	503	679	809
Dolores	388	403	503	679	809
Elbert	429	475	544	679	891
Garfield	451	483	610	763	999
Grand	461	465	589	737	893
Hinsdale	388	411	503	679	809
Jackson	388	403	503	679	809
Kit Carson	388	403	503	679	809
La Plata	507	561	739	1030	1215
Lincoln	388	403	503	679	809
Mineral	388	403	503	679	809
Montezuma	388	403	503	679	809
Morgan	388	403	503	679	809
Ouray	388	403	509	679	824
Phillips	388	403	503	679	809
Prowers	388	403	503	679	809
Rio Grande	388	403	503	679	809
Saguache	388	403	503	679	809
San Miguel	714	1032	1134	1416	1828
Summit	500	599	768	1068	1314
Washington	388	403	503	679	809

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Archuleta	464	508	601	811	964
Bent	388	403	503	679	809
Cheyenne	388	403	503	679	809
Conejos	388	403	503	679	809
Crowley	388	403	503	679	809
Delta	388	403	503	679	809
Eagle	522	569	759	1056	1245
Fremont	388	403	503	679	809
Gilpin	388	516	656	866	957
Gunnison	388	403	503	679	809
Huerfano	388	403	503	679	809
Kiowa	388	403	503	679	809
Lake	388	403	503	679	809
Las Animas	388	415	503	679	809
Logan	388	403	503	679	809
Moffat	388	403	503	679	809
Montrose	388	403	509	706	832
Otero	388	403	503	679	809
Park	388	430	560	777	884
Pitkin	582	797	1062	1400	1592
Rio Blanco	388	403	503	679	809
Routt	388	469	620	862	1016
San Juan	388	403	503	679	809
Sedgwick	388	403	503	679	809
Teller	388	460	613	852	860
Yuma	388	403	503	679	809

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 6

C O N N E C T I C U T

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	476	619	745	932	1162	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	643	769	961	1268	1462	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT MSA	443	552	706	886	1075	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town New London county towns of Colchester town, Lebanon town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	549	674	833	1067	1236	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	501	606	738	923	1055	Middlesex county towns of Old Saybrook town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town Windham county towns of Canterbury town, Plainfield town

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING

C O N N E C T I C U T continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	926	1084	1322	1772	1957	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT PMSA	467	630	781	973	1091	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT PMSA	451	546	681	850	953	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	366	593	669	930	1096	Hartland town
Litchfield	426	581	774	966	1100	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	631	715	955	1329	1567	Chester town, Deep River town, Essex town Westbrook town
New London	535	655	744	960	1218	Lyme town, Voluntown town
Tolland	366	593	669	930	936	Union town
Windham	422	516	669	838	1051	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

D E L A W A R E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	495	547	624	809	920	Kent
Wilmington-Newark, DE-MD PMSA	457	603	703	954	1153	New Castle

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Sussex	432	459	586	770	822

D I S T . O F C O L U M B I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Washington, DC-MD-VA	680	773	907	1236	1491	District of Columbia

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 8

F L O R I D A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	396	464	593	787	836	Flagler, Volusia
*Fort Lauderdale, FL PMSA	517	609	754	1049	1233	Broward
Fort Myers-Cape Coral, FL MSA	425	490	591	826	861	Lee
Fort Pierce-Port Lucie, FL MSA	473	519	672	874	942	Martin, St. Lucie
Fort Walton Beach, FL MSA	413	451	512	694	818	Okaloosa
Gainesville, FL MSA	413	451	548	751	887	Alachua
Jacksonville, FL MSA	473	530	638	843	938	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	396	433	490	607	663	Polk
Melbourne-Titusville-Palm Bay, FL MSA	396	463	579	775	903	Brevard
*Miami, FL PMSA	490	616	768	1054	1222	Dade
Naples, FL MSA	441	622	749	1041	1160	Collier
Ocala, FL MSA	413	451	512	672	788	Marion
Orlando, FL MSA	513	582	694	911	1112	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	413	451	512	653	700	Bay
Pensacola, FL MSA	413	451	512	684	806	Escambia, Santa Rosa
Punta Gorda, FL MSA	413	474	631	875	1032	Charlotte
Sarasota-Bradenton, FL MSA	414	526	669	860	936	Manatee, Sarasota
Tallahassee, FL MSA	422	468	616	805	970	Gadsden, Leon
*Tampa-St. Petersburg-Clearwater, FL MSA	468	557	690	917	1111	Hernando, Hillsborough, Pasco, Pinellas
*West Palm Beach-Boca Raton, FL MSA	538	628	777	1032	1278	Palm Beach

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	389	425	481	597	648
Calhoun	389	425	481	597	648
Columbia	389	425	481	597	648
Dixie	389	425	481	597	648
Gilchrist	389	425	481	597	648
Gulf	389	425	481	597	648
Hardee	389	425	481	597	648
Highlands	389	425	481	599	669
Indian River	389	486	625	782	875
Jefferson	389	425	481	597	648
Levy	389	425	481	597	648
Madison	389	425	481	597	648
Okeechobee	389	425	481	597	654
Sumter	389	425	481	597	648
Taylor	389	425	481	597	649
Wakulla	389	425	481	597	648
Washington	389	425	481	597	648

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bradford	389	425	481	597	648
Citrus	389	425	481	597	648
Desoto	389	425	481	597	648
Franklin	389	425	481	597	648
Glades	389	425	481	597	648
Hamilton	389	425	481	597	648
Hendry	389	425	495	621	696
Holmes	389	425	481	597	648
Jackson	389	425	481	597	648
Lafayette	389	425	481	597	648
Liberty	389	425	481	597	648
Monroe	556	628	807	1112	1323
Putnam	389	425	481	597	648
Suwannee	389	425	481	597	648
Union	389	425	481	597	648
Walton	389	425	481	619	774

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 9

G E O R G I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	308	361	440	601	651	Dougherty, Lee
Athens, GA MSA	379	409	529	722	870	Clarke, Madison, Oconee
*Atlanta, GA MSA	647	720	839	1119	1353	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett Henry, Newton, Paulding, Pickens, Rockdale, Spalding Walton
Augusta-Aiken, GA-SC MSA	389	465	548	744	880	Columbia, Mcduffie, Richmond
Chattanooga, TN-GA MSA	372	434	522	674	768	Catoosa, Dade, Walker
Columbus, GA-AL MSA	356	396	475	620	673	Chattahoochee, Harris, Muscogee
Macon, GA MSA	398	443	516	711	731	Bibb, Houston, Jones, Peach, Twiggs
Savannah, GA MSA	371	461	536	723	752	Bryan, Chatham, Effingham

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Appling	283	340	416	539	613
Bacon	283	340	416	539	613
Baldwin	283	362	441	565	617
Ben Hill	283	340	416	539	621
Bleckley	283	340	416	539	613
Brooks	283	340	416	539	613
Burke	283	340	416	539	613
Calhoun	283	340	416	539	613
Candler	283	340	416	539	613
Chattooga	283	340	416	539	613
Clinch	283	340	416	539	613
Colquitt	283	340	416	539	613
Crawford	283	340	416	539	613
Dawson	283	368	489	612	754
Dodge	283	340	416	539	613
Early	283	340	416	539	613
Elbert	283	340	416	539	613
Evans	283	340	416	539	613
Floyd	283	340	417	550	613
Gilmer	283	340	416	539	613
Glynn	394	441	499	670	821
Grady	288	340	416	539	613
Habersham	303	340	416	539	618
Hancock	283	340	416	539	613
Hart	283	340	416	539	613
Irwin	283	340	416	539	613
Jasper	283	340	421	572	613
Jefferson	283	340	416	539	621

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Atkinson	283	340	416	539	613
Baker	283	340	416	539	613
Banks	283	340	416	539	613
Berrien	283	340	416	539	613
Brantley	283	340	416	539	613
Bulloch	340	345	444	572	726
Butts	283	374	496	664	696
Camden	395	447	500	696	822
Charlton	283	340	416	539	613
Clay	283	340	416	539	613
Coffee	283	340	416	539	621
Cook	283	340	416	539	613
Crisp	286	340	416	539	613
Decatur	283	340	416	539	613
Dooly	283	340	416	539	613
Echols	283	340	416	539	613
Emanuel	283	340	416	539	613
Fannin	283	340	416	539	613
Franklin	283	340	416	539	613
Glascock	283	340	416	539	613
Gordon	335	340	424	547	699
Greene	283	340	416	539	613
Hall	299	454	534	669	746
Haralson	283	340	416	539	613
Heard	283	340	416	539	613
Jackson	314	340	427	539	703
Jeff Davis	283	340	416	539	613
Jenkins	283	340	416	539	613

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 10

G E O R G I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Johnson	283	340	416	539	613
Lanier	283	340	416	539	613
Liberty	351	392	446	620	625
Long	283	368	416	539	613
Lumpkin	283	381	428	573	703
Macon	283	340	416	539	613
Meriwether	283	340	416	539	613
Mitchell	283	340	416	539	613
Montgomery	283	340	416	539	613
Murray	283	340	416	539	613
Pierce	283	340	416	539	613
Polk	283	340	416	563	613
Putnam	283	340	416	539	621
Rabun	283	340	416	539	613
Schley	283	340	416	539	613
Seminole	283	340	416	539	613
Stewart	283	340	416	539	613
Talbot	283	340	416	539	613
Tattnall	283	340	416	539	613
Telfair	283	340	416	539	613
Thomas	283	350	416	539	613
Toombs	283	340	416	539	613
Treutlen	283	340	416	539	613
Turner	283	340	416	539	613
Upson	292	340	416	539	613
Warren	283	340	416	539	613
Wayne	292	340	416	539	613
Wheeler	283	340	416	539	613
Whitfield	283	371	446	570	672
Wilkes	283	340	416	539	613
Worth	283	340	416	539	613

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Lamar	283	349	416	539	659
Laurens	289	340	416	539	613
Lincoln	283	340	416	539	613
Lowndes	316	383	463	649	718
Mcintosh	283	340	416	539	613
Marion	283	340	416	539	613
Miller	283	340	416	539	613
Monroe	283	340	416	548	613
Morgan	283	340	431	539	613
Oglethorpe	283	340	416	539	613
Pike	328	355	450	627	631
Pulaski	283	340	416	539	613
Quitman	283	340	416	539	613
Randolph	283	340	416	539	613
Screven	283	340	416	539	613
Stephens	283	340	416	539	613
Sumter	283	345	416	539	613
Taliaferro	283	340	416	539	613
Taylor	283	340	416	539	613
Terrell	283	340	416	539	613
Tift	283	340	416	539	613
Towns	283	340	416	539	613
Troup	283	385	433	541	613
Union	283	340	434	544	613
Ware	312	350	416	539	647
Washington	283	340	416	539	613
Webster	283	340	416	539	613
White	283	340	416	539	627
Wilcox	283	340	416	539	613
Wilkinson	283	340	416	539	613

H A W A I I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	595	713	839	1134	1226	Honolulu

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 11

H A W A I I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hawaii	463	604	695	923	1137
Maui	748	928	1132	1462	1656
Kauai	591	884	1076	1424	1540

I D A H O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA	396	451	548	761	900	Ada, Canyon
Pocatello, ID MSA	284	329	423	576	681	Bannock

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	282	327	421	558	661
Benewah	282	327	421	558	661
Blaine	436	480	639	891	1049
Bonner	324	401	497	688	792
Boundary	282	327	421	558	661
Camas	282	327	421	558	661
Cassia	282	327	421	558	661
Clearwater	282	327	421	558	661
Elmore	282	327	421	558	661
Fremont	282	327	421	558	661
Gooding	282	327	421	558	661
Jefferson	290	327	421	558	661
Kootenai	358	421	551	767	907
Lemhi	282	327	421	558	661
Lincoln	282	327	421	558	661
Minidoka	282	327	421	558	661
Oneida	283	327	421	558	661
Payette	282	327	421	558	661
Shoshone	282	327	421	558	661
Twin Falls	282	327	426	562	661
Washington	282	327	421	558	661
Bear Lake	282	327	421	558	661
Bingham	300	327	421	558	661
Boise	282	363	421	558	661
Bonneville	287	361	497	668	815
Butte	282	327	421	558	661
Caribou	282	327	421	558	661
Clark	282	327	421	558	661
Custer	282	327	421	558	661
Franklin	282	327	421	558	661
Gem	282	327	421	558	661
Idaho	282	327	421	558	661
Jerome	282	327	421	558	661
Latah	282	327	421	558	670
Lewis	282	327	421	558	661
Madison	282	327	421	558	661
Nez Perce	287	327	421	558	661
Owyhee	282	327	421	558	661
Power	282	327	421	558	661
Teton	307	327	421	570	675
Valley	293	327	421	558	661

I L L I N O I S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	346	422	565	785	829	Mclean
Champaign-Urbana, IL MSA	381	467	605	830	994	Champaign
*Chicago, IL	593	711	848	1060	1186	Cook, Dupage, Kane, Lake, Mchenry, Will
Davenport-Moline-Rock Island, IA-IL MSA	286	395	489	632	685	Henry, Rock Island

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 12

I L L I N O I S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Decatur, IL MSA	276	357	459	620	642	Macon
De Kalb County, IL	454	528	669	930	1077	Dekalb
Grundy County, IL	394	456	605	799	850	Grundy
Kankakee, IL PMSA	358	433	576	737	809	Kankakee
Kendall County, Il	548	624	752	1047	1053	Kendall
Peoria-Pekin, IL MSA	384	423	567	755	927	Peoria, Tazewell, Woodford
Rockford, IL MSA	368	471	574	721	841	Boone, Ogle, Winnebago
*St. Louis, MO-IL MSA	352	429	556	724	800	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	317	393	524	697	793	Menard, Sangamon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	263	295	380	499	606
Bond	263	295	380	499	560
Bureau	263	332	389	499	560
Carroll	263	295	380	499	560
Christian	283	295	382	501	560
Clay	263	295	380	499	560
Crawford	263	295	380	499	560
De Witt	267	295	380	503	560
Edgar	263	295	380	499	560
Effingham	263	304	380	499	560
Ford	250	352	457	587	641
Fulton	271	303	391	513	577
Greene	263	295	380	499	560
Hancock	263	295	380	499	560
Henderson	263	295	380	499	560
Jackson	319	320	405	574	642
Jefferson	264	310	387	528	560
Johnson	263	295	380	499	560
La Salle	319	374	499	674	756
Lee	293	301	404	504	566
Logan	294	313	417	522	654
Macoupin	263	295	380	499	560
Marshall	263	295	380	499	560
Massac	264	295	380	499	560
Montgomery	263	295	380	499	560
Moultrie	263	295	380	512	560
Piatt	263	320	416	567	583
Pope	263	295	380	499	560
Putnam	263	295	380	499	560

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alexander	263	295	380	499	560
Brown	263	295	380	499	560
Calhoun	263	295	380	499	560
Cass	264	295	380	499	560
Clark	263	295	380	499	560
Coles	278	331	440	585	691
Cumberland	263	295	380	499	560
Douglas	281	295	380	499	560
Edwards	263	295	380	499	560
Fayette	263	295	380	499	560
Franklin	263	295	380	499	560
Gallatin	263	295	380	499	560
Hamilton	263	296	380	499	560
Hardin	263	295	380	499	560
Iroquois	263	295	380	499	560
Jasper	263	297	380	499	560
Jo Daviess	291	315	380	499	560
Knox	263	295	380	499	579
Lawrence	263	295	380	499	560
Livingston	263	324	433	558	609
Mcdonough	263	300	380	499	600
Marion	268	295	380	499	560
Mason	263	295	380	499	567
Mercer	263	295	380	499	560
Morgan	263	334	443	591	622
Perry	264	295	380	499	560
Pike	263	295	380	499	560
Pulaski	263	295	380	499	560
Randolph	263	295	380	499	560

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 13

I L L I N O I S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Richland	263	295	380	499	560
Schuyler	263	295	380	499	560
Shelby	263	295	380	499	560
Stephenson	278	318	403	503	564
Vermilion	263	336	419	524	587
Warren	278	295	380	499	560
Wayne	263	295	380	499	560
Whiteside	278	316	421	527	594

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Saline	263	295	380	499	560
Scott	263	295	380	499	560
Stark	263	295	380	499	560
Union	263	295	380	499	560
Wabash	263	295	380	499	592
Washington	263	315	420	526	683
White	263	295	380	499	560
Williamson	263	295	382	531	560

I N D I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	376	486	647	900	1063	Monroe
Cincinnati, OH-KY-IN	324	416	557	746	806	Dearborn
Elkhart-Goshen, IN MSA	380	433	547	700	804	Elkhart
Evansville-Henderson, IN-KY MSA	325	387	503	628	703	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	325	414	515	664	720	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA	400	526	656	824	920	Lake, Porter
Indianapolis, IN MSA	371	465	559	700	785	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison Marion, Morgan, Shelby
Kokomo, IN MSA	350	413	539	693	755	Howard, Tipton
Lafayette, IN MSA	354	450	599	833	984	Clinton, Tippecanoe
Louisville, KY-IN MSA	323	415	510	703	741	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	302	376	446	604	713	Delaware
Ohio County, IN	301	338	433	558	614	Ohio
South Bend, IN MSA	326	434	570	712	799	St. Joseph
Terre Haute, IN MSA	294	344	439	547	611	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bartholomew	404	434	524	654	861
Blackford	284	320	422	528	592
Carroll	284	320	410	527	580
Crawford	284	320	410	527	580
Decatur	284	347	443	574	624
Fayette	300	339	433	557	655
Franklin	284	320	410	527	648
Gibson	284	320	410	527	580
Greene	284	320	410	527	580
Jackson	349	365	451	597	641
Jay	284	320	410	527	580

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	284	320	410	527	580
Brown	284	377	497	690	714
Cass	284	320	410	527	580
Daviess	284	320	410	527	580
Dubois	284	320	410	527	598
Fountain	284	320	410	527	580
Fulton	313	328	410	551	580
Grant	299	320	410	529	580
Henry	312	351	449	579	635
Jasper	284	345	410	527	580
Jefferson	284	320	410	527	580

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 14

I N D I A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Jennings	296	320	410	527	580
Kosciusko	284	376	454	589	636
La Porte	289	350	468	600	655
Marshall	337	342	454	571	636
Miami	284	320	410	527	580
Newton	296	320	410	527	580
Orange	284	320	410	527	580
Parke	284	320	410	527	606
Pike	284	320	410	527	580
Putnam	309	360	442	594	599
Ripley	284	320	410	535	607
Spencer	284	320	410	527	580
Steuben	348	392	469	587	655
Switzerland	284	320	410	527	580
Wabash	284	320	410	527	580
Washington	284	320	410	527	580
White	284	320	410	527	640

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Knox	289	320	415	527	581
Lagrange	289	334	425	553	643
Lawrence	284	320	410	531	580
Martin	284	320	410	527	580
Montgomery	409	430	536	681	753
Noble	328	335	416	536	594
Owen	284	320	410	527	607
Perry	284	320	410	527	580
Pulaski	284	320	410	527	580
Randolph	284	320	410	527	580
Rush	292	320	410	527	607
Starke	284	320	410	527	580
Sullivan	284	320	410	527	580
Union	284	320	410	527	580
Warren	284	320	410	527	580
Wayne	343	385	494	635	698

I O W A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	279	394	507	705	757	Linn
Davenport-Moline-Rock Island, IA-IL MSA	286	395	489	632	685	Scott
Des Moines, IA MSA	363	458	565	733	770	Dallas, Polk, Warren
Dubuque, IA MSA	297	363	466	596	727	Dubuque
Iowa City, IA MSA	351	452	582	807	954	Johnson
Omaha, NE-IA MSA	343	469	593	777	872	Pottawattamie
Sioux City, IA-NE MSA	349	419	522	651	744	Woodbury
Waterloo-Cedar Falls, IA MSA	326	418	522	695	817	Black Hawk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	267	330	414	526	580
Allamakee	267	330	414	532	609
Audubon	267	330	414	526	580
Boone	267	351	414	532	630
Buchanan	281	330	414	526	580
Butler	284	330	414	526	580
Carroll	267	330	414	526	580
Cedar	267	335	414	526	580
Cherokee	267	330	414	526	580

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	267	330	414	526	580
Appanoose	267	330	414	526	584
Benton	274	330	414	526	580
Bremer	267	330	414	526	617
Buena Vista	282	330	414	526	580
Calhoun	267	330	414	526	580
Cass	267	330	414	526	580
Cerro Gordo	267	350	433	577	606
Chickasaw	267	330	414	526	580

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 15

I O W A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Clarke	274	330	414	526	580
Clayton	267	330	414	526	580
Crawford	267	330	414	526	580
Decatur	267	330	414	526	580
Des Moines	267	341	438	549	613
Emmet	267	330	414	526	613
Floyd	290	330	414	526	580
Fremont	293	330	414	526	611
Grundy	267	330	414	526	596
Hamilton	305	346	419	526	587
Hardin	267	330	414	526	580
Henry	267	339	430	538	609
Humboldt	267	330	414	526	580
Iowa	267	330	414	526	580
Jasper	267	339	429	536	601
Jones	276	330	414	526	580
Kossuth	267	330	414	526	580
Louisa	267	330	414	526	580
Lyon	267	330	414	526	580
Mahaska	267	330	414	526	580
Marshall	294	364	456	579	640
Mitchell	267	330	414	526	580
Monroe	267	348	414	526	611
Muscatine	305	378	501	667	700
Osceola	267	330	414	526	580
Palo Alto	267	330	414	526	580
Pocahontas	267	330	414	526	580
Ringgold	267	330	414	526	580
Shelby	267	330	414	526	580
Story	348	422	499	689	790
Taylor	267	330	414	526	581
Van Buren	267	330	414	526	580
Washington	267	330	414	526	611
Webster	267	330	420	529	589
Winneshiek	267	330	414	526	580
Wright	267	330	414	526	580

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Clay	267	330	414	526	580
Clinton	267	330	420	526	588
Davis	267	330	414	526	580
Delaware	267	330	414	526	580
Dickinson	267	330	414	526	580
Fayette	267	330	414	526	580
Franklin	274	330	414	526	580
Greene	267	330	414	526	580
Guthrie	267	330	414	526	610
Hancock	267	330	414	526	580
Harrison	267	330	414	526	580
Howard	267	330	414	526	606
Ida	274	330	414	526	580
Jackson	267	330	417	526	584
Jefferson	267	338	449	585	739
Keokuk	267	330	414	526	580
Lee	267	330	427	535	600
Lucas	267	330	414	526	580
Madison	267	330	431	552	605
Marion	267	367	449	562	630
Mills	267	357	421	529	590
Monona	267	330	414	526	580
Montgomery	293	332	414	526	580
O'Brien	267	330	414	526	580
Page	267	330	414	526	580
Plymouth	267	330	433	541	606
Poweshiek	282	351	449	562	630
Sac	267	330	414	526	580
Sioux	267	330	414	526	580
Tama	267	330	414	526	580
Union	267	330	414	526	611
Wapello	267	330	418	526	585
Wayne	267	330	414	526	580
Winnebago	267	336	414	526	580
Worth	267	330	414	526	589

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 16

K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Kansas City, MO-KS MSA	418	526	633	875	970	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	361	432	554	771	888	Douglas
Topeka, KS MSA	338	389	507	685	772	Shawnee
*Wichita, KS MSA	353	424	567	767	829	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	272	309	396	511	568	Anderson	272	309	396	511	568
Atchison	272	309	396	511	609	Barber	272	309	396	511	568
Barton	272	309	396	511	568	Bourbon	272	309	396	511	568
Brown	272	309	396	511	568	Chase	272	309	396	511	568
Chautauqua	272	309	396	511	568	Cherokee	272	309	396	511	568
Cheyenne	272	309	396	511	568	Clark	272	309	396	511	568
Clay	272	309	396	511	568	Cloud	272	309	396	511	568
Coffey	281	309	396	511	593	Comanche	272	309	396	511	568
Cowley	290	309	396	523	568	Crawford	272	309	403	511	568
Decatur	272	309	396	511	568	Dickinson	272	309	396	511	568
Doniphan	272	309	396	511	568	Edwards	272	309	396	511	568
Elk	272	309	396	511	568	Ellis	272	309	396	511	568
Ellsworth	272	309	396	511	568	Finney	357	381	488	636	804
Ford	313	370	460	580	653	Franklin	306	321	414	530	646
Geary	335	352	440	568	616	Gove	272	309	396	511	568
Graham	272	309	396	511	568	Grant	282	358	410	561	612
Gray	272	309	396	511	568	Greeley	272	309	396	511	568
Greenwood	272	309	396	511	568	Hamilton	272	309	396	511	568
Harper	272	309	396	511	568	Haskell	272	316	396	511	568
Hodgeman	272	309	396	511	568	Jackson	272	309	396	511	568
Jefferson	272	309	403	535	568	Jewell	272	309	396	511	568
Kearny	303	309	407	548	602	Kingman	272	309	396	511	568
Kiowa	272	309	396	511	568	Labette	272	309	396	511	568
Lane	272	309	396	511	568	Lincoln	272	309	396	511	568
Linn	272	309	396	511	568	Logan	272	309	396	511	568
Lyon	272	309	396	511	606	Mcpherson	274	309	396	511	568
Marion	272	309	396	511	568	Marshall	272	309	396	511	568
Meade	272	309	396	511	568	Mitchell	272	309	396	511	568
Montgomery	272	309	396	511	568	Morris	272	309	396	511	568
Morton	272	332	396	511	568	Nemaha	272	309	396	511	568
Neosho	272	309	396	511	568	Ness	272	309	396	511	568
Norton	272	309	396	511	568	Osage	272	309	396	511	568
Osborne	272	309	396	511	569	Ottawa	272	309	396	511	568
Pawnee	272	309	396	511	568	Phillips	272	309	396	511	568

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 17

K A N S A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pottawatomie	272	309	396	511	581
Rawlins	272	309	396	511	568
Republic	272	309	396	511	568
Riley	338	372	495	618	751
Rush	272	309	396	511	568
Saline	356	368	485	670	678
Seward	328	358	476	596	665
Sherman	272	309	396	511	568
Stafford	272	309	396	511	568
Stevens	272	310	396	511	584
Thomas	272	309	396	511	568
Wabaunsee	272	309	396	511	568
Washington	272	309	396	511	568
Wilson	272	309	396	511	568

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pratt	272	309	396	521	568
Reno	272	309	396	511	617
Rice	272	309	396	511	568
Rooks	272	309	396	511	568
Russell	272	309	396	511	568
Scott	272	309	396	521	599
Sheridan	272	309	396	511	568
Smith	272	309	396	511	568
Stanton	272	309	396	511	568
Sumner	272	309	396	535	568
Trego	272	309	396	511	568
Wallace	272	309	396	511	568
Wichita	272	309	407	511	634
Woodson	272	309	396	511	568

K E N T U C K Y

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	324	416	557	746	806	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	345	386	454	618	636	Christian
Evansville-Henderson, IN-KY MSA	325	387	503	628	703	Henderson
Gallatin County, KY	271	369	452	567	740	Gallatin
Grant County, KY	270	321	425	593	702	Grant
Huntington-Ashland, WV-KY-OH MSA	307	360	444	566	624	Boyd, Carter, Greenup
Lexington, KY MSA	350	435	533	727	821	Bourbon, Clark, Fayette, Jessamine, Madison, Scott Woodford
Louisville, KY-IN MSA	323	415	510	703	741	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	305	316	415	557	583	Daviess
Pendleton County, KY	272	315	419	527	589	Pendleton

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	251	307	363	480	527
Anderson	277	293	380	474	532
Barren	251	304	363	469	527
Bell	251	293	366	469	527
Bracken	251	293	363	469	527
Breckinridge	251	293	363	469	527
Caldwell	251	293	363	469	527
Carlisle	251	293	363	469	527
Casey	251	293	363	469	527
Clinton	251	293	363	469	527

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	251	293	363	469	527
Ballard	251	293	363	469	527
Bath	251	293	363	469	527
Boyle	299	303	404	506	567
Breathitt	251	293	363	469	527
Butler	251	293	363	469	527
Calloway	251	293	363	469	527
Carroll	251	293	363	469	527
Clay	251	293	363	469	527
Crittenden	251	293	363	469	527

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 18

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cumberland	251	293	363	469	527
Elliott	251	293	363	469	527
Fleming	251	293	363	469	527
Franklin	251	370	453	585	739
Garrard	251	293	363	469	527
Grayson	251	293	363	469	527
Hancock	251	293	363	473	560
Harlan	251	382	435	568	670
Hart	251	293	363	469	527
Hickman	251	293	363	469	527
Jackson	251	293	363	469	527
Knott	251	293	363	469	527
Larue	251	293	363	469	527
Lawrence	251	293	363	469	527
Leslie	251	293	363	469	527
Lewis	251	293	363	469	527
Livingston	290	293	391	543	547
Lyon	251	293	363	469	527
Mccreary	251	293	363	469	527
Magoffin	251	293	363	469	527
Marshall	251	299	363	469	564
Mason	251	293	363	469	527
Menifee	251	293	363	469	527
Metcalfe	251	293	363	469	527
Montgomery	251	293	363	469	527
Muhlenberg	251	293	363	469	527
Nicholas	251	293	363	469	527
Owen	251	293	363	469	540
Perry	282	293	378	472	529
Powell	251	293	363	469	527
Robertson	251	293	363	469	527
Rowan	251	293	363	469	547
Shelby	252	332	372	519	527
Spencer	251	299	363	469	527
Todd	251	293	363	469	527
Trimble	251	293	363	469	527
Warren	251	325	434	542	627
Wayne	251	293	363	469	527
Whitley	251	293	363	469	527

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Edmonson	251	293	363	469	527
Estill	251	293	363	469	527
Floyd	265	322	363	503	578
Fulton	251	293	363	469	527
Graves	251	293	363	469	527
Green	251	293	363	469	527
Hardin	312	321	401	540	640
Harrison	251	294	372	469	574
Henry	251	293	363	469	527
Hopkins	251	293	363	469	532
Johnson	251	293	363	469	527
Knox	251	347	445	557	685
Laurel	328	371	440	593	615
Lee	251	293	363	469	527
Letcher	251	293	363	469	527
Lincoln	251	293	363	469	527
Logan	251	293	363	478	527
Mccracken	285	306	383	490	629
Mclean	251	293	363	469	527
Marion	251	293	363	469	527
Martin	251	293	363	469	527
Meade	260	323	372	491	612
Mercer	251	293	363	478	527
Monroe	251	293	363	469	527
Morgan	251	293	363	469	527
Nelson	276	293	374	469	527
Ohio	251	293	363	469	527
Owsley	251	293	363	469	527
Pike	270	308	374	469	553
Pulaski	276	293	372	470	527
Rockcastle	251	293	363	469	527
Russell	251	293	363	469	527
Simpson	251	314	368	470	527
Taylor	303	359	401	537	607
Trigg	251	293	363	469	527
Union	251	293	363	469	527
Washington	251	297	363	469	527
Webster	251	293	363	469	527
Wolfe	251	293	363	469	527

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 19

L O U I S I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	283	354	444	615	625	Rapides
*Baton Rouge, LA MSA	326	404	502	696	822	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	279	327	419	581	688	Lafourche, Terrebonne
Lafayette, LA MSA	296	341	405	558	660	Lafayette, Acadia, St. Landry, St. Martin
Lake Charles, LA MSA	326	379	480	629	788	Calcasieu
Monroe, LA MSA	306	343	457	616	640	Ouachita
New Orleans, LA	369	423	527	717	868	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles St. John the Baptist, St. Tammany
St. James Parish, LA	278	315	420	523	586	St. James
Shreveport-Bossier City, LA MSA	345	392	492	658	808	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	270	293	361	473	527
Avoyelles	270	293	361	473	529
Bienville	270	293	361	479	566
Cameron	270	293	361	473	527
Claiborne	270	293	361	473	527
De Soto	270	293	361	473	531
East Feliciana	270	293	361	473	527
Franklin	270	293	361	473	531
Iberia	285	297	369	473	527
Jackson	270	293	361	473	527
La Salle	270	293	361	473	531
Madison	270	293	361	473	527
Natchitoches	288	295	381	528	531
Red River	270	293	361	473	531
Sabine	270	300	361	473	556
St. Mary	295	316	397	541	564
Tensas	270	293	361	473	527
Vermilion	270	293	361	473	527
Washington	270	293	361	473	527
West Feliciana	270	351	470	587	659

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Assumption	295	317	376	473	527
Beauregard	328	358	424	554	610
Caldwell	270	293	361	473	527
Catahoula	270	293	361	473	527
Concordia	270	293	361	473	527
East Carroll	270	293	361	473	527
Evangeline	270	293	361	473	527
Grant	270	293	361	473	527
Iberville	270	293	361	473	543
Jefferson Davis	270	293	361	473	535
Lincoln	317	319	398	546	655
Morehouse	270	293	361	473	527
Pointe Coupee	270	293	361	473	572
Richland	270	293	361	473	531
St. Helena	270	293	361	473	527
Tangipahoa	289	300	386	506	539
Union	270	293	361	473	531
Vernon	309	345	393	509	601
West Carroll	270	293	361	473	527
Winn	270	293	361	473	527

M A I N E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	354	432	554	724	777	Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 20

M A I N E continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Waldo county towns of Winterport town
Lewiston-Auburn, ME MSA	326	393	505	633	718	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	442	569	749	937	1050	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	497	595	765	981	1203	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	325	402	533	666	746	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Aroostook	325	382	489	622	716	
Cumberland	476	485	646	878	1008	Baldwin town, Bridgton town, Brunswick town Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Franklin	332	382	489	622	716	
Hancock	350	429	531	669	743	
Kennebec	338	422	507	637	716	
Knox	325	419	543	725	763	
Lincoln	423	471	535	744	878	
Oxford	325	382	489	622	716	
Penobscot	325	382	489	622	716	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

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 21

M A I N E continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Piscataquis	325	382	489	622	716	
Sagadahoc	457	523	646	859	1061	
Somerset	340	389	489	622	735	
Waldo	325	382	489	622	716	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
Washington	325	382	489	622	716	
York	402	459	615	770	861	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

M A R Y L A N D

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baltimore, MD	443	542	661	875	1001	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Anne's, Baltimore city
Columbia, MD	575	773	901	1190	1487	Columbia
Cumberland, MD-WV MSA	340	409	506	668	763	Allegany
Hagerstown, MD PMSA	348	418	522	683	780	Washington
*Washington, DC-MD-VA	680	773	907	1236	1491	Calvert, Charles, Frederick, Montgomery, Prince George's
Wilmington-Newark, DE-MD PMSA	457	603	703	954	1153	Cecil

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Caroline	372	401	501	657	746
Garrett	332	445	501	653	823
St. Mary's	507	602	694	968	1106
Talbot	439	465	620	777	1018
Worcester	332	401	502	697	746
Dorchester	332	429	501	653	746
Kent	336	414	553	690	832
Somerset	396	444	501	695	822
Wicomico	374	432	558	708	781

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	501	671	896	1122	1256	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 22

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	695	782	979	1223	1437	Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city 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 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 Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town
Brockton, MA PMSA	464	611	750	932	1063	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 23

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town
Fitchburg-Leominster, MA MSA.....	363	510	662	851	925	Middlesex county towns of Ashby town Worcester county towns of Ashburnham town, Fitchburg city Gardner city, Leominster city, Lunenburg town Templeton town, Westminster town, Winchendon town
Lawrence, MA-NH PMSA.....	502	606	763	953	1172	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.....	510	659	796	997	1115	Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
New Bedford, MA PMSA.....	487	595	677	846	950	Bristol county towns of Acushnet town, Dartmouth town Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town Rochester town
Pittsfield, MA MSA.....	327	464	571	717	888	Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
Providence-Fall River-Warwick, RI-MA MSA.....	384	523	628	789	972	Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town
Springfield, MA MSA.....	407	503	635	793	976	Franklin county towns of Sunderland town 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 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 PMSA.....	451	546	681	850	953	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

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 24

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Uxbridge town, Webster town, Westborough town West Boylston town, West Brookfield to, Worcester city

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Barnstable	484	664	884	1106	1239	Bourne town, Falmouth town, Provincetown town Truro town, Wellfleet town
Berkshire	386	469	553	758	908	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
Dukes	654	665	885	1107	1242	
Franklin	416	515	659	826	997	Ashfield town, Bernardston town, Buckland town Charlemont town, Colrain town, Conway town Deerfield town, Erving town, Gill town, Greenfield town Hawley town, Heath town, Leverett town, Leyden town Monroe town, Montague town, New Salem town Northfield town, Orange town, Rowe town, Shelburne town Shutesbury town, Warwick town, Wendell town Whately town
Hampden	420	572	763	1015	1252	Blandford town, Brimfield town, Chester town Granville town, Tolland town, Wales town
Hampshire	588	595	794	996	1114	Chesterfield town, Cummington town, Goshen town Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town
Nantucket	743	996	1328	1660	1858	
Worcester	468	488	650	814	910	Athol town, Hardwick town, Hubbardston town New Braintree town, Petersham town, Phillipston town Royalston town, Warren town

M I C H I G A N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	493	596	736	965	1082	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	385	389	511	638	716	Berrien
*Detroit, MI PMSA	441	598	723	904	1013	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	384	436	547	698	765	Genesee
*Grand Rapids-Muskegon-Holland, MI MSA	421	492	601	752	842	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	303	407	516	644	722	Jackson
Kalamazoo-Battle Creek, MI MSA	358	432	544	682	761	Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	403	474	613	801	925	Clinton, Eaton, Ingham

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 25

M I C H I G A N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Saginaw-Bay City-Midland, MI MSA	352	388	516	644	722	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alcona	293	335	424	551	628	Alger	293	335	424	551	628
Alpena	293	335	424	551	632	Antrim	293	352	424	551	628
Arenac	293	335	424	551	628	Baraga	293	335	424	551	628
Barry	293	362	481	604	676	Benzie	306	335	424	569	628
Branch	340	348	427	584	628	Cass	293	335	426	582	628
Charlevoix	357	361	457	621	643	Cheboygan	309	335	424	551	644
Chippewa	293	335	424	551	628	Clare	304	335	424	551	628
Crawford	321	335	433	592	628	Delta	293	335	424	551	628
Dickinson	293	361	445	556	628	Emmet	328	392	464	609	648
Gladwin	293	335	424	551	628	Gogebic	293	335	424	551	628
Grand Traverse	388	416	555	694	779	Gratiot	306	335	424	551	628
Hillsdale	293	335	424	551	628	Houghton	293	335	424	551	628
Huron	293	335	424	551	628	Ionia	360	364	456	568	639
Iosco	293	335	424	551	665	Iron	293	335	424	551	628
Isabella	328	350	468	632	768	Kalkaska	293	335	425	553	699
Keweenaw	293	335	424	551	628	Lake	296	335	424	551	628
Leelanau	398	430	503	657	825	Luce	293	335	424	551	628
Mackinac	293	335	424	551	628	Manistee	293	335	424	551	628
Marquette	293	335	424	551	628	Mason	293	335	424	551	628
Mecosta	293	335	424	574	681	Menominee	293	335	424	551	628
Missaukee	309	335	424	551	628	Montcalm	351	396	501	651	742
Montmorency	293	335	424	551	628	Newaygo	338	362	425	551	628
Oceana	313	335	424	551	628	Ogemaw	305	336	424	551	628
Ontonagon	293	335	424	551	628	Osceola	293	335	424	551	628
Oscoda	293	335	424	551	628	Otsego	300	364	459	638	739
Presque Isle	293	335	424	551	628	Roscommon	324	335	424	551	628
St. Joseph	293	342	424	553	628	Sanilac	293	345	424	553	628
Schoolcraft	293	335	424	551	628	Shiawassee	293	368	443	617	661
Tuscola	319	348	464	580	648	Wexford	293	339	439	576	681

M I N N E S O T A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	285	367	471	629	733	St. Louis
Fargo-Moorhead, ND-MN MSA	344	473	571	793	849	Clay
Grand Forks, ND-MN MSA	355	423	557	768	857	Polk

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 26

M I N N E S O T A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
La Crosse, WI-MN MSA	289	372	473	633	767	Houston
*Minneapolis-St. Paul, MN-WI MSA	451	580	742	1004	1137	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright
Rochester, MN MSA	332	466	610	843	947	Olmsted
St. Cloud, MN MSA	330	427	505	637	813	Benton, Stearns

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aitkin	273	354	471	591	659	Becker	269	386	434	543	609
Beltrami	269	345	461	604	645	Big Stone	269	328	416	521	596
Blue Earth	367	443	552	707	897	Brown	269	348	416	521	596
Carlton	269	328	416	521	596	Cass	269	328	416	521	596
Chippewa	269	328	416	521	596	Clearwater	269	328	416	521	596
Cook	319	328	428	585	609	Cottonwood	269	328	416	521	596
Crow Wing	269	328	437	547	687	Dodge	269	328	416	521	596
Douglas	269	328	416	521	596	Faribault	269	328	416	521	596
Fillmore	269	328	416	521	596	Freeborn	269	328	424	558	598
Goodhue	311	400	533	680	746	Grant	269	328	416	521	596
Hubbard	275	328	416	521	596	Itasca	345	349	455	568	637
Jackson	269	328	416	521	596	Kanabec	269	339	439	549	615
Kandiyohi	332	419	510	639	770	Kittson	269	328	416	521	596
Koochiching	326	332	441	551	722	Lac qui Parle	269	328	416	521	596
Lake	269	328	416	521	596	Lake of the Woods	269	328	416	521	596
Le Sueur	269	328	416	521	642	Lincoln	269	328	416	521	596
Lyon	269	328	416	521	617	Mcleod	320	412	549	682	766
Mahnomen	269	328	416	521	596	Marshall	269	328	416	521	596
Martin	269	328	416	521	596	Meeker	321	377	478	601	686
Mille Lacs	286	328	417	581	684	Morrison	298	328	416	521	596
Mower	269	328	416	521	596	Murray	269	328	416	521	596
Nicollet	338	361	480	637	674	Nobles	269	328	416	521	596
Norman	269	328	416	521	596	Otter Tail	269	328	416	521	596
Pennington	269	328	416	556	596	Pine	297	328	416	524	596
Pipestone	269	328	416	521	596	Pope	269	328	416	521	596
Red Lake	269	340	416	521	596	Redwood	269	328	416	521	596
Renville	269	328	416	521	596	Rice	319	436	582	725	812
Rock	269	328	416	521	596	Roseau	326	332	435	561	611
Sibley	269	328	416	521	596	Steele	319	370	493	616	690
Stevens	306	387	437	547	613	Swift	269	328	416	521	596
Todd	269	328	416	521	596	Traverse	269	328	416	521	596
Wabasha	291	355	449	563	643	Wadena	269	328	416	521	596
Waseca	351	385	489	613	701	Watonwan	269	328	416	521	596

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 27

M I N N E S O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wilkin	269	328	416	521	596
Yellow Medicine	269	328	416	521	596
Winona	314	409	518	647	725

M I S S I S S I P P I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	401	470	541	754	889	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	285	349	428	574	684	Forrest, Lamar
Jackson, MS MSA	399	455	557	740	781	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	396	462	542	753	791	Desoto

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	250	297	370	473	603
Amite	250	297	368	473	532
Benton	250	297	368	473	532
Calhoun	250	297	368	473	532
Chickasaw	250	297	368	473	532
Claiborne	250	297	368	473	532
Clay	250	297	368	473	537
Copiah	250	297	368	473	532
Franklin	253	297	368	473	532
Greene	250	297	368	473	532
Holmes	250	297	368	473	532
Issaquena	263	362	480	601	673
Jasper	250	297	368	473	532
Jefferson Davis	250	297	368	473	532
Kemper	252	297	368	473	532
Lauderdale	250	323	406	527	570
Leake	250	297	368	473	532
Leflore	250	297	368	474	569
Lowndes	309	333	395	495	558
Marshall	250	297	368	473	540
Montgomery	250	297	368	473	532
Newton	250	297	368	473	532
Oktibbeha	307	320	391	543	641
Pearl River	263	297	368	475	532
Pike	254	297	368	473	532
Prentiss	253	297	368	473	532
Scott	250	297	368	473	532
Simpson	253	297	368	473	532
Alcorn	250	297	368	473	532
Attala	250	297	368	473	532
Bolivar	285	297	383	478	546
Carroll	250	297	368	473	532
Choctaw	250	297	368	473	532
Clarke	250	297	368	473	532
Coahoma	291	297	392	492	550
Covington	250	297	368	473	532
George	250	297	368	473	532
Grenada	250	298	368	502	532
Humphreys	250	297	368	473	532
Itawamba	250	297	368	473	532
Jefferson	250	297	368	473	532
Jones	250	297	368	473	532
Lafayette	253	347	463	580	648
Lawrence	250	297	368	473	532
Lee	313	337	406	508	570
Lincoln	250	297	368	473	532
Marion	250	297	368	473	532
Monroe	250	297	368	473	532
Neshoba	250	297	368	473	532
Noxubee	254	297	368	473	532
Panola	259	297	368	473	532
Perry	250	297	368	473	532
Pontotoc	250	297	368	473	532
Quitman	250	297	368	473	532
Sharkey	254	297	368	473	532
Smith	250	297	368	473	532

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 28

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Stone	250	297	368	473	532
Tallahatchie	250	297	368	473	532
Tippah	250	297	368	473	532
Tunica	250	297	368	473	532
Walthall	250	297	368	473	532
Washington	271	322	430	555	612
Webster	252	297	368	473	532
Winston	250	297	368	473	532
Yazoo	254	297	368	473	532

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Sunflower	277	301	368	473	565
Tate	250	338	391	490	643
Tishomingo	250	297	368	473	532
Union	250	297	368	473	532
Warren	250	327	408	564	676
Wayne	250	297	368	473	532
Wilkinson	250	297	368	473	532
Yalobusha	252	297	368	473	532

M I S S O U R I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	266	374	487	677	798	Boone
Joplin, MO MSA	259	300	398	524	563	Jasper, Newton
*Kansas City, MO-KS MSA	418	526	633	875	970	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	249	302	403	509	565	Andrew, Buchanan
*St. Louis, MO-IL MSA	352	429	556	724	800	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	272	345	446	616	641	Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	241	301	399	503	603
Audrain	257	277	357	482	557
Barton	241	277	357	463	532
Benton	271	277	369	463	532
Butler	241	277	357	463	532
Callaway	284	288	384	487	631
Cape Girardeau	248	305	405	540	662
Carter	241	277	357	463	532
Chariton	241	277	357	463	532
Cole	241	318	423	565	592
Crawford	264	318	358	472	532
Dallas	241	277	357	463	532
Dekalb	249	277	357	469	532
Douglas	241	277	357	463	532
Gasconade	241	277	357	463	532
Grundy	241	277	357	463	532
Henry	274	279	373	467	613
Holt	241	277	357	463	532
Howell	241	277	357	463	532

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Atchison	241	277	357	463	532
Barry	241	286	357	463	532
Bates	241	277	357	463	542
Bollinger	241	277	357	463	532
Caldwell	241	279	376	470	532
Camden	317	320	427	593	698
Carroll	241	277	357	463	532
Cedar	241	277	357	463	532
Clark	241	277	357	463	532
Cooper	241	277	357	463	532
Dade	241	277	357	463	532
Daviess	241	277	357	463	532
Dent	241	277	357	463	532
Dunklin	241	277	357	463	532
Gentry	241	277	357	463	532
Harrison	241	277	357	463	532
Hickory	241	277	357	463	532
Howard	241	277	357	463	534
Iron	241	277	357	463	532

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 29

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Johnson	289	323	421	558	660
Laclede	241	277	357	467	532
Lewis	241	277	357	463	532
Livingston	241	277	358	463	532
Macon	259	298	383	498	571
Maries	241	277	357	463	532
Mercer	241	277	357	463	532
Mississippi	241	277	357	463	532
Monroe	241	277	357	463	532
Morgan	241	277	357	463	532
Nodaway	254	308	379	481	580
Osage	241	277	357	463	532
Pemiscot	241	277	357	463	532
Pettis	258	303	405	510	610
Pike	241	277	357	463	559
Pulaski	241	338	379	502	559
Ralls	241	277	357	463	532
Reynolds	241	277	357	463	532
St. Clair	241	277	357	463	532
St. Francois	264	332	420	527	691
Schuyler	241	277	357	463	532
Scott	289	291	390	526	606
Shelby	241	277	357	463	532
Stone	279	297	370	472	532
Taney	272	301	394	532	625
Vernon	241	277	357	475	532
Wayne	241	277	357	463	532
Wright	241	277	357	463	532

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Knox	241	277	357	463	532
Lawrence	255	284	357	463	532
Linn	241	277	357	463	532
Mcdonald	241	277	357	463	532
Madison	241	277	357	463	532
Marion	241	277	357	463	532
Miller	264	318	357	467	552
Moniteau	241	277	357	463	532
Montgomery	255	293	377	490	562
New Madrid	241	277	357	463	532
Oregon	241	277	357	463	532
Ozark	241	277	357	463	532
Perry	291	296	396	527	554
Phelps	249	299	383	520	564
Polk	241	278	357	463	557
Putnam	241	277	357	463	532
Randolph	241	277	357	463	532
Ripley	241	277	357	463	532
Ste. Genevieve	241	286	369	472	598
Saline	241	277	367	463	532
Scotland	241	277	357	463	532
Shannon	241	277	357	463	532
Stoddard	241	277	357	463	532
Sullivan	241	277	357	463	532
Texas	241	277	357	463	532
Washington	281	341	382	477	535
Worth	241	277	357	463	532

M O N T A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	335	389	520	699	848	Yellowstone
Great Falls, MT MSA	335	387	510	664	790	Cascade
Missoula, MT MSA	335	393	523	674	857	Missoula

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 30

M O N T A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	301	347	458	595	695
Blaine	301	347	458	595	695
Carbon	342	401	521	678	791
Chouteau	301	347	458	595	695
Daniels	301	368	458	595	695
Deer Lodge	301	347	458	595	695
Fergus	301	347	458	595	695
Gallatin	370	432	579	744	951
Glacier	301	347	458	595	695
Granite	301	347	458	595	695
Jefferson	317	347	458	595	695
Lake	327	347	458	595	695
Liberty	301	347	458	595	695
Mccone	301	366	458	595	695
Meagher	301	368	458	595	695
Musselshell	306	347	458	595	695
Petroleum	301	347	458	595	695
Pondera	301	367	458	595	695
Powell	306	347	458	595	695
Ravalli	301	347	458	595	695
Roosevelt	314	347	458	595	695
Sanders	301	347	458	595	695
Silver Bow	301	347	458	595	695
Sweet Grass	324	347	458	595	695
Toole	307	347	458	595	695
Valley	301	347	458	595	695
Wibaux	301	368	458	595	695

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	301	347	458	595	695
Broadwater	301	347	458	595	741
Carter	301	368	458	595	695
Custer	301	347	458	595	695
Dawson	301	347	458	595	695
Fallon	301	347	458	595	695
Flathead	301	348	465	649	764
Garfield	301	347	458	595	695
Golden Valley	301	367	458	595	695
Hill	310	347	458	595	695
Judith Basin	301	368	458	595	695
Lewis and Clark	334	391	520	723	856
Lincoln	327	347	458	595	695
Madison	307	347	458	595	695
Mineral	301	347	458	595	710
Park	301	347	458	595	703
Phillips	301	347	458	595	695
Powder River	301	352	458	595	695
Prairie	301	347	458	595	695
Richland	301	375	458	595	695
Rosebud	301	347	458	595	695
Sheridan	309	347	458	595	695
Stillwater	307	347	458	595	695
Teton	301	347	458	595	695
Treasure	301	347	458	595	695
Wheatland	301	347	458	595	695

N E B R A S K A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	318	408	538	714	834	Lancaster
Omaha, NE-IA MSA	343	469	593	777	872	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	349	419	522	651	744	Dakota

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 31

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	250	335	442	554	664
Arthur	240	309	394	504	573
Blaine	240	309	394	504	573
Box Butte	260	309	394	505	595
Brown	240	309	394	504	585
Burt	240	309	394	504	573
Cedar	240	309	394	504	573
Cherry	240	324	394	507	596
Clay	240	309	394	504	573
Cuming	240	325	394	504	573
Dawes	256	309	394	508	599
Deuel	240	309	394	504	573
Dodge	240	309	406	535	573
Fillmore	240	309	394	504	573
Frontier	269	309	394	504	573
Gage	240	310	401	511	573
Garfield	240	309	394	504	573
Grant	240	309	394	504	573
Hall	287	379	505	664	744
Harlan	240	309	394	505	573
Hitchcock	240	309	394	504	573
Hooker	240	323	394	505	573
Jefferson	240	309	394	504	573
Kearney	240	309	394	504	599
Keya Paha	240	309	394	504	573
Knox	240	320	394	504	573
Logan	240	309	394	504	600
Mcpherson	240	309	394	505	573
Merrick	240	309	394	504	573
Nance	240	309	394	504	573
Nuckolls	240	309	394	504	573
Pawnee	240	309	394	508	573
Phelps	268	309	394	505	599
Platte	240	309	394	550	573
Red Willow	240	309	394	504	583
Rock	240	316	394	504	573
Saunders	240	309	394	504	573
Seward	297	309	402	504	573
Sherman	240	311	394	504	600
Stanton	240	309	394	504	573

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Antelope	240	324	394	507	573
Banner	240	309	394	505	573
Boone	240	309	394	504	596
Boyd	240	322	394	504	573
Buffalo	258	374	469	585	707
Butler	240	309	394	504	573
Chase	240	325	394	504	601
Cheyenne	268	309	394	504	573
Colfax	261	321	394	504	573
Custer	268	311	394	504	595
Dawson	263	321	394	508	573
Dixon	267	309	394	504	573
Dundy	240	309	394	504	573
Franklin	240	309	394	509	573
Furnas	240	309	394	504	596
Garden	240	321	394	507	599
Gosper	240	309	394	504	580
Greeley	240	309	394	504	583
Hamilton	240	309	394	508	573
Hayes	240	323	394	504	596
Holt	240	309	394	504	573
Howard	240	309	394	504	573
Johnson	240	313	394	504	573
Keith	240	309	394	504	573
Kimball	240	309	394	505	599
Lincoln	246	321	394	504	573
Loup	240	309	394	504	598
Madison	246	323	427	553	674
Morrill	240	311	394	504	596
Nemaha	240	309	394	504	573
Otoe	240	309	394	504	600
Perkins	240	309	394	504	573
Pierce	240	309	394	504	573
Polk	240	309	394	504	573
Richardson	240	309	394	504	573
Saline	240	322	394	504	573
Scotts Bluff	244	320	406	504	596
Sheridan	240	309	394	504	574
Sioux	240	309	394	504	599
Thayer	240	324	394	504	573

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 32

N E B R A S K A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Thomas	240	309	394	504	573
Valley	240	309	394	504	573
Webster	240	309	394	504	573
York	240	309	399	504	573
Thurston	240	309	394	504	573
Wayne	274	309	394	504	596
Wheeler	240	309	394	505	573

N E V A D A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Las Vegas, NV-AZ MSA	536	636	757	1054	1245	Clark, Nye
Reno, NV MSA	492	570	733	1021	1206	Washoe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Churchill	445	452	604	832	988
Elko	404	462	616	813	1012
Eureka	328	535	603	750	839
Lander	331	513	603	753	987
Lyon	392	469	603	838	988
Pershing	456	462	616	770	881
White Pine	329	453	603	813	854
Douglas	399	582	731	1014	1128
Esmeralda	429	535	603	751	842
Humboldt	482	506	610	800	855
Lincoln	329	494	603	754	843
Mineral	333	455	606	794	993
Storey	462	468	616	857	1012
Carson City	346	473	632	879	1037

N E W H A M P S H I R E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	695	782	979	1223	1437	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	502	606	763	953	1172	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	510	659	796	997	1115	Hillsborough county towns of Pelham town
Manchester, NH PMSA	410	585	730	913	1023	Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town Londonderry town
Nashua, NH PMSA	483	673	835	1136	1352	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	497	595	765	981	1203	Rockingham county towns of Brentwood town East Kingston town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 33

N E W H A M P S H I R E continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	436	504	663	896	1089	
Carroll	364	500	666	835	1041	
Cheshire	452	537	687	895	1061	
Coos	312	382	489	638	755	
Grafton	402	485	646	835	1055	
Hillsborough	428	535	713	943	1135	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Merrimack	450	538	671	860	960	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Rockingham	468	547	733	1016	1173	Deerfield town, Northwood town, Nottingham town
Strafford	414	562	749	939	1052	Middleton town, New Durham town, Strafford town
Sullivan	435	442	574	754	804	

N E W J E R S E Y

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	511	582	774	970	1108	Atlantic, Cape May
*Bergen-Passaic, NJ PMSA	702	856	1003	1336	1648	Bergen, Passaic
Jersey City, NJ PMSA	601	709	826	1050	1155	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	699	766	956	1298	1499	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	614	735	933	1240	1454	Monmouth, Ocean
*Newark, NJ PMSA	608	777	936	1179	1489	Essex, Morris, Sussex, Union, Warren
*Philadelphia, PA-NJ PMSA	535	657	812	1016	1274	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	507	707	862	1167	1409	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	493	600	723	902	1014	Cumberland

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

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N E W M E X I C O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Albuquerque, NM MSA	424	505	632	871	1028	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	296	372	442	606	714	Dona Ana
Santa Fe, NM MSA	428	607	749	1006	1139	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Catron	273	319	396	532	601
Cibola	284	310	396	532	601
Curry	273	317	415	532	601
Eddy	280	309	396	532	619
Guadalupe	273	309	396	532	605
Hidalgo	273	309	396	532	601
Lincoln	309	317	418	551	689
Mckinley	273	343	436	543	609
Otero	273	309	396	552	601
Rio Arriba	319	326	401	532	601
San Juan	308	330	412	572	678
Sierra	273	309	396	532	601
Taos	469	475	633	791	1042
Union	273	333	396	532	601

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Chaves	273	310	409	563	601
Colfax	273	317	396	532	601
Debaca	273	310	396	532	601
Grant	323	369	472	633	714
Harding	273	309	396	532	601
Lea	273	309	396	532	601
Luna	300	330	423	567	640
Mora	273	309	396	532	601
Quay	273	395	445	557	623
Roosevelt	273	309	396	532	601
San Miguel	302	309	408	532	601
Socorro	273	309	396	532	617
Torrance	299	323	396	532	601

N E W Y O R K

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	401	494	607	762	851	Albany, Montgomery, Rensselaer, Saratoga, Schenectady Schoharie
Binghamton, NY MSA	360	404	504	640	718	Broome, Tioga
*Buffalo-Niagara Falls, NY PMSA	383	453	547	682	765	Erie, Niagara
Dutchess County, NY PMSA	595	754	933	1212	1416	Dutchess
Elmira, NY MSA	360	404	496	627	748	Chemung
Glens Falls, NY MSA	360	468	571	715	799	Warren, Washington
Jamestown, NY MSA	360	404	486	627	718	Chautauqua
Nassau-Suffolk, NY PMSA	798	962	1173	1633	1749	Nassau, Suffolk
New York, NY PMSA	750	836	949	1187	1330	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	720	939	1144	1486	1774	Westchester
Newburgh, NY-PA PMSA	476	618	757	960	1095	Orange
Rochester, NY MSA	387	504	612	785	858	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	385	464	575	734	814	Cayuga, Madison, Onondaga, Oswego
Utica-Rome, NY MSA	359	403	484	626	715	Herkimer, Oneida

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 35

N E W Y O R K continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allegany	359	403	484	626	715
Chenango	382	403	484	626	715
Columbia	448	471	604	791	846
Delaware	359	403	484	626	769
Franklin	359	403	484	626	715
Greene	359	465	557	719	878
Jefferson	386	455	535	670	750
Otsego	359	424	488	630	800
Schuyler	388	413	491	683	805
Steuben	371	422	484	633	715
Tompkins	468	504	647	903	1064
Wyoming	359	403	484	626	715

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cattaraugus	359	403	484	626	715
Clinton	359	403	521	651	730
Cortland	359	428	536	670	793
Essex	359	408	512	641	715
Fulton	359	403	484	626	715
Hamilton	359	431	496	626	715
Lewis	359	403	484	626	715
St. Lawrence	359	403	484	626	715
Seneca	383	411	497	642	715
Sullivan	465	521	635	878	890
Ulster	440	612	736	958	1206
Yates	359	403	484	626	715

N O R T H C A R O L I N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	349	422	550	717	773	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA	519	585	659	869	1040	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	382	434	487	674	801	Cumberland
Goldsboro, NC MSA	347	400	485	625	730	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	414	472	562	775	788	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph Stokes, Yadkin
Greenville, NC MSA	429	435	564	761	930	Pitt
Hickory-Morganton, NC MSA	395	430	499	630	746	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	357	416	471	653	772	Onslow
*Norfolk-Virginia Beach-Newport News, VA-NC MSA	475	535	632	882	1036	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	530	643	755	1013	1195	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	334	361	438	581	641	Edgecombe, Nash
Wilmington, NC MSA	458	502	615	842	1004	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alleghany	295	345	413	532	630
Ashe	295	340	413	532	604
Beaufort	295	340	413	532	604
Bladen	295	340	413	532	604
Carteret	334	366	446	620	690
Cherokee	295	340	413	532	604
Clay	295	340	413	532	604
Columbus	295	340	413	532	604
Dare	306	485	558	766	783
Gates	295	340	413	532	604

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anson	295	340	413	532	604
Avery	329	371	451	566	632
Bertie	295	340	413	532	604
Camden	295	377	502	628	705
Caswell	295	340	413	532	604
Chowan	295	340	413	532	604
Cleveland	295	346	413	547	604
Craven	295	369	444	581	622
Duplin	295	340	413	532	604
Graham	295	340	413	532	604

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 36

N O R T H C A R O L I N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Granville	311	340	413	547	619
Halifax	295	340	413	532	604
Haywood	307	349	425	571	621
Hertford	295	340	413	532	604
Hyde	295	340	413	532	604
Jackson	295	340	413	578	755
Lee	295	377	446	578	626
Mcdowell	295	360	431	589	698
Martin	295	340	413	532	604
Montgomery	295	340	413	532	604
Northampton	295	340	413	532	604
Pasquotank	340	364	453	630	636
Perquimans	295	340	413	532	604
Polk	295	374	419	532	604
Robeson	295	347	413	532	604
Rutherford	298	340	413	532	604
Scotland	295	340	413	532	604
Surry	295	340	413	532	604
Transylvania	341	365	462	612	654
Vance	312	353	413	532	604
Washington	295	340	413	532	604
Wilkes	335	378	425	588	660
Yancey	295	346	413	532	623

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Greene	295	340	413	532	604
Harnett	333	385	467	604	682
Henderson	382	393	486	646	744
Hoke	295	340	413	532	604
Iredell	398	408	538	673	752
Jones	295	340	413	532	604
Lenoir	295	340	413	532	604
Macon	295	352	413	532	604
Mitchell	295	386	443	605	632
Moore	339	409	489	668	801
Pamlico	295	340	413	532	604
Pender	356	431	498	642	784
Person	295	340	443	578	677
Richmond	295	340	413	532	604
Rockingham	295	340	413	532	604
Sampson	295	340	413	532	604
Stanly	295	340	419	566	604
Swain	295	340	413	532	604
Tyrrell	295	340	413	532	604
Warren	295	340	413	532	604
Watauga	385	462	584	795	958
Wilson	308	340	418	532	604

N O R T H D A K O T A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	350	392	522	727	860	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	344	473	571	793	849	Cass
Grand Forks, ND-MN MSA	355	423	557	768	857	Grand Forks

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	231	290	374	486	568
Benson	262	290	374	486	568
Bottineau	231	290	374	486	568
Burke	251	290	374	486	568
Dickey	251	290	374	486	568
Dunn	231	290	374	486	568
Emmons	231	290	374	486	568
Golden Valley	231	298	395	494	568

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barnes	231	292	386	505	568
Billings	251	290	374	486	568
Bowman	231	290	374	486	568
Cavalier	231	299	397	495	611
Divide	231	290	374	486	568
Eddy	231	290	374	486	568
Foster	231	290	376	486	568
Grant	231	290	374	486	568

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 37

N O R T H D A K O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Griggs	231	290	374	486	568
Kidder	231	290	374	486	568
Logan	231	290	374	486	568
Mcintosh	231	290	374	486	568
Mclean	245	290	374	486	568
Mountrail	255	290	374	486	568
Oliver	231	290	374	486	568
Pierce	231	290	374	501	568
Ransom	236	290	374	486	568
Richland	243	290	381	486	568
Sargent	231	290	374	486	568
Sioux	231	290	374	486	568
Stark	231	290	374	486	568
Stutsman	276	290	378	527	621
Traill	243	309	374	486	568
Ward	231	318	424	573	683
Williams	231	290	374	486	568

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hettinger	231	290	374	486	568
Lamoure	251	290	374	486	568
Mchenry	231	290	374	486	568
Mckenzie	231	290	374	486	568
Mercer	231	290	374	486	568
Nelson	231	290	374	486	568
Pembina	231	290	374	493	586
Ramsey	238	318	424	531	693
Renville	267	290	374	489	578
Rolette	250	319	384	486	568
Sheridan	231	290	374	486	568
Slope	231	290	374	486	568
Steele	231	290	374	486	568
Towner	264	298	395	494	651
Walsh	308	329	408	511	572
Wells	246	290	374	486	568

O H I O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	387	469	602	753	845	Portage, Summit
Brown County, OH	301	354	441	571	630	Brown
Canton-Massillon, OH MSA	292	380	484	606	681	Carroll, Stark
Cincinnati, OH-KY-IN	324	416	557	746	806	Clermont, Hamilton, Warren
*Cleveland-Lorain-Elyria, OH PMSA	442	555	687	874	984	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	398	471	605	768	883	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton-Springfield, OH MSA	389	436	556	718	806	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	326	464	594	743	832	Butler
Huntington-Ashland, WV-KY-OH MSA	307	360	444	566	624	Lawrence
Lima, OH MSA	292	350	460	587	643	Allen, Auglaize
Mansfield, OH MSA	292	350	445	555	622	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	309	371	424	550	597	Washington
Steubenville-Weirton, OH-WV MSA	292	344	431	549	613	Jefferson
Toledo, OH MSA	365	444	542	698	758	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	318	349	431	549	613	Belmont
Youngstown-Warren, OH MSA	342	403	505	634	722	Columbiana, Mahoning, Trumbull

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 38

O H I O continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	282	335	417	532	596
Athens	390	440	517	678	832
Clinton	322	413	496	691	697
Darke	310	335	420	532	596
Erie	282	376	469	633	768
Gallia	282	335	417	532	596
Hancock	358	362	458	585	640
Harrison	282	335	417	532	596
Highland	282	335	417	532	596
Holmes	282	335	417	532	596
Jackson	282	335	417	532	596
Logan	331	336	433	583	607
Meigs	282	335	417	532	596
Monroe	282	335	417	532	596
Morrow	282	335	417	532	596
Noble	282	335	417	532	604
Paulding	282	335	417	532	596
Pike	296	353	438	561	626
Putnam	292	335	417	532	596
Sandusky	282	366	469	592	654
Seneca	283	335	417	536	596
Tuscarawas	282	335	437	547	613
Van Wert	282	339	417	532	596
Wayne	282	373	459	583	642
Wyandot	282	335	417	532	596

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashland	282	335	440	550	616
Champaign	282	344	447	558	625
Coshocton	282	335	417	532	596
Defiance	335	381	502	633	703
Fayette	306	335	417	532	596
Guernsey	282	335	417	532	596
Hardin	282	335	417	532	596
Henry	325	360	449	580	659
Hocking	282	335	417	532	596
Huron	327	356	443	585	622
Knox	332	365	468	605	669
Marion	282	335	417	532	596
Mercer	282	335	417	532	613
Morgan	282	340	417	532	596
Muskingum	282	335	417	532	596
Ottawa	282	417	479	652	697
Perry	282	335	417	532	596
Preble	289	343	427	547	611
Ross	327	341	417	532	596
Scioto	282	335	417	532	596
Shelby	282	344	459	573	642
Union	282	390	515	644	745
Vinton	282	335	417	532	596
Williams	313	350	436	557	623

O K L A H O M A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	300	304	403	561	642	Garfield
Fort Smith, AR-OK MSA	337	341	449	600	630	Sequoyah
Lawton, OK MSA	371	373	475	659	722	Comanche
*Oklahoma City, OK MSA	388	422	547	760	850	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
*Tulsa, OK MSA	358	427	559	778	918	Creek, Osage, Rogers, Tulsa, Wagoner

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING

O K L A H O M A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	249	286	357	475	544
Atoka	249	286	357	475	544
Beckham	253	286	357	475	544
Bryan	249	286	357	475	544
Carter	249	288	360	501	544
Choctaw	249	286	357	475	544
Coal	249	286	357	475	544
Craig	249	286	357	487	576
Delaware	249	286	357	475	554
Ellis	249	286	357	475	544
Grady	273	286	370	503	607
Greer	249	286	357	475	544
Harper	249	286	357	475	544
Hughes	249	286	357	475	544
Jefferson	249	286	357	475	544
Kay	276	292	384	535	627
Kiowa	249	286	357	475	544
Le Flore	249	286	357	475	544
Love	249	286	361	475	544
Mcintosh	249	286	357	475	544
Marshall	249	286	357	475	544
Murray	249	286	357	475	544
Noble	249	286	357	475	544
Okfuskee	249	286	357	475	544
Ottawa	268	286	357	475	544
Payne	288	340	435	601	674
Pontotoc	249	286	357	475	544
Roger Mills	249	286	357	475	544
Stephens	253	286	357	475	566
Tillman	249	286	357	475	544
Washita	249	286	357	475	544
Woodward	249	286	357	475	544

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alfalfa	249	286	357	475	544
Beaver	249	290	357	475	544
Blaine	249	286	357	475	544
Caddo	249	286	357	475	544
Cherokee	261	295	357	475	552
Cimarron	249	286	357	475	544
Cotton	249	286	357	475	544
Custer	249	286	366	509	587
Dewey	249	286	357	475	544
Garvin	249	286	357	475	548
Grant	249	286	357	475	544
Harmon	249	286	357	475	544
Haskell	249	286	357	475	544
Jackson	249	323	394	518	584
Johnston	249	286	357	475	544
Kingfisher	249	294	365	478	544
Latimer	249	286	357	475	544
Lincoln	267	286	357	475	544
Mccurtain	249	286	357	475	544
Major	249	299	357	495	544
Mayes	249	290	386	487	544
Muskogee	270	303	357	493	544
Nowata	249	286	357	475	544
Okmulgee	253	286	357	475	544
Pawnee	281	286	370	476	544
Pittsburg	249	286	357	475	544
Pushmataha	249	286	357	475	544
Seminole	249	286	357	475	544
Texas	249	296	357	476	544
Washington	249	342	416	552	645
Woods	249	286	357	475	544

O R E G O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Corvallis, OR MSA	385	499	633	952	1011	Benton
Eugene-Springfield, OR MSA	339	465	606	846	977	Lane
Medford-Ashland, OR MSA	348	456	610	848	945	Jackson

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

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SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 40

O R E G O N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Portland-Vancouver, OR-WA PMSA	481	592	730	1015	1102	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR PMSA	407	480	615	846	886	Marion, Polk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	315	373	484	666	742	Clatsop	363	430	563	768	863
Coos	315	384	510	710	742	Crook	315	373	484	666	742
Curry	315	428	568	728	895	Deschutes	389	447	598	833	964
Douglas	315	373	484	666	793	Gilliam	315	397	484	666	742
Grant	315	373	484	666	742	Harney	315	373	484	666	742
Hood River	370	416	565	736	870	Jefferson	315	373	484	666	742
Josephine	315	382	492	666	776	Klamath	315	373	484	666	788
Lake	315	373	484	666	742	Lincoln	382	388	517	719	782
Linn	378	449	582	801	893	Malheur	315	373	484	666	742
Morrow	315	373	484	666	742	Sherman	315	373	484	666	742
Tillamook	315	373	484	666	742	Umatilla	315	373	484	666	742
Union	315	373	484	666	742	Wallowa	315	373	484	666	742
Wasco	383	475	531	723	813	Wheeler	315	373	484	666	742

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	377	511	608	792	889	Carbon, Lehigh, Northampton
Altoona, PA MSA	288	365	438	571	639	Blair
Erie, PA MSA	292	381	448	579	647	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	346	443	568	716	798	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	292	371	446	579	647	Cambria, Somerset
Lancaster, PA MSA	384	470	586	765	823	Lancaster
Newburgh, NY-PA PMSA	476	618	757	960	1095	Pike
*Philadelphia, PA-NJ PMSA	535	657	812	1016	1274	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	389	476	574	719	803	Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA	303	448	553	691	779	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	292	408	489	610	737	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	320	371	446	579	647	Mercer
State College, PA MSA	419	513	635	832	890	Centre
Williamsport, PA MSA	292	373	448	579	647	Lycoming
York, PA MSA	325	446	553	690	772	York

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 41

P E N N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	285	384	509	660	835
Bedford	285	363	434	567	633
Cameron	285	363	434	567	633
Clearfield	285	363	434	567	633
Crawford	285	363	434	567	633
Forest	285	363	434	567	633
Fulton	285	363	434	567	633
Huntingdon	285	363	434	567	633
Jefferson	285	363	434	567	633
Lawrence	285	363	434	567	633
Mifflin	317	363	434	567	633
Montour	337	363	456	633	748
Potter	285	363	434	567	633
Snyder	343	363	435	567	633
Susquehanna	341	363	434	567	673
Union	344	457	571	714	798
Warren	285	363	434	567	633

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Armstrong	289	383	434	567	712
Bradford	289	367	447	585	641
Clarion	285	363	434	567	633
Clinton	285	363	434	567	633
Elk	285	363	434	567	633
Franklin	285	363	440	606	633
Greene	285	363	434	567	633
Indiana	327	365	434	567	633
Juniata	285	363	434	567	633
Mc Kean	285	365	434	567	633
Monroe	456	544	672	917	1025
Northumberland	301	381	465	618	688
Schuylkill	285	363	452	567	633
Sullivan	285	363	434	567	633
Tioga	285	363	434	567	633
Venango	285	363	434	567	633
Wayne	286	442	521	664	853

R H O D E I S L A N D

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	501	606	738	923	1055	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA MSA	384	523	628	789	972	Bristol county towns of Barrington town, Bristol town Warren town Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Newport county towns of Jamestown town Little Compton tow, Tiverton town 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 Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 42

R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Newport	565	658	845	1058	1183	Middletown town, Newport city, Portsmouth town
Washington	667	751	844	1089	1199	New Shoreham town

S O U T H C A R O L I N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	389	465	548	744	880	Aiken, Edgefield
Charleston-North Charleston, SC MSA	410	476	546	726	846	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	519	585	659	869	1040	York
Columbia, SC MSA	439	484	556	735	846	Lexington, Richland
Florence, SC MSA	333	370	481	600	673	Florence
Greenville-Spartanburg-Anderson, SC MSA	395	478	539	679	799	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	431	438	561	702	786	Horry
Sumter, SC MSA	352	390	442	605	719	Sumter

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Abbeville	290	338	411	528	604
Bamberg	290	338	411	528	604
Beaufort	414	508	585	730	818
Chester	290	338	411	528	604
Clarendon	290	338	411	528	604
Darlington	290	338	411	528	604
Fairfield	290	389	443	552	619
Greenwood	291	338	411	528	604
Jasper	290	338	411	528	604
Lancaster	304	339	411	528	604
Lee	290	338	411	528	604
Marion	290	338	411	528	604
Newberry	290	338	411	528	604
Orangeburg	290	338	411	528	604
Union	290	338	411	528	604

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allendale	290	338	411	528	604
Barnwell	305	338	413	528	604
Calhoun	290	338	411	528	604
Chesterfield	290	338	411	528	604
Colleton	290	338	411	528	604
Dillon	290	338	411	528	604
Georgetown	290	369	414	528	629
Hampton	290	338	411	528	604
Kershaw	290	338	411	528	604
Laurens	290	338	411	528	604
Mccormick	290	338	411	528	643
Marlboro	290	338	411	528	604
Oconee	290	338	411	528	604
Saluda	290	338	411	528	604
Williamsburg	290	338	411	528	604

S O U T H D A K O T A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA	362	431	574	781	945	Pennington
Sioux Falls, SD MSA	350	484	614	777	892	Lincoln, Minnehaha

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 43

S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aurora	256	343	427	565	654
Bennett	256	340	427	565	654
Brookings	274	435	482	652	769
Brule	256	340	427	565	654
Butte	296	403	536	700	825
Charles Mix	256	340	427	565	654
Clay	285	378	475	629	780
Corson	256	340	427	565	654
Davison	286	362	455	609	697
Deuel	256	340	427	565	654
Douglas	284	340	427	565	654
Fall River	292	340	427	565	654
Grant	256	340	427	565	654
Haakon	256	348	427	565	654
Hand	256	340	427	565	654
Harding	256	348	427	565	654
Hutchinson	256	340	427	565	654
Jackson	256	345	427	565	654
Jones	256	340	427	565	654
Lake	256	345	427	565	654
Lyman	256	340	427	565	654
Mcpherson	256	340	427	565	654
Meade	360	406	542	709	837
Miner	256	345	427	565	654
Perkins	256	340	427	565	654
Roberts	256	340	427	565	654
Shannon	256	345	427	565	654
Stanley	256	348	427	565	654
Todd	282	340	427	565	654
Turner	256	340	427	565	654
Walworth	256	348	427	565	654
Ziebach	256	340	427	565	654

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beadle	256	340	427	565	654
Bon Homme	284	340	427	565	654
Brown	282	374	470	622	720
Buffalo	256	340	427	565	660
Campbell	256	340	427	565	654
Clark	256	340	427	565	654
Codington	295	391	492	651	753
Custer	256	340	427	565	654
Day	286	340	427	565	654
Dewey	256	340	427	565	654
Edmunds	256	340	427	565	654
Faulk	256	340	450	565	654
Gregory	257	340	427	565	654
Hamlin	256	340	427	565	654
Hanson	260	356	474	596	667
Hughes	291	352	466	613	726
Hyde	256	346	427	565	654
Jerauld	256	343	427	565	654
Kingsbury	279	340	427	565	654
Lawrence	294	423	532	728	824
Mccook	256	340	427	565	654
Marshall	303	340	427	565	654
Mellette	306	345	427	565	654
Moody	256	340	427	565	654
Potter	256	340	427	565	654
Sanborn	256	340	427	565	654
Spink	278	340	434	565	654
Sully	256	340	427	565	654
Tripp	256	340	427	565	654
Union	269	340	427	565	654
Yankton	256	340	427	565	654

T E N N E S S E E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	372	434	522	674	768	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	345	386	454	618	636	Montgomery
Jackson, TN MSA	267	353	473	654	658	Madison, Chester

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 44

T E N N E S S E E continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA.....	310	370	458	594	704	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA.....	310	381	479	639	767	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN-AR-MS MSA.....	396	462	542	753	791	Fayette, Shelby, Tipton
Nashville, TN MSA.....	434	520	641	873	979	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bedford.....	240	309	378	476	529	Benton.....	259	295	355	468	524
Bledsoe.....	240	282	355	468	524	Bradley.....	240	303	404	547	665
Campbell.....	242	282	355	468	524	Cannon.....	240	282	355	468	524
Carroll.....	240	292	355	468	524	Claiborne.....	240	282	355	468	524
Clay.....	244	282	355	468	524	Cocke.....	240	282	355	468	524
Coffee.....	240	335	377	524	597	Crockett.....	240	282	355	468	524
Cumberland.....	253	282	369	514	524	Decatur.....	240	282	355	468	524
Dekalb.....	240	282	355	468	524	Dyer.....	300	304	405	507	632
Fentress.....	240	282	355	468	524	Franklin.....	251	282	355	489	575
Gibson.....	240	282	355	468	524	Giles.....	240	306	379	474	530
Grainger.....	244	282	355	468	524	Greene.....	240	282	355	468	524
Grundy.....	240	282	355	468	524	Hamblen.....	240	283	371	493	524
Hancock.....	240	282	355	468	524	Hardeman.....	240	282	355	468	524
Hardin.....	240	282	355	468	524	Haywood.....	252	293	391	489	547
Henderson.....	240	282	355	468	524	Henry.....	240	282	355	468	524
Hickman.....	284	288	382	503	534	Houston.....	240	282	355	468	524
Humphreys.....	240	293	355	468	524	Jackson.....	240	282	355	468	524
Jefferson.....	262	282	365	468	580	Johnson.....	240	282	355	468	524
Lake.....	240	282	355	468	524	Lauderdale.....	240	282	359	468	524
Lawrence.....	240	282	355	468	524	Lewis.....	240	282	355	468	524
Lincoln.....	240	282	360	468	524	Mcminn.....	240	282	355	470	524
Mcnairy.....	240	282	355	468	524	Macon.....	240	282	355	468	524
Marshall.....	283	308	401	507	564	Maury.....	344	351	468	586	653
Meigs.....	240	282	355	468	524	Monroe.....	240	282	355	468	524
Moore.....	240	282	355	468	524	Morgan.....	240	282	355	468	524
Obion.....	279	283	362	479	524	Overton.....	240	282	355	468	524
Perry.....	240	284	355	468	524	Pickett.....	240	282	355	468	524
Polk.....	240	282	355	468	524	Putnam.....	292	295	379	521	560
Rhea.....	240	300	355	473	524	Roane.....	259	282	355	478	575
Scott.....	240	282	355	468	524	Sequatchie.....	240	282	355	468	524
Smith.....	240	282	355	468	524	Stewart.....	240	282	355	468	524
Trousdale.....	240	295	392	492	644	Van Buren.....	240	282	355	468	524
Warren.....	267	282	364	468	524	Wayne.....	240	282	355	468	524

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 45

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Weakley	260	282	355	468	524
White	244	282	355	468	524

T E X A S

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	338	376	485	654	795	Taylor
Amarillo, TX MSA	286	361	449	626	738	Potter, Randall
*Austin-San Marcos, TX MSA	533	645	858	1192	1409	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	326	394	480	636	673	Hardin, Jefferson, Orange
Brazoria, TX PMSA	473	527	658	917	1079	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	300	378	472	591	738	Cameron
Bryan-College Station, TX MSA	381	443	560	781	921	Brazos
Corpus Christi, TX MSA	357	438	559	761	900	Nueces, San Patricio
*Dallas, TX	562	647	830	1148	1358	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	402	451	534	739	877	El Paso
*Fort Worth-Arlington, TX PMSA	479	521	675	943	1111	Hood, Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	464	477	597	829	979	Galveston
Henderson County, TX	296	352	430	586	704	Henderson
*Houston, TX PMSA	470	529	684	954	1124	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	401	418	529	735	808	Bell, Coryell
Laredo, TX MSA	325	374	491	614	691	Webb
Longview-Marshall, TX MSA	322	363	445	607	662	Gregg, Harrison, Upshur
Lubbock, TX MSA	308	390	506	704	780	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	278	370	424	529	594	Hidalgo
Odessa-Midland, TX MSA	308	356	475	660	765	Ector, Midland
San Angelo, TX MSA	286	365	443	608	717	Tom Green
*San Antonio, TX MSA	399	461	596	829	980	Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	286	391	472	603	721	Grayson
Texarkana, TX-Texarkana, AR MSA	311	380	464	612	649	Bowie
Tyler, TX MSA	358	395	482	668	707	Smith
Victoria, TX MSA	354	358	452	627	707	Victoria
Waco, TX MSA	311	381	502	667	703	Mclennan
Wichita Falls, TX MSA	343	383	462	615	725	Archer, Wichita

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 46

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson	333	375	420	585	591
Angelina	302	351	395	548	646
Armstrong	277	320	418	525	591
Austin	277	320	386	529	591
Bandera	297	320	386	525	591
Bee	277	320	386	518	591
Borden	277	320	386	518	591
Brewster	277	320	386	522	625
Brooks	277	320	386	518	591
Burleson	277	320	405	548	668
Calhoun	296	320	386	534	632
Camp	375	380	475	594	664
Cass	277	320	386	518	591
Cherokee	309	321	393	518	591
Clay	277	326	386	518	603
Coke	277	320	386	518	591
Collingsworth	277	320	386	518	591
Comanche	277	320	386	518	591
Cooke	300	320	406	552	613
Crane	277	320	386	518	591
Crosby	277	320	386	518	591
Dallam	277	320	386	518	591
Deaf Smith	277	320	386	518	601
Dewitt	277	320	386	518	591
Dimmit	277	320	386	518	591
Duval	277	320	386	518	591
Edwards	277	320	386	518	591
Falls	277	320	386	518	591
Fayette	277	320	386	518	591
Floyd	277	320	386	518	591
Franklin	277	320	386	534	591
Frio	277	320	386	518	591
Garza	277	320	386	518	591
Glasscock	277	320	386	518	591
Gonzales	277	320	386	518	591
Grimes	277	320	386	522	616
Hall	277	320	386	518	591
Hansford	277	320	386	518	607
Hartley	277	320	386	518	591
Hemphill	277	357	399	557	591

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Andrews	277	320	386	518	591
Aransas	277	341	454	632	636
Atascosa	277	320	386	518	591
Bailey	277	320	386	518	591
Baylor	277	320	386	518	591
Blanco	277	320	408	569	600
Bosque	277	320	386	518	591
Briscoe	277	320	386	518	591
Brown	277	320	387	520	635
Burnet	352	407	501	696	814
Callahan	277	320	386	518	591
Carson	277	320	386	518	591
Castro	279	320	386	518	591
Childress	277	320	386	518	591
Cochran	277	320	386	518	591
Coleman	277	320	386	518	591
Colorado	277	320	386	518	591
Concho	277	320	386	518	591
Cottle	277	320	386	518	591
Crockett	277	320	386	518	591
Culberson	277	320	386	518	591
Dawson	277	320	386	518	591
Delta	277	332	386	518	591
Dickens	277	320	386	518	591
Donley	277	320	386	518	591
Eastland	277	320	386	518	591
Erath	287	325	420	544	591
Fannin	281	320	386	520	591
Fisher	277	320	386	518	591
Foard	277	320	386	518	591
Freestone	277	320	386	518	591
Gaines	283	320	386	518	591
Gillespie	277	349	452	622	634
Goliad	277	320	386	518	591
Gray	303	320	411	518	611
Hale	277	320	386	518	591
Hamilton	277	320	386	518	591
Hardeman	277	320	386	518	591
Haskell	277	320	386	518	591
Hill	277	320	386	518	591

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 47

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hockley	283	330	386	523	591
Houston	277	320	386	518	591
Hudspeth	334	377	420	528	693
Irion	277	320	386	518	591
Jackson	277	321	386	518	591
Jeff Davis	277	320	386	518	591
Jim Wells	277	320	386	518	599
Karnes	277	320	386	518	591
Kenedy	277	320	386	518	591
Kerr	277	359	448	624	736
King	277	320	386	518	591
Kleberg	337	349	425	594	699
Lamar	277	344	404	565	668
Lampasas	277	320	386	525	620
Lavaca	277	320	386	518	591
Leon	277	356	398	518	656
Lipscomb	277	320	386	518	591
Llano	277	357	475	595	780
Lynn	277	320	386	518	591
Mcmullen	277	320	386	518	591
Marion	277	320	386	518	613
Mason	277	320	386	518	591
Maverick	277	320	386	518	591
Menard	277	320	386	518	591
Mills	277	320	386	518	591
Montague	277	320	386	518	591
Morris	277	320	386	518	591
Nacogdoches	292	353	457	571	675
Newton	277	320	386	518	591
Ochiltree	277	320	386	518	591
Palo Pinto	277	320	386	518	615
Parmer	277	320	386	518	591
Polk	309	338	393	529	642
Rains	277	359	434	602	607
Real	277	320	386	518	591
Reeves	277	320	386	518	591
Roberts	277	323	386	518	591
Runnels	277	320	386	518	591
Sabine	277	320	386	518	591
San Jacinto	290	327	386	518	605

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hopkins	323	348	408	569	613
Howard	295	320	386	522	591
Hutchinson	277	320	399	557	658
Jack	277	320	386	518	591
Jasper	277	320	394	525	644
Jim Hogg	277	320	386	518	591
Jones	277	320	386	518	591
Kendall	277	404	454	632	747
Kent	277	320	386	518	591
Kimble	277	320	420	527	591
Kinney	277	320	386	518	591
Knox	277	320	386	518	591
Lamb	277	320	386	518	591
La Salle	277	320	386	518	591
Lee	314	353	396	553	621
Limestone	277	320	386	518	591
Live Oak	277	320	386	518	591
Loving	277	320	386	518	591
Mcculloch	285	320	386	518	591
Madison	277	329	386	518	609
Martin	277	320	386	518	591
Matagorda	320	350	434	602	607
Medina	277	320	386	518	591
Milam	277	320	386	518	591
Mitchell	277	320	386	518	591
Moore	277	325	386	518	601
Motley	277	320	386	518	591
Navarro	332	349	419	532	591
Nolan	285	320	386	518	591
Oldham	277	320	418	525	614
Panola	277	326	386	518	591
Pecos	277	320	386	522	616
Presidio	277	320	386	518	591
Reagan	353	359	477	599	783
Red River	277	357	399	518	591
Refugio	277	320	386	518	591
Robertson	277	367	409	518	591
Rusk	289	320	386	518	591
San Augustine	277	320	386	518	591
San Saba	277	320	386	518	591

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 48

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Schleicher	277	320	386	518	591
Shackelford	277	320	386	518	591
Sherman	277	320	386	518	591
Starr	277	320	386	518	591
Sterling	277	320	386	518	591
Sutton	277	320	386	518	591
Terrell	277	320	386	518	591
Throckmorton	277	320	386	518	591
Trinity	288	325	386	518	591
Upton	277	320	386	518	591
Val Verde	277	368	433	540	637
Walker	374	397	486	645	681
Washington	344	351	469	585	769
Wheeler	277	320	386	518	591
Willacy	277	320	386	518	591
Wise	277	323	388	541	591
Yoakum	277	365	448	560	736
Zapata	277	320	386	518	591

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Scurry	277	320	400	559	660
Shelby	277	320	386	518	591
Somervell	317	357	399	548	591
Stephens	277	320	386	518	591
Stonewall	277	320	386	518	591
Swisher	277	320	386	518	591
Terry	277	320	386	518	591
Titus	294	366	414	572	591
Tyler	277	320	412	518	679
Uvalde	277	320	386	518	591
Van Zandt	296	320	400	546	660
Ward	277	320	386	518	591
Wharton	277	320	386	518	591
Wilbarger	277	320	386	518	610
Winkler	277	320	386	518	591
Wood	277	320	399	557	658
Young	277	320	386	518	599
Zavala	277	320	386	518	591

U T A H

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kane County, UT	318	391	489	655	788	Kane
Provo-Orem, UT MSA	440	464	574	796	941	Utah
*Salt Lake City-Ogden, UT MSA	475	550	698	971	1138	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaver	301	368	461	617	742
Cache	335	412	516	690	830
Daggett	327	447	593	744	833
Emery	301	368	461	617	742
Grand	301	368	461	617	742
Juab	301	368	461	617	742
Morgan	301	368	461	617	742
Rich	301	368	461	617	742
Sanpete	301	368	461	617	742
Summit	445	549	685	924	1124
Uintah	301	368	461	617	742
Washington	370	456	605	809	990

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Box Elder	335	371	465	622	750
Carbon	323	368	461	617	742
Duchesne	301	368	461	617	742
Garfield	301	368	461	617	742
Iron	307	418	520	651	765
Millard	301	368	461	617	742
Piute	301	368	461	617	742
San Juan	301	368	461	617	742
Sevier	305	368	461	617	742
Tooele	301	382	461	617	742
Wasatch	301	382	461	617	742
Wayne	301	368	461	617	742

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 49

V E R M O N T

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington, VT MSA	482	590	788	1074	1296	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 Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town South Hero town

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	426	514	598	834	935	
Bennington	385	486	625	794	926	
Caledonia	371	444	541	682	782	
Chittenden	392	632	713	991	1168	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Essex	354	427	528	665	763	
Franklin	426	483	592	751	863	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Grand Isle	367	442	547	689	791	Alburg town, Isle La Motte town, North Hero town
Lamoille	340	473	564	772	885	
Orange	353	463	571	754	845	
Orleans	328	395	489	616	707	
Rutland	390	505	617	774	866	
Washington	366	454	613	767	860	
Windham	422	488	648	822	905	
Windsor	454	514	642	825	977	

V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA	434	513	656	872	977	Albemarle, Fluvanna, Greene, Charlottesville city
Clarke County, VA	321	453	586	805	821	Clarke
Culpeper County, VA	388	566	658	870	1042	Culpeper
Danville, VA MSA	296	373	438	588	709	Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA	310	370	458	594	704	Scott, Washington, Bristol city
King George County, VA	389	517	581	807	813	King George
Lynchburg, VA MSA	352	388	447	588	709	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
*Norfolk-Virginia Beach-Newport News, VA-NC MSA	475	535	632	882	1036	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 50

V I R G I N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Richmond-Petersburg, VA MSA	509	576	671	933	1101	Suffolk city, Virginia Beach city, Williamsburg city Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA	298	373	484	621	773	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA	314	430	573	751	938	Warren
*Washington, DC-MD-VA	680	773	907	1236	1491	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Accomack	343	371	433	575	693	Alleghany	301	365	428	575	693
Amelia	289	365	428	575	693	Appomattox	289	365	428	575	693
Augusta	289	375	455	599	729	Bath	289	365	428	575	693
Bland	289	365	428	575	693	Brunswick	289	365	428	575	693
Buchanan	289	365	428	575	693	Buckingham	289	365	428	575	693
Caroline	410	415	555	736	776	Carroll	289	365	428	575	693
Charlotte	289	365	428	575	693	Craig	289	365	428	575	693
Cumberland	289	397	460	575	693	Dickenson	289	365	428	575	693
Essex	289	407	480	669	789	Floyd	289	365	428	575	693
Franklin	289	365	428	575	693	Frederick	393	453	545	746	893
Giles	289	365	428	575	693	Grayson	289	365	428	575	693
Greensville	289	375	428	575	693	Halifax	289	365	428	575	693
Henry	289	365	428	575	693	Highland	289	365	428	575	693
King and Queen	289	415	467	584	693	King William	289	397	444	575	693
Lancaster	362	406	458	610	743	Lee	289	365	428	575	693
Louisa	289	377	464	645	693	Lunenburg	289	365	428	575	693
Madison	290	431	485	608	796	Mecklenburg	289	365	428	575	693
Middlesex	289	367	428	575	693	Montgomery	297	391	459	637	754
Nelson	289	365	428	575	693	Northampton	289	365	428	575	693
Northumberland	289	365	428	575	693	Nottoway	289	365	428	575	693
Orange	321	436	584	813	954	Page	336	379	428	575	693
Patrick	289	365	428	575	693	Prince Edward	324	367	428	575	693
Pulaski	289	365	428	575	693	Rappahannock	293	475	535	742	875
Richmond	289	386	432	575	710	Rockbridge	289	365	428	575	693
Rockingham	289	401	507	695	815	Russell	289	365	428	575	693
Shenandoah	381	391	481	667	757	Smyth	289	365	428	575	693
Southampton	289	365	428	575	693	Surry	300	365	428	575	693
Sussex	289	365	428	575	693	Tazewell	289	365	428	575	693

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 51

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Westmoreland	289	391	519	653	845
Wythe	302	365	428	575	693
Wise	289	365	428	575	693

W A S H I N G T O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	401	520	692	956	1133	Whatcom
Bremerton, WA PMSA	454	524	679	917	1115	Kitsap
Olympia, WA PMSA	467	573	716	985	1162	Thurston
Portland-Vancouver, OR-WA PMSA	481	592	730	1015	1102	Clark
Richland-Kennewick-Pasco, WA MSA	500	572	685	954	1119	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	525	639	809	1123	1327	Island, King, Snohomish
Spokane, WA MSA	321	436	527	716	801	Spokane
Tacoma, WA PMSA	404	482	642	893	1009	Pierce
Yakima, WA MSA	361	444	551	739	771	Yakima

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	319	382	497	656	728
Chelan	319	382	497	656	728
Columbia	319	382	497	656	728
Douglas	373	394	497	656	728
Garfield	319	382	497	656	728
Grays Harbor	326	382	502	677	781
Kittitas	319	382	497	656	728
Lewis	319	382	497	656	728
Mason	362	449	552	726	781
Pacific	319	382	497	656	728
San Juan	394	538	717	945	1125
Skamania	319	382	497	656	728
Wahkiakum	319	382	497	656	728
Whitman	344	391	521	723	857
Asotin	319	382	497	656	728
Clallam	372	460	585	753	823
Cowlitz	358	400	516	716	728
Ferry	319	382	497	656	728
Grant	343	382	497	656	728
Jefferson	319	412	507	687	728
Klickitat	319	382	497	656	728
Lincoln	319	382	497	656	728
Okanogan	319	382	497	656	728
Pend Oreille	319	382	497	656	873
Skagit	435	531	627	783	875
Stevens	319	382	497	656	728
Walla Walla	319	382	497	665	786

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County, WV	422	451	531	663	745	Berkeley
Charleston, WV MSA	290	393	499	685	749	Kanawha, Putnam
Cumberland, MD-WV MSA	340	409	506	668	763	Mineral
Huntington-Ashland, WV-KY-OH MSA	307	360	444	566	624	Cabell, Wayne
Jefferson County, WV	427	473	586	762	863	Jefferson

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 52

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	309	371	424	550	597	Wood
Steubenville-Weirton, OH-WV MSA	292	344	431	549	613	Brooke, Hancock
Wheeling, WV-OH MSA	318	349	431	549	613	Marshall, Ohio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barbour	257	326	365	469	546
Braxton	257	313	365	469	546
Clay	257	313	365	469	546
Fayette	257	313	365	469	546
Grant	257	313	365	469	546
Hampshire	257	313	367	482	546
Harrison	282	347	401	500	600
Lewis	257	343	365	469	546
Logan	263	313	365	472	559
Marion	257	324	400	512	591
Mercer	257	313	365	469	546
Monongalia	323	358	435	600	709
Morgan	349	394	441	554	617
Pendleton	257	313	365	469	546
Pocahontas	257	313	365	469	546
Raleigh	296	349	407	524	613
Ritchie	257	313	365	469	546
Summers	257	313	365	469	546
Tucker	257	313	365	469	546
Upshur	257	313	367	469	546
Wetzel	290	313	394	491	620
Wyoming	257	313	365	469	546

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Boone	257	313	365	469	546
Calhoun	257	313	365	469	546
Doddridge	266	313	365	469	546
Gilmer	282	313	365	469	546
Greenbrier	257	354	378	471	546
Hardy	257	313	365	469	546
Jackson	257	321	365	499	546
Lincoln	257	313	365	469	546
Mcdowell	257	313	365	469	546
Mason	257	313	365	469	561
Mingo	257	313	365	469	553
Monroe	257	313	365	469	546
Nicholas	257	313	365	469	546
Pleasants	265	313	365	469	560
Preston	257	329	365	469	546
Randolph	257	313	365	469	546
Roane	257	313	365	469	546
Taylor	314	339	371	469	546
Tyler	257	313	384	480	546
Webster	257	313	365	469	546
Wirt	257	313	365	469	546

W I S C O N S I N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	325	400	509	641	740	Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA	285	367	471	629	733	Douglas
Eau Claire, WI MSA	351	382	501	642	723	Chippewa, Eau Claire
Green Bay, WI MSA	385	424	544	756	760	Brown
Janesville-Beloit, WI MSA	358	452	559	700	785	Rock
Kenosha, WI PMSA	403	500	614	844	950	Kenosha
La Crosse, WI-MN MSA	289	372	473	633	767	La Crosse
Madison, WI MSA	445	559	676	938	1107	Dane

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 53

W I S C O N S I N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	386	504	633	794	887	Milwaukee, Ozaukee, Washington, Waukesha
*Minneapolis-St. Paul, MN-WI MSA	451	580	742	1004	1137	Pierce, St. Croix
Racine, WI PMSA	343	425	561	724	792	Racine
Sheboygan, WI MSA	310	399	487	609	756	Sheboygan
Wausau, WI MSA	381	394	492	672	745	Marathon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	279	326	415	529	597
Barron	279	326	415	529	597
Buffalo	279	326	415	529	597
Clark	279	326	415	529	597
Crawford	279	326	415	529	597
Door	279	346	429	552	670
Florence	279	326	415	529	597
Forest	279	326	415	529	597
Green	284	326	415	558	597
Iowa	289	326	415	545	597
Jackson	279	326	415	529	597
Juneau	285	326	415	529	597
Lafayette	284	326	415	529	597
Lincoln	279	326	415	529	597
Marinette	279	326	415	529	597
Menominee	279	326	415	529	597
Oconto	279	326	415	529	597
Pepin	279	326	415	529	597
Portage	340	359	465	581	718
Richland	279	326	415	529	597
Sauk	327	338	450	561	629
Shawano	284	326	415	529	597
Trempealeau	279	326	415	529	597
Vilas	279	326	415	529	597
Washburn	279	326	415	529	597
Waushara	279	326	415	529	597

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashland	304	338	415	529	597
Bayfield	279	326	415	529	597
Burnett	279	326	415	529	597
Columbia	279	332	436	571	641
Dodge	354	359	471	591	659
Dunn	279	326	426	569	703
Fond du Lac	324	439	520	707	729
Grant	283	326	415	529	597
Green Lake	279	326	415	529	597
Iron	279	326	415	529	597
Jefferson	279	370	480	621	679
Kewaunee	279	326	415	529	597
Langlade	279	326	415	529	597
Manitowoc	282	326	415	529	597
Marquette	279	326	415	529	597
Monroe	279	326	415	553	597
Oneida	279	327	415	533	639
Polk	279	326	422	529	597
Price	279	326	415	529	597
Rusk	279	326	415	529	597
Sawyer	279	326	415	529	597
Taylor	279	326	415	529	597
Vernon	279	326	415	529	597
Walworth	291	410	532	693	779
Waupaca	279	326	415	529	627
Wood	302	347	430	539	606

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 54

W Y O M I N G

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	328	381	487	667	788	Natrona
Cheyenne, WY MSA	371	465	621	794	964	Laramie

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Albany	311	389	519	721	852
Campbell	320	340	436	580	685
Converse	296	340	436	578	665
Fremont	296	340	436	578	665
Hot Springs	296	340	436	578	665
Lincoln	296	340	436	578	665
Park	296	340	436	578	672
Sheridan	296	340	436	578	672
Sweetwater	308	340	436	580	685
Uinta	310	340	436	579	700
Weston	296	340	436	578	665

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	296	340	436	578	665
Carbon	296	340	436	578	665
Crook	296	340	436	578	665
Goshen	296	340	436	578	665
Johnson	296	340	436	578	665
Niobrara	296	340	436	578	665
Platte	296	340	436	578	665
Sublette	329	370	436	578	665
Teton	394	502	667	897	978
Washakie	296	340	436	578	665

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	691	830	983	1232	1386

P U E R T O R I C O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	215	261	311	386	435	Aguada Municipio, Aguadilla Municipio, Moca Municipio
Arecibo, PR PMSA	232	282	331	415	467	Arecibo Municipio, Camuy Municipio, Hatillo Municipio
Caguas, PR PMSA	272	326	385	485	539	Caguas Municipio, Cayey Municipio, Cidra Municipio Gurabo Municipio, San Lorenzo Municipio
Mayaguez, PR MSA	255	311	369	459	517	Anasco Municipio, Cabo Rojo Municipio Hormigueros Municipio, Mayaguez Municipio Sabana Grande Municipio, San German Municipio
Ponce, PR MSA	253	310	365	457	513	Guayanilla Municipio, Juana Diaz Municipio Penuelas Municipio, Ponce Municipio, Villalba Municipio Yauco Municipio
San Juan-Bayamon, PR PMSA	341	416	491	614	690	Aguas Buenas Municipio, Barceloneta Municipio Bayamon Municipio, Canovanas Municipio Carolina Municipio, Catano Municipio, Ceiba Municipio Comerio Municipio, Corozal Municipio, Dorado Municipio Fajardo Municipio, Florida Municipio, Guaynabo Municipio Humacao Municipio, Juncos Municipio Las Piedras Municipio, Loiza Municipio Luquillo Municipio, Manati Municipio, Morovis Municipio

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

SCHEDULE B - FISCAL YEAR 2001 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 55

P U E R T O R I C O continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
						Naguabo Municipio, Naranjito Municipio Rio Grande Municipio, San Juan Municipio Toa Alta Municipio, Toa Baja Municipio Trujillo Alto Municipio, Vega Alta Municipio Vega Baja Municipio, Yabucoa Municipio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adjuntas Municipio.....	202	249	292	369	408
Arroyo Municipio.....	202	249	292	369	408
Ciales Municipio.....	202	249	292	369	408
Culebra Municipio.....	202	249	292	369	408
Guayama Municipio.....	202	249	292	369	408
Jayuya Municipio.....	202	249	292	369	408
Lares Municipio.....	202	249	292	369	408
Maricao Municipio.....	202	249	292	369	408
Orocovis Municipio.....	202	249	292	369	408
Quebradillas Municipio..	202	249	292	369	408
Salinas Municipio.....	202	249	292	369	408
Santa Isabel Municipio..	202	249	292	369	408
Vieques Municipio.....	202	249	292	369	408

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aibonito Municipio.....	202	249	292	369	408
Barranquitas Municipio..	202	249	292	369	408
Coamo Municipio.....	202	249	292	369	408
Guanica Municipio.....	202	249	292	369	408
Isabela Municipio.....	202	249	292	369	408
Lajas Municipio.....	202	249	292	369	408
Las Marias Municipio....	202	249	292	369	408
Maunabo Municipio.....	202	249	292	369	408
Patillas Municipio.....	202	249	292	369	408
Rincon Municipio.....	202	249	292	369	408
San Sebastian Municipio.	202	249	292	369	408
Utuado Municipio.....	202	249	292	369	408

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
St. Croix.....	482	585	690	861	965

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
St. Johns/St. Thomas....	619	750	884	1105	1237

* 50TH percentile FMRS are indicated by an * before the the MSA name.
Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. 121100

Schedule D: FY 2001 Final Fair Market Rents for Manufactured Home Spaces in the Section 8 Housing Choice Voucher Program

Area Name	Space Rent
California	
Los Angeles, CA	$392
Orange County, CA	$479
Riverside-San Bernardino, CA	$310
San Diego, CA	$441
Vallejo-Fairfield-Napa, CA	$366
Colorado	
Boulder-Longmont, CO	$362
Denver, CO	$344
Maryland	
Hagerstown, MD	$222
Nevada	
Reno, NV	$392
New York	
Dutchess County, NY	$383
Newburgh, NY-PA	$350
Rochester, NY	$246
Utica-Rome, NY	$221
Oregon	
Portland-Vancouver, OR-WA	$296
Deschutes County, OR	$261

[FR Doc. 00–33374 Filed 12–29–00; 8:45 am]
BILLING CODE 4210–62–C

Federal Register

Tuesday,
January 2, 2001

Part IV

The President

Presidential Determination No. 2001–05 of December 15, 2000—Presidential Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Presidential Determination No. 2001–06 of December 15, 2000—Suspension of Limitations Under the Jerusalem Embassy Act

Federal Register
Vol. 66, No. 1
Tuesday, January 2, 2001

Presidential Documents

Title 3—

The President

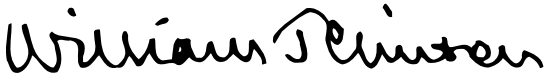
Presidential Determination No. 2001–05 of December 15, 2000

Presidential Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $33 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the unexpected urgent refugee and migration needs, including those of refugees, displaced persons, conflict victims, and other persons at risk, due to crises in Guinea, the Democratic Republic of the Congo, Afghanistan, the North Caucasus, Serbia, and the Middle East. These funds may be used, as appropriate, to provide contributions to international, governmental, and nongovernmental organizations. I understand that you will be forwarding a separate request to meet requirements for refugee assistance in Bosnia and Croatia.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the use of funds under this authority, and to arrange for the publication of this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 15, 2000.

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Federal Register
Vol. 66, No. 1
Tuesday, January 2, 2001

Presidential Documents

Presidential Determination No. 2001–06 of December 15, 2000

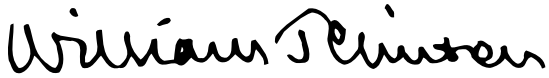
Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register.**

This suspension shall take effect after transmission of this determination and report to the Congress.



THE WHITE HOUSE,
Washington, December 15, 2000.

[FR Doc. 00–33459
Filed 12–29–00; 8:45 am]
Billing code 4710–10–M

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37	(869–042–00130–3)	32.00	July 1, 2000
38 Parts:			
0–17	(869–042–00131–1)	40.00	July 1, 2000
18–End	(869–042–00132–0)	47.00	July 1, 2000
39	(869–042–00133–8)	28.00	July 1, 2000
40 Parts:			
1–49	(869–042–00134–6)	37.00	July 1, 2000
50–51	(869–042–00135–4)	28.00	July 1, 2000
52 (52.01–52.1018)	(869–042–00136–2)	36.00	July 1, 2000
52 (52.1019–End)	(869–042–00137–1)	44.00	July 1, 2000
53–59	(869–042–00138–9)	21.00	July 1, 2000
60	(869–042–00139–7)	66.00	July 1, 2000
61–62	(869–042–00140–1)	23.00	July 1, 2000
63 (63.1–63.1119)	(869–042–00141–9)	66.00	July 1, 2000
63 (63.1200–End)	(869–042–00142–7)	49.00	July 1, 2000
64–71	(869–042–00143–5)	12.00	July 1, 2000
72–80	(869–042–00144–3)	47.00	July 1, 2000
81–85	(869–042–00145–1)	36.00	July 1, 2000
86	(869–042–00146–0)	66.00	July 1, 2000
87-135	(869–042–00146–8)	66.00	July 1, 2000
136–149	(869–042–00148–6)	42.00	July 1, 2000
150–189	(869–042–00149–4)	38.00	July 1, 2000
190–259	(869–042–00150–8)	25.00	July 1, 2000
260–265	(869–042–00151–6)	36.00	July 1, 2000
266–299	(869–042–00152–4)	35.00	July 1, 2000
300–399	(869–042–00153–2)	29.00	July 1, 2000
400–424	(869–042–00154–1)	37.00	July 1, 2000
425–699	(869–042–00155–9)	48.00	July 1, 2000
700–789	(869–042–00156–7)	46.00	July 1, 2000
790–End	(869–042–00157–5)	23.00	[6]July 1, 2000
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–042–00158–3)	15.00	July 1, 2000
101	(869–042–00159–1)	37.00	July 1, 2000
102–200	(869–042–00160–5)	21.00	July 1, 2000
201–End	(869–042–00161–3)	16.00	July 1, 2000
42 Parts:			
1–399	(869–038–00162–4)	36.00	Oct. 1, 1999
400–429	(869–038–00163–2)	44.00	Oct. 1, 1999
430–End	(869–038–00164–1)	54.00	Oct. 1, 1999
43 Parts:			
1–999	(869–042–00165–6)	45.00	Oct. 1, 2000
1000–end	(869–038–00166–7)	47.00	Oct. 1, 1999
44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–042–00168–1)	50.00	Oct. 1, 2000
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–042–00170–2)	45.00	Oct. 1, 2000
1200–End	(869–038–00171–3)	40.00	Oct. 1, 1999
46 Parts:			
1–40	(869–038–00172–1)	27.00	Oct. 1, 1999
41–69	(869–038–00173–0)	23.00	Oct. 1, 1999
70–89	(869–038–00174–8)	8.00	Oct. 1, 1999
90–139	(869–042–00175–3)	41.00	Oct. 1, 2000
140–155	(869–038–00176–4)	15.00	Oct. 1, 1999
156–165	(869–038–00177–2)	21.00	Oct. 1, 1999
166–199	(869–038–00178–1)	27.00	Oct. 1, 1999
200–499	(869–038–00179–9)	23.00	Oct. 1, 1999
500–End	(869–042–00180–0)	23.00	Oct. 1, 2000
47 Parts:			
0–19	(869–038–00181–1)	39.00	Oct. 1, 1999
20–39	(869–042–00182–6)	41.00	Oct. 1, 2000
40–69	(869–038–00183–7)	26.00	Oct. 1, 1999
70–79	(869–038–00184–5)	39.00	Oct. 1, 1999
80–End	(869–042–00185–1)	54.00	Oct. 1, 2000
48 Chapters:			
1 (Parts 1–51)	(869–038–00186–1)	55.00	Oct. 1, 1999
1 (Parts 52–99)	(869–038–00187–0)	30.00	Oct. 1, 1999
2 (Parts 201–299)	(869–038–00188–8)	36.00	Oct. 1, 1999
3–6	(869–038–00189–3)	40.00	Oct. 1, 2000
7–14	(869–038–00190–0)	35.00	Oct. 1, 1999
15–28	(869–038–00191–8)	36.00	Oct. 1, 1999
29–End	(869–038–00192–6)	25.00	Oct. 1, 1999
49 Parts:			
1–99	(869–038–00193–4)	34.00	Oct. 1, 1999
100–185	(869–038–00194–2)	53.00	Oct. 1, 1999
186–199	(869–038–00195–1)	13.00	Oct. 1, 1999
200–399	(869–038–00196–9)	53.00	Oct. 1, 1999
400–999	(869–038–00197–7)	57.00	Oct. 1, 1999
1000–1199	(869–042–00198–2)	25.00	Oct. 1, 2000
1200–End	(869–042–00199–1)	21.00	Oct. 1, 2000
50 Parts:			
1–199	(869–038–00200–1)	43.00	Oct. 1, 1999
200–599	(869–042–00201–6)	35.00	Oct. 1, 2000

Title	Stock Number	Price	Revision Date
600–End	(869–038–00202–7)	37.00	Oct. 1, 1999
CFR Index and Findings Aids	(869–042–00047–1)	53.00	Jan. 1, 2000
Complete 1999 CFR set		951.00	1999
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained..

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 2001

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Jan 2	Jan 17	Feb 1	Feb 16	March 5	April 2
Jan 3	Jan 18	Feb 2	Feb 20	March 5	April 3
Jan 4	Jan 19	Feb 5	Feb 20	March 5	April 4
Jan 5	Jan 22	Feb 5	Feb 20	March 6	April 5
Jan 8	Jan 23	Feb 7	Feb 22	March 9	April 9
Jan 9	Jan 24	Feb 8	Feb 23	March 12	April 9
Jan 10	Jan 25	Feb 9	Feb 26	March 12	April 10
Jan 11	Jan 26	Feb 12	Feb 26	March 12	April 11
Jan 12	Jan 29	Feb 12	Feb 26	March 13	April 12
Jan 16	Jan 31	Feb 15	March 2	March 19	April 16
Jan 17	Feb 1	Feb 16	March 5	March 19	April 17
Jan 18	Feb 2	Feb 20	March 5	March 19	April 18
Jan 19	Feb 5	Feb 20	March 5	March 20	April 19
Jan 22	Feb 6	Feb 21	March 8	March 23	April 23
Jan 23	Feb 7	Feb 22	March 9	March 26	April 23
Jan 24	Feb 8	Feb 23	March 12	March 26	April 24
Jan 25	Feb 9	Feb 26	March 12	March 26	April 25
Jan 26	Feb 12	Feb 26	March 12	March 27	April 26
Jan 29	Feb 13	Feb 28	March 15	March 30	April 30
Jan 30	Feb 14	March 1	March 16	April 2	April 30
Jan 31	Feb 15	March 2	March 19	April 2	May 1